



For your information

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## Same-sex spouses and domestic partners may pay penalties for late enrollment in Medicare

Individuals who do not enroll in Medicare Part B when they first become eligible due to age (i.e., turning 65) must pay a late-enrollment penalty in the form of higher premiums, and they can only enroll during the annual “General Enrollment Period” of January 1 through March 31. The penalty is waived for an individual who did not enroll because he or she had employer-sponsored health coverage due to the individual’s or spouse’s current employment. Because the Defense of Marriage Act (DOMA) provides that domestic partners and same-sex spouses covered as dependents under employer-sponsored plans cannot be considered “spouses” for purposes of federal law, including Medicare, the waiver of the Part B late-enrollment penalty does not apply to them. Different rules and penalties apply under other Medicare provisions. A domestic partner or same-sex spouse covered as a dependent under an employer-sponsored plan may be unaware of these provisions and may inadvertently incur additional costs due to late enrollment in Medicare.

### Background

Medicare provides health benefits to three groups of people: those age 65 and over, disabled individuals receiving Social Security disability benefits (generally after 24 months), and those with end-stage renal disease (ESRD) (permanent kidney failure requiring dialysis or a kidney transplant). “Original” Medicare consists of Part A, which covers hospital charges, and Part B, which covers outpatient care and professional services, e.g., doctors’ charges. Part C or “Medicare Advantage” plans are comprehensive plans that cover all the services covered under Parts A and B. Part D, which covers prescription drugs, can be added to either Original Medicare or Medicare Advantage.

DOMA provides that with respect to any federal law or regulation, the word “marriage” means only a legal union between one man and one woman, and “spouse” refers only to an individual of the opposite sex who is a husband or wife. As a result, same-sex domestic partners are not treated as spouses for purposes of federal benefits, even when legally married under state law.

## Medicare Enrollment and Penalties

Individuals who receive Social Security disability benefits before age 65 are enrolled for Medicare Parts A and B automatically. But a person nearing age 65 and not on Social Security must actively enroll during an “Initial Enrollment Period” beginning three months before his or her 65th birthday and ending three months after the month in which he or she turns 65. The individual may also enroll for Part D coverage or a Medicare Advantage plan during the same period. Failure to enroll during the Initial Enrollment Period may result in higher premiums and limit the times for late enrollment to the annual General Enrollment Period that runs from January 1 through March 31 of each year. Coverage is effective the following July 1.

Part A is free for most people. However, individuals who are not eligible for free Part A (e.g., those over age 65 who did not pay Medicare taxes over the course of 10 years while working) pay a penalty of 10% of the Part A premium for twice the number of years they went without Part A coverage. For example, an individual who did not have Part A coverage for two years pays 10% more for coverage for four years.

Individuals must pay a monthly premium for Part B coverage. A person who does not enroll for Part B coverage when first eligible based on age pays higher premiums permanently. The premium penalty is up to 10% for each full 12-month period that he or she could have had Part B but didn’t enroll. For example, if an individual’s Initial Enrollment Period ended on September 30, 2009 and the person waited until January 2012 to enroll, his or her premium will be 20% higher for life. (The penalty does not apply to individuals eligible for Medicare on the basis of ESRD.)

The Annual Open Enrollment Period for Parts C and D is October 15 through December 7 of each year. Coverage begins on January 1, provided the plan receives the application by December 7.

To enroll in Part C during an Annual Open Enrollment Period, an individual must have both Part A and Part B coverage. Therefore, the person who failed to enroll in Parts A and B during the Initial Eligibility Period will first have to enroll for those coverages during a General Enrollment Period and then switch to Part C during an Annual Open Enrollment Period. The individual will pay the higher Part B premium for the period before enrolling in a Medicare Advantage plan, but it does not appear that any other late-enrollment fees apply.

Individuals do not have to enroll for Part D coverage when first eligible as long as they have “creditable prescription drug coverage,” i.e., prescription drug coverage that is at least as good as Medicare drug coverage under another plan. If an eligible individual has a lapse in creditable coverage lasting 63 continuous days or longer before enrolling for Medicare Part D, his or her monthly premium will be increased by at least 1% of the Medicare base beneficiary premium for each month that the individual was without creditable prescription drug coverage. For example, if the individual does not have creditable prescription drug coverage for 18 months, his or her premium will be 18% higher permanently.

## Medicare Enrollment at Age 65

A Special Enrollment Period is available to individuals who first become eligible for Medicare when they turn age 65 but decline to enroll because they are employed and covered under an employer-sponsored health plan. They can enroll at any time while employed or during the eight-month period that begins the month after their employment or coverage ends, whichever is later. If they enroll during this period, no premium penalty applies. These provisions also apply to the employee's spouse who turns 65 and is covered under the employee's employer-sponsored health plan.

## Disability and ESRD and Medicare Eligibility

Individuals under age 65 who are eligible for Medicare and are receiving Social Security disability benefits for 24 months (immediately upon award for individuals with amyotrophic lateral sclerosis, also known as ALS or Lou Gehrig's disease) are automatically enrolled in Medicare Part A and are offered Medicare Part B. Those with ESRD must enroll for Medicare, and special coverage rules apply. An individual eligible for Medicare on account of disability or ESRD who declines Medicare Part B because he or she has coverage as a dependent under a spouse's or family member's employer-sponsored plan will not pay a late-enrollment penalty if he or she enrolls for Medicare when the employer-sponsored coverage ends.

### Insight

It is important to note the difference in the rules that apply when the person's first eligibility for Medicare is due to disability or ESRD. In these cases, no late-enrollment penalty applies if a domestic partner or same-sex spouse declined Medicare Part B because he or she had employer-sponsored coverage due to a "family member's" current employment.

## Medicare Part D

Medicare Part D provides benefits for prescription drugs and may be purchased in addition to Original Medicare or a Medicare Advantage plan. If a person has creditable coverage under another plan, he or she may decide to decline Medicare Part D coverage. As long as the person maintains that coverage and does not go without it for more than 63 days, when he or she decides to enroll for Medicare D there will be no late-enrollment penalty.

### Insight

Medicare Part D only requires that an individual maintain coverage at least as good as that provided under a Medicare plan in order to avoid any late enrollment penalties. The "other coverage requirement" is not tied to employment or to status as a spouse or family member.

## Conclusion

Unless overturned by the Supreme Court or repealed by Congress, DOMA continues to be the law of the land. Employers who provide benefits to domestic partners and same-sex spouses need to be mindful of the Medicare requirements and may wish to include this information in their employee communications. Buck's consultants are available to discuss these requirements in more detail and to assist in developing a compliance strategy.

This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.  
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