

Final Rules to Streamline and Expand Enrollment in Medicare Parts A and B

PRACTICE TIP • January 2023

On November 3, 2022, the Centers for Medicare and Medicaid Services (CMS) finalized rules that implement provisions of the Beneficiary Enrollment Notification and Eligibility Simplification (BENES) Act.¹ Among other things, those provisions, which went into effect January 1, 2023:

- Abolish lags in the effective date for Medicare enrollments during the Initial Enrollment Period and General Enrollment Period;
- Establish new Special Enrollment Periods;
- Erase late enrollment penalties for individuals using the Special Enrollment Periods; and
- Extend Part B coverage of immune-suppressive drugs for kidney transplant recipients.

Changes that Eliminate Lags in Coverage Effective Dates

*Initial Enrollment Period and Part B Effective Date*²

For individuals who become eligible for Medicare on or after January 1, 2023, and enroll in Part B during the last 3 months of their Initial Enrollment Period (IEP),³ benefits will begin the first day of the month following the month in which they enroll.⁴ Up until now, benefits have been delayed by two or more months for individuals who enrolled during the last three months of their IEP. The new rules get rid of this extended delay in coverage for later enrollers.

EXAMPLE:

Susan is eligible for Medicare Part A and turned 65 on April 5. Her IEP for Medicare Part B therefore started January 1 (three months before April) and ran through July 31 (three months after April).

If Susan enrolls in Part B *before* April (the month she turns 65), then her Part B would start April 1, at the same time as her Part A.⁵ If Susan delays enrolling in Part B until April, her Part B benefit would not go into effect until May 1, the first month *after* she enrolled. This has not changed. Under the old rules, however, if Susan further delayed enrolling in Part B until May, her Part B would not go into effect until July 1—the second month after the month she enrolled. If she delayed enrolling in Part B until June, her Part B would not start until September 1—the third month after the month she enrolled. If she enrolled in July, her Part B coverage would not start until October.

1 [87 Fed. Reg. 66,454 \(Nov. 3, 2022\)](#). The BENES Act is a part of a larger piece of legislation known as the Consolidated Appropriations Act (CAA) of 2021, Public Law 116-260 (December 27, 2020).

2 The revised entitlement periods will also apply to premium Part A enrollees, i.e., individuals who are not insured for premium-free Part A but are eligible to buy it by paying monthly premiums. *See* 42 C.F.R. § 406.22(b).

3 The IEP for Part B is the seven months surrounding the month in which an individual's Medicare Part A begins, i.e., three months before the first month of Part A up to three months after the first month of Part A. Most individuals who are eligible for Medicare Part A based on age become eligible for it in the month they turn 65. The same IEP rules apply for Medicare based on disability under age 65. *See* 42 C.F.R. § 406.22(d).

4 *See* 42 C.F.R. § 407.25(a)(2)(ii); *see also* 42 U.S.C. § 1395q(a)(2)(C), -(a)(3)(A), and -(a)(2)(D) (am. Dec. 27, 2020).

5 *See* 42 C.F.R. § 407.25(a)(1).

Under the new rules starting January 2023, if an individual waits to enroll in Part B until some time from the fourth through the seventh month of their IEP, their Part B will now be effective the first of the month *after* they enrolled—regardless of the month.⁶

Thus, if Susan delays enrolling in Part B until May, then her Part B would now be effective June 1 (not July 1, as it would have been under the old rule). If she enrolled in Part B in June, it would be effective July 1; if she enrolled in July, it would be effective August 1. Susan will no longer face multiple months of delay in Part B coverage simply because she waited to enroll until the end of her IEP.

General Enrollment Period

If an individual does not enroll in Part B during their IEP, their next opportunity to do so is typically during the General Enrollment Period (GEP), which runs annually from January 1 through March 31.⁷ Up until now, Part B enrollment during the GEP would not have become effective until July 1.⁸ Under the new law and regulations, Part B coverage will start the month following the month during the GEP in which an individual enrolls.⁹

EXAMPLE:

Frank missed his IEP and is now seeking to enroll in Medicare Part B during the 2023 GEP. He enrolls on January 10, 2023. His Part B will now be effective February 1, 2023, the month after he enrolled (not July 1). An application filed in February would make coverage effective March 1; one filed in March would be effective April 1.

This change in GEP enrollment effective dates is particularly helpful for individuals with limited income in “group payer” states who must conditionally apply for Part A during the GEP, then apply for the Qualified Medicare Beneficiary (QMB) program with their state.¹⁰

EXAMPLE:

Luis is a resident of Illinois, a group payer state. He does not qualify for premium-free Part A, but his income and assets qualify him for the QMB program. He applies for conditional Part A in February 2023 and also applies for QMB during the same month. Illinois can enroll him in QMB as of March 1, 2023, and begin paying his Part A and Part B premiums. He does not have to wait until July for his Medicare and QMB enrollment to start.

⁶ See 42 C.F.R. § 407.25(a)(2).

⁷ For more information about the General Enrollment Period, see Justice in Aging, “[March 31 is a Double Deadline for People Eligible for Medicare.](#)”

⁸ See 42 C.F.R. § 407.25(b)(1).

⁹ See 42 C.F.R. §§ 406.21(c)(3)(ii); 407.25(b)(3); *see also* 42 U.S.C. § 1395q(a)(2). The BENES Act and the new rules also streamline and make fairer the calculation of the Late Enrollment Penalty (LEP) assessed for failing to enroll during one’s IEP. The LEP has historically been calculated based on the number of months that elapsed between the close of the individual’s IEP and the *close of the general enrollment period* during which they finally enrolled, regardless of the month within that period in which they *actually* enrolled. Starting January 1, 2023, the months that will be considered for purposes of determining any LEP include only months between the close of the individual’s IEP and the close of the month in which they enroll. See 42 C.F.R. §§ 406.33 (Part A); 408.24 (Part B).

¹⁰ There are 14 group payer states: Alabama, Arizona, California, Colorado, Illinois, Kansas, Kentucky, Missouri, Nebraska, New Jersey, New Mexico, North Carolina, Utah, and Virginia. For more information on the QMB enrollment process for individuals without premium-free Part A, see Justice in Aging, “[Medicare Part A Conditional Applications](#) (updated Jan. 2023); [SSA - POMS: HI 00801.140 - Premium-Part A Enrollments for Qualified Medicare Beneficiaries \(QMBs\); Part A Buy-In States and Group Payer States - 10/26/2022.](#)”

Special Enrollment Periods for Exceptional Conditions

The Medicare statutes have historically been quite rigid about enrollment periods and did not allow CMS to make exceptions for individuals who missed enrollment because of circumstances beyond their control. The BENES Act authorizes CMS to grant Special Enrollment Periods (SEPs) for individuals facing exceptional conditions.¹¹ CMS has created five new SEPs to allow eligible individuals to enroll in Part B outside of their IEP, GEP, or any other SEP.¹²

Termination of Medicaid coverage:

This SEP applies when an individual who has Medicaid becomes eligible for Medicare, and their Medicaid terminates on or after January 1, 2023.¹³ The SEP starts when the beneficiary receives notice of an upcoming termination of Medicaid eligibility and ends 6 months after the termination. The rule allows enrollees to choose the effective date of their Medicare coverage: either retroactive as far back as their Medicaid termination (but no earlier than January 1, 2023) or beginning the month after application. If they opt for retroactive coverage, they must pay all past due premiums.

This SEP will be particularly helpful to individuals who were enrolled in expansion Medicaid during the COVID-19 Public Health Emergency (PHE) and continued that coverage beyond their Medicare IEP. People who are no longer eligible for Medicaid can use this SEP to avoid late enrollment penalties or delays in Medicare coverage.

Former incarceration:

This SEP applies to individuals leaving incarceration who are eligible for Medicare but not enrolled.¹⁴ The SEP is for both Part A and Part B and starts the day of the individual's release and ends the last day of the 12th month after release.¹⁵ Coverage starts the month after enrollment, but with an option for up to 6 months of retroactive coverage.

Regional emergency or disaster:

This SEP applies when an emergency or disaster declared by federal, state, or local government prevents an individual or their appointed representative from submitting a timely application.¹⁶ The SEP begins on the first official day of the emergency or disaster and lasts until six months after it officially ends.

Material misrepresentation or misinformation by health plan or employers:

This SEP applies when an individual does not enroll in premium Part A or Part B during an enrollment period in which they were eligible to do so and demonstrates that the reason they did not file timely is because their employer, Group Health Plan, insurance broker, or plan agent materially misled or misinformed them about their Part A or Part B rights.¹⁷ The SEP begins on the first day that the individual informs Medicare of the misrepresentation or misinformation and lasts for six months. Because such communications from employers, plans, and brokers often are only oral, without anything in writing, an attestation by the individual will be accepted as evidence of a misrepresentation or misinformation.

11 See 42 U.S.C. § 1395p(m).

12 See 42 C.F.R. §§ 406.27; 407.23.

13 See 42 C.F.R. §§ 406.27(e); 407.23(e).

14 See 42 C.F.R. §§ 406.27(d); 407.23(d).

15 There are some instances, e.g., home confinement, where leaving an institution does not constitute release from custody under Medicare regulations. See 42 C.F.R. § 411.4(b).

16 See 42 C.F.R. §§ 406.27(b); 407.23(b).

17 See 42 C.F.R. §§ 406.27(c); 407.23(c).

Other exceptional condition:

This is a catch-all SEP that applies when any other exceptional conditions beyond an individual's control prevented them from timely enrolling in premium Part A or Part B.¹⁸ The SEP length is determined case by case, but will be at least 6 months.

In all cases, coverage starts the month after enrollment (except for those who lose Medicaid due to the end of the PHE, or for formerly incarcerated enrollees, who may opt for retroactive coverage). People using these SEPs will not have to pay any late enrollment penalties.¹⁹

Continued Part B coverage for End Stage Renal Disease

Individuals who are entitled to Medicare on the basis of End Stage Renal Disease (ESRD or kidney failure) are currently entitled to Medicare A and B for up to 36 months after they receive a kidney transplant. The Part B coverage is critical because it pays for very expensive immunosuppressive drugs necessary to keep the body from rejecting the new kidney. Historically, Medicare had to end 36 months after transplant even if the individual had no other insurance.²⁰ The new rules allow kidney transplant recipients with no alternative health insurance to continue Part B coverage of immunosuppressive drugs indefinitely (called Part B-ID).²¹ The Part B-ID benefit covers only immunosuppressive drugs, however—no other services.

If an individual subsequently acquires other coverage, they must notify Medicare within 60 days of its start.²² Part B-ID ends the first of the month after they report the new coverage or when Medicare finds out about the new coverage (if the individual did not report it). The Part B-ID premium is less than the premium for full Part B coverage,²³ e.g., \$97.10 a month in 2023.²⁴ The new rules also allow Medicare Part B-ID enrollees who are eligible for a Medicare Savings Program such as QMB, SLMB, or QI to enroll and have the Part B-ID premium paid by Medicaid (the QMB program pays deductibles and co-insurance as well).²⁵

NOTE: The Part B-ID benefit, though a valuable safety net, will likely be the best coverage choice only for a limited subset of people losing full Medicare coverage after a kidney transplant. Kidney transplant recipients usually have multiple health care needs and finding comprehensive health coverage—not coverage that is limited to immunosuppressive drugs—should be their first priority. For those without access to employer insurance, Marketplace coverage or adult group Medicaid are options to explore.

Case consultation assistance is available for attorneys and professionals seeking more information to help older adults. Contact NCLER at ConsultNCLER@acl.hhs.gov.

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18 See 42 C.F.R. §§ 406.27(f); 407.23(f). Merely forgetting or having been “busy” will not count.

19 See 42 C.F.R. §§ 406.33(c)(2); 408.24(b)(2).

20 See 42 U.S.C. § 426-1(b)(2).

21 See 42 U.S.C. § 1395o(b)(1); 42 C.F.R. §§ 407.1(a)(6); 407.55(b); 410.30(b).

22 See 42 C.F.R. § 407.62(a).

23 See 42 C.F.R. § 408.20(f)(1).

24 See [87 Fed. Reg. at 66,482](#).

25 See 42 U.S.C. § 1396d(p)(1)(A)