

BEING MINDFUL OF MEDIGAP: CMS PROPOSED RULE IMPLEMENTING REVISIONS TO MEDICARE PART B ENROLLMENT

On April 27, 2022, the U.S. Department of Health and Human Services, Centers for Medicare & Medicaid Services ("CMS") published a proposed rule in the *Federal Register* entitled, "Medicare Program: Implementing Certain Provisions of the Consolidated Appropriations Act, 2021 and Other Revisions to Medicare Enrollment and Eligibility Rules".

Included in the proposed rule are changes with respect to: Part B enrollment simplification and new special enrollment periods; extended Part B coverage limited to immunosuppressive drugs for certain ESRD beneficiaries; simplification changes to Medicare enrollment forms; and Medicaid state buy-in of Medicare premiums. Comments are due on or before June 27, 2022.

Of interest to Medigap carriers and beneficiaries are proposals relating to: (1) "simplifying" changes to Part B enrollment with respect to the effective dates for Part B entitlement; and (2) new Part B special enrollment periods ("SEPs") for "exceptional conditions". These particular two provisions are discussed below.

Enrollment Simplification - Effective Dates of Entitlement

Importantly, the statutory amendments of the Consolidated Appropriations Act, 2021 ("CAA"), did not change the open enrollment and guarantee issue requirements applicable to Medigap health insurance. As a result, existing federal and state requirements remain implemented as under current law but for the sooner Medicare Part B effective date changes.

For Medigap coverage, there is a statutory 6-month open enrollment period beginning with the first month as of the first day on which the person is age 65 (or older) "**and is enrolled for benefits under Medicare Part B**". This Medigap open enrollment period is separate from the two Medicare open enrollment periods.

There are two Medicare enrollment periods. Individuals may first enroll during their Initial Enrollment Period ("IEP"), or subsequently during the General Election Period ("GEP"). Under the proposed rules coverage takes effect earlier than under current law. These effective date changes are applicable to Medicare enrollment that occurs on or after January 1, 2023.

Initial Enrollment Period. For persons who enroll during the IEP in the month following the month they turn age 65: under current law coverage begins the first day of the second month following the month of enrollment; under the proposed rule coverage begins the first day of the month following the month of enrollment.

For persons who enroll during the IEP in the second or third month following the month they turn age 65: under current law coverage begins the first day of the third month following the month of enrollment; under the proposed rule coverage begins on the first day of the month following the month of enrollment.

General Enrollment Period. For persons who enroll during the GEP: under current law coverage begins July 1; under the proposed rule coverage begins the first day of the month after the month of enrollment.

New Special Enrollment Periods for Exceptional Conditions

For Medigap coverage, the legal effect of existing and the new proposed SEPs is the same as for the Medigap open enrollment rule. As noted, there is a statutory 6-month open enrollment period for Medigap coverage that begins with the first month as of the first day on which the person is age 65 (or older) "**and is enrolled for benefits under Medicare Part B**".

Currently there are regulatory SEPs for: persons in a group health plan when first eligible for Medicare who elected not to enroll in Medicare; disabled workers who are enrolled in a group health plan and the group health plan is involuntarily terminated; international volunteers outside the U.S. when first eligible; and certain disabled or ESRD persons in TRICARE.

CMS proposes to establish new premium Part A and B SEPs based upon "exceptional circumstances" authority included in the CAA. These SEPs would be effective on or after January 1, 2023, with an exception for certain circumstances for the termination of Medicaid coverage. Entitlement would begin the first day of the month following the month of enrollment.

Emergency or Disaster. For a person that is prevented from submitting a timely Medicare enrollment request because of an emergency or disaster that is declared by a Federal, state, or local government entity the person must demonstrate that they reside in that area during the period of the declaration. CMS requests comments on duration and other circumstances.

Health Plan or Employer Misrepresentation. For a person whose timely enrollment is not made because of demonstrated misrepresentation or reliance on incorrect information provided by the individual's employer or group health plan or a person acting on behalf of either entity. CMS requests comments on required evidence and documentation.

Formerly Incarcerated. For a person who failed to timely enroll or reenroll in during an enrollment period due to incarceration, and there is a record of release or discharge that occurs on or after January 1, 2023.

Termination of Medicaid Coverage. For a person whose Medicaid eligibility is terminated on or after January 1, 2023, or after a COVID public health emergency (PHE); and the person is eligible for Medicare. If the PHE ends before January 1, 2023, the SEP begins on January 1, 2023 (but the person may request an earlier date if they pay premiums).

Other Exceptional Conditions. For a person where none of the existing or proposed SEPs are applicable, on a case-by-case basis the individual demonstrates that they missed an enrollment period because of an "exceptional" event or circumstances outside of their control which prevented them from enrolling in Medicare.