



Medicare Snapshot:

Stories from the Helpline

Part D Enrollment: Penalty Pitfalls

October 2016

The Medicare Rights Center (Medicare Rights) is a national, nonprofit consumer service organization that works to ensure access to affordable health care for older adults and people with disabilities through counseling and advocacy, educational programs, and public policy initiatives. Last year, the organization answered 20,000 questions from older adults, people with disabilities, families, and professionals on its national multilingual helpline and leveraged their stories to advocate for systemic reforms at the federal and state level. More than 350,000 consumers and professionals were also reached through interactive trainings and presentations in all 50 states. Medicare Rights provides training and certification to State Health Insurance Assistance Programs (SHIPs) nationally and its educational web site, Medicare Interactive, receives more than two million visits each year.

Introduction

Since 2006, people with Medicare have benefited from access to coverage for prescription medications by enrolling in private insurance plans through Medicare Part D. People eligible for Medicare who fail to enroll in Part D face a late enrollment penalty (LEP) unless they have other *creditable coverage*, meaning a prescription drug plan that provides equal or greater value than the standard Part D benefit. While those with creditable coverage can delay enrollment in Part D and will not pay penalties, those without creditable coverage face a penalty equal to 1 percent of the national base beneficiary premium (\$34.10 in 2016) for each month they delay enrollment in Part D after qualifying for Part D coverage. This penalty is added to a beneficiary's premium every month and, in many cases, may be paid for the rest of the beneficiary's life.

In the past year, the Medicare Rights' national helpline observed a notable increase in callers assessed a late enrollment penalty by their Part D plan. Yet, many of these callers could have avoided this pitfall and saved significant time and money.

One such Medicare Rights caller is Mr. M, a 53-year old from Michigan, who did everything he was supposed to but still faced a penalty he could not afford.

When Mr. M became eligible for Medicare through disability, he was covered by an employer health plan that offered creditable prescription drug coverage, though he did not have a letter from his employer reflecting this. When he left this plan, Mr. M immediately enrolled in Part D coverage. Unfortunately, soon after his new coverage began, the Part D insurer informed Mr. M that he would have to pay a late enrollment penalty every month on top of his premium. As Mr. M, single with children, is unable to work due to his disabilities, he did not know how he could afford to pay this penalty every month on his limited, fixed income.

Under Medicare's rules, Part D plans are responsible for assessing and collecting Part D late enrollment penalties.ⁱ Medicare records are shared with plans so they know when someone became eligible for Medicare and when they were enrolled in Part D coverage.ⁱⁱ If a beneficiary is listed as being eligible for Medicare but not enrolled in Part D, plans are required to ask beneficiaries whether they are or were enrolled in creditable drug coverage.ⁱⁱⁱ If the beneficiary does not attest to having such coverage, the plan should notify the member about the amount of his or her penalty and appeal rights.^{iv} If they so choose, the beneficiary can appeal the determination to MAXIMUS, the federal contractor responsible for these redeterminations.^v Plans are also responsible for explaining the appeals process and helping members appeal.^{vi}

Once notified of his penalty, Mr. M called his plan and told them he had carried creditable prescription drug coverage from an employer plan for the entire time he was eligible for Medicare. His Part D plan told him that there was nothing they could do and directed him to request a redetermination of his penalty. Mr. M did this, but his request was denied for insufficient evidence of carrying creditable coverage. After many calls, Mr. M learned that he needed to provide proof from his former employer that he had been covered by their prescription plan. Unfortunately, Mr. M's employer did not understand this request for evidence of creditable coverage and did not provide the needed information in a timely manner. By the time Mr. M finally received a letter from his former employer, his appeal time had run out and his request was denied.

This situation was avoidable. Mr. M's Part D plan should have asked him if he had carried creditable drug coverage or mailed him an attestation form after he enrolled in the plan. Requesting such an attestation is a federal requirement for Part D sponsors.^{vii} By skipping this step, Mr. M was inappropriately penalized.

Likewise, Mr. M's employer fell short of federal regulations by not providing notice of creditable coverage.^{viii} Such notice would have provided Mr. M with clear proof of creditable coverage, which he could have used to win his redetermination. On top of missing the notice requirement, Mr. M's employer also lacked sufficient knowledge to process proof of creditable coverage when Mr. M requested it himself, leading to a denial of his redetermination.

Mr. M's case was ultimately resolved after MAXIMUS reopened its reconsideration decision after Mr. M was able to obtain evidence of creditable coverage.

Information for Policymakers

Federal law requires that Medicare beneficiaries carry creditable prescription drug coverage or face a penalty.^{ix} Unfortunately, Medicare Rights receives hundreds of calls every year from older adults and people with disabilities who are blindsided by a lifetime Part D late enrollment penalty. For various reasons, these callers miss key information they need to make informed decisions about their health care coverage.

In 2014, the Medicare Payment Advisory Commission (MedPAC) echoed similar observations in their annual report to Congress. According to MedPAC, "The number of late enrollment penalty-related appeals submitted to an external review entity (MAXIMUS) between 2008 and 2012 ranged from nearly 34,000 cases to about 72,000 cases. According to data from MAXIMUS, the majority of the cases that are not dismissed or withdrawn are overturned, and thus the penalty is not applied. The high reversal rate observed for the appeals related to the LEP suggests that plans' processes used to verify enrollees' prior creditable coverage status may not be effective. Further, the resolution of cases in which the penalty is incorrectly applied may be delayed by limited awareness among enrollees of the penalty."^x

As previously discussed, Medicare beneficiaries are generally checked for compliance with the prescription drug requirement whenever they join a Part D plan. Further, Part D plans are required under Medicare rules to contact plan members and ask them to attest to their prior drug coverage.

Like Mr. M, many Medicare Rights helpline callers report that they were assessed a penalty without ever being asked to attest verbally or in writing to their prior drug coverage.

In addition, some callers have been enrolled in a plan for years before they are informed they have a penalty. As a result, some older adults and people with disabilities face hundreds of dollars in back penalties or risk losing their prescription drug coverage all together.

Many beneficiaries also face an educational barrier once they are assessed a late enrollment penalty. Medicare Rights callers frequently contact the helpline with basic questions about how their penalty is assessed, calculated, and appealed. Many conflate their Part D premium with their penalty, think they can refuse to pay it, or believe they should drop drug coverage to avoid the penalty. Often times, these clients reach us after extensive contact with their Part D plan. This is true even though Part D plans are required by Medicare rules to assist their plan members with understanding and appealing late enrollment penalties.^{xi}

Those who are improperly assessed a Part D late enrollment penalty, like Mr. M, frequently report a time-consuming and frustrating process to have their penalty removed. They can miss deadlines to appeal when they are not properly informed, and they often have difficulty determining the status of their appeal. Some beneficiaries grow so frustrated that they give up and forgo drug coverage or pay the penalty out of hopelessness.

Many Medicare Rights callers do not understand how to prove they have creditable drug coverage once they appealed, or even what “creditable” drug coverage means. Federal regulations require employers (and others entities providing prescription drug coverage) to inform employees about whether their coverage is creditable.^{xii} This notice not only serves as proof of creditable coverage, but also informs beneficiaries about their responsibilities to carry creditable coverage and how Part D enrollment works.

Based on the experiences of older adults and people with disabilities regularly served on Medicare Rights' helpline, the system for informing people about, assessing, and appealing the Part D late enrollment penalty can be improved.

Policy Recommendations

1. Ensure that Part D plans are not erroneously assessing penalties for their members.

The Centers for Medicare & Medicaid Services (CMS) should strengthen monitoring and oversight so that Part D plans fulfill their obligations under existing Medicare rules.^{xiii}

CMS should enforce that all Part D plans:

- › Ask members about previous prescription drug coverage before assessing a penalty;^{xiv}
- › Always mail attestation forms to those identified with gaps in coverage;^{xv}
- › Provide assistance with filling out attestation forms;^{xvi} and
- › If a penalty is assessed, explain the LEP and how to appeal and provide assistance in completing the reconsideration form; and answer questions about the creditable coverage requirement.^{xvii}

In addition, CMS should consider issuing new requirements. For instance:

- › CMS could require that all plan sponsors allow telephonic attestation of prior creditable coverage.
- › CMS should also make Part D LEP data publically available, including but not limited to, the number of Part D LEPs assessed and appeals outcomes.

2. Examine the effectiveness of creditable coverage notices and oversight mechanisms.

Under the Medicare Modernization Act, entities that provide prescription drug coverage, such as employers and unions, are required to send a creditable coverage notice to plan members who are eligible for Medicare Part D. CMS has created an informative notice that educates beneficiaries about their responsibilities to carry creditable drug coverage, the Part D enrollment process, and whether the prescription drug coverage offered through their employer (or other entity) is considered creditable. This notice is vital for newly eligible beneficiaries because it helps them make educated decisions about whether to enroll in Part D. In addition, the physical notice is also evidence that they had creditable coverage if they are ever assessed a penalty.^{xviii}

Questions remain about how consistently employers (and other entities) comply with this requirement and what oversight mechanisms CMS has in place to ensure the delivery of these critical notices. Additional research is needed, such as by CMS, MedPAC, or the Government Accountability Office (GAO), to determine how often the notices are sent as well as the effectiveness of the notice messaging.

3. Enhance beneficiary education and outreach.

While CMS has taken steps to inform beneficiaries about their Part D responsibilities, for instance, through the initial enrollment packet and *Medicare & You*, Medicare Rights continues to receive a significant number of calls from individuals who do not understand that they are required to carry creditable prescription drug coverage. To avoid these problems, it is critical to ensure that employers (and other entities) fulfill their obligation to provide creditable coverage notices, as discussed above.

To complement these notices, we recommend that CMS make efforts to help newly eligible Medicare beneficiaries understand the requirements to carry coverage under Part D, perhaps through a separate mailing or more prominent placement of information. This is particularly

needed by those who have Medicare owing to a disability and people without substantial prescription medication needs.

Information for People with Medicare

Mr. M's story highlights the insufficient assistance people with Medicare sometimes receive regarding the Part D late enrollment penalty appeal process, which can lead to unfavorable outcomes even when a penalty was incorrectly assessed. It also underscores the need for beneficiaries and their families to know their Part D rights, and how to get the help they need.

The following is straightforward advice that Medicare Rights' expert counselors give to clients who have questions about Part D enrollment and the Part D late enrollment penalty:

1. When you become eligible for Medicare, you should enroll in a Part D plan unless you have other creditable prescription drug coverage. Creditable drug coverage is coverage that is considered to be as good as or better than Part D. Your employer (or other entity providing prescription drug coverage) should inform you whether or not your coverage is creditable. If you do not receive this information ask for it.
2. Hold onto any notice of creditable coverage that you may receive. Keep this in a safe place just in case you have to prove your creditable coverage.
3. If you have been without creditable drug coverage for more than 63 days while eligible for Medicare, you may face a lifetime Part D late enrollment penalty that must be paid or you will likely lose your coverage. But you do have the right to appeal. (See next point.)
4. Everyone has the right to file an appeal with MAXIMUS--the company contracted with Medicare to handle Part D appeals--regarding their penalty determination. You can appeal either the penalty itself (e.g., if you think you were continuously covered by *creditable* prescription drug coverage) or its amount (e.g., if you think your penalty was calculated incorrectly). You should complete the Part D Late Enrollment Penalty Reconsideration Request Form you received from your plan, attach any evidence you have, and mail it to MAXIMUS. For questions about your appeal, contact MAXIMUS at 877-456-5302.
5. The appeal deadline is 60 days from the date you received the letter informing you about the penalty. If you miss the deadline, you can write and attach a letter to your appeal explaining why you missed the deadline. Once your appeal is submitted, you can expect a determination from MAXIMUS within 90 days. In the meantime, pay your penalty to your plan along with your premium; if your appeal is successful, your plan has to pay you back for the penalty payments you paid.
6. It can help your appeal to show evidence that you held creditable coverage. A former employer, union, or insurer may be able to write a letter for you. In some cases, you may be able to show that you were making premium payments or have statements from an old plan.

7. Additionally, if you qualify, there are income-based programs that can eliminate or help pay for your Part D late enrollment penalty. These programs include Extra Help, Medicare Savings Programs, Medicaid, and State Pharmaceutical Assistance Programs. For more information about the specific programs available in your state, contact your State Health Insurance Assistance Program (SHIP): call 877-839-2675 to find a SHIP counselor in your state, or visit www.shiptacenter.org.

Find more information about the Part D late enrollment penalty and appeals on Medicare Interactive, the Medicare Rights Center's online educational resource:

- › <http://www.medicareinteractive.org/get-answers/medicare-prescription-drug-coverage-part-d/enrolling-in-part-d-and-changing-drug-plans/medicare-part-d-late-enrollment-penalty>
- › <http://www.medicareinteractive.org/get-answers/medicare-rights-and-appeals/part-d-appeals/appealing-the-part-d-late-enrollment-penalty>

For additional help, visit Medicare Interactive at www.medicareinteractive.org, or call the Medicare Rights Center's national consumer helpline at 800-333-4114.

ⁱ See generally [Medicare Prescription Drug Benefit Manual, Ch. 4](#)

ⁱⁱ [Medicare Prescription Drug Benefit Manual, Ch. 4 - § 10](#)

ⁱⁱⁱ [Medicare Prescription Drug Benefit Manual, Ch. 4 - § 20](#)

^{iv} [Medicare Prescription Drug Benefit Manual, Ch. 4 - § 50](#)

^v [Medicare Prescription Drug Benefit Manual, Ch. 18 - § 80.7.1](#)

^{vi} [Medicare Prescription Drug Benefit Manual, Ch. 18 - § 80.7.1.2](#)

^{vii} [Medicare Prescription Drug Benefit Manual, Ch. 4 - § 10.1-10.2 and § 20](#)

^{viii} 42 C.F.R. § 423.56

^{ix} [§ 1860D-13\(b\) of the Social Security Act](#)

^x Medicare Payment Advisory Commission (MedPAC), "Report to the Congress: Medicare Payment Policy," (March 2014) available at: http://www.medpac.gov/docs/default-source/reports/mar14_ch14.pdf?sfvrsn=0

^{xi} [Medicare Prescription Drug Benefit Manual, Ch. 18 - § 80.7.1.2](#)

^{xii} 42 C.F.R. § 423.56

^{xiii} See generally [Medicare Prescription Drug Benefit Manual, Ch. 4](#)

^{xiv} [Medicare Prescription Drug Benefit Manual, Ch. 4 - § 20](#)

^{xv} [Medicare Prescription Drug Benefit Manual, Ch. 4 - § 20.1](#)

^{xvi} [Medicare Prescription Drug Benefit Manual, Ch. 4 - § 20](#)

^{xvii} [Medicare Prescription Drug Benefit Manual, Ch. 18 - § 80.7.1.2](#)

^{xviii} CMS "Creditable Coverage" available at: <https://www.cms.gov/Medicare/Prescription-Drug-Coverage/CreditableCoverage/>