

Medicare Complications Caused by COVID-19 for U.S. Seniors

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The U.S. Centers for Disease Control has advised that adults age 65 and older are more vulnerable to developing serious complications from COVID-19. It is important that the senior population be able to access needed medical care, and timely enrolling in Medicare is particularly important for eligible individuals who don't have other health insurance coverage. Signing up for Medicare can be complicated in the best of times; the COVID-19 disaster has created additional challenges for certain individuals who have just reached age 65, or who will be reaching age 65 during the pandemic.

Who is eligible for Medicare?

Generally, Medicare is available to certain U.S. citizens and permanent legal residents who have reached the age of 65 (or older), or individuals who are disabled or have End Stage Renal Disease (permanent kidney failure requiring dialysis or transplant). Medicare has several components: Part A (hospital insurance), Part B (medical insurance), and Part D (prescription drugs), or an individual can sign up for Medicare Part C (also referred to as a Medicare Advantage Plan), which combines Parts A, B, and in some cases, D.

You are eligible for premium-free Part A if you are age 65 or older, and you or your spouse worked and paid Medicare taxes for at least 10 years (40 quarters). You can also receive Part A at age 65 without having to pay premiums if you are receiving retirement benefits from Social Security or the Railroad Retirement Board; you are eligible to receive Social Security or Railroad benefits, but you have not yet filed for them; or you or your spouse had Medicare-covered government employment. You are also eligible to receive premium-free Part A coverage if you are under age 65, and you have been entitled to Social Security or Railroad Retirement Board disability benefits for 24 months. If you have Lou Gehrig's disease, or if you are a kidney dialysis or kidney transplant patient, your Medicare benefits begin the first month you begin receiving disability benefits.

If you (or your spouse) did not pay Medicare taxes while you worked, and you are age 65 or older and a citizen or permanent resident of the United States, you may be able to buy Part A coverage. If you aren't eligible for premium-free Part A, and you don't buy it when you're first eligible, your monthly premium may go up 10%. You will have to pay the higher premium for twice the number of years you could have had Part A but didn't sign up. To determine your eligibility and calculate your premium, you can go to this Medicare.gov website [here](#).

Enrolling in Medicare

Eligible individuals can begin to receive Social Security retirement benefits at any time between age 62 and 70. If you are over the age of 65 (or you will be reaching age 65 in the next three months) and you are not already getting retirement or disability benefits from Social Security, you need to sign up to get Medicare Part A, Part B, and Part D, or you can sign up and get Medicare Part C (which combines Parts A, B, and in some cases, D). You **will not automatically be signed up** for Medicare; you must formally elect coverage.

If you are already receiving benefits from Social Security, and you do not live in Puerto Rico, you will be signed up for Medicare Part A and Part B automatically when you are first eligible, and **you do not need to sign up**. Medicare will send you a “Welcome to Medicare” packet three months before you turn 65. Please note, you will still have other important deadlines and actions to take, so you need to read all of the materials in the packet and carefully follow the instructions. If you live in Puerto Rico, you will only be signed up for Medicare Part A automatically. If you want Medicare Part B, you will need to enroll.

How do I enroll in Medicare?

If you do not qualify for the automatic enrollment in Medicare mentioned above, you can enroll in Medicare in a number of different ways.

Over the Phone – Be prepared for long wait times.

You can enroll by phone by calling 1-800-772-1213 from 7 a.m. to 7 p.m. Monday through Friday. If you are deaf or hard of hearing, you can call TTY 1-800-325-0778. Unfortunately, given the recent COVID-19 epidemic, this may not be a good option. Currently, the call hold time is extremely long.

In Person – Not available while Social Security Administration (SSA) offices are closed during the pandemic.

Normally, you can apply for Medicare in person by first making an appointment, and then visiting your local Social Security office. A locator is available [here](#). However, all local Social Security offices have been closed to the public since March 17 due to the COVID-19 pandemic. Local offices are able to provide certain services over the phone, but an in-person application for Medicare is currently **not** available.

Online – The best option for enrollment during the COVID-19 crisis, if available.

You are eligible to enroll online if you:

- are at least 64 years and nine months old;
- want to sign up for Medicare, but do not currently have ANY Medicare coverage;
- do not want to start receiving Social Security benefits at this time; and
- are not currently receiving Social Security retirement, disability, or survivor’s benefits.

Prior to enrolling online, you must have an SSA account. If you don’t have one, you will need to establish one. You also need a number of documents and some information when you are enrolling (see the checklist [here](#)). You can use this [online application](#) to sign up. Social Security will process your application and contact you if it needs more information.

How soon must I enroll in Medicare?

If you do not qualify for automatic enrollment in Medicare, you have a seven-month Initial Enrollment Period to sign up for Medicare Part A and/or Part B. If you’re eligible, you can sign up during the seven-month period that begins as follows:

- three months before the month you reach age 65;
- the month in which you reach age 65; or
- three months after the month you reach age 65.

If you or your spouse are still working and you are covered under your or your spouse's group health plan based on that current employment, you can delay enrollment in Medicare without penalty. In those circumstances, you and/or your spouse will qualify for a Special Enrollment Period (SEP) once you lose your employer group health plan coverage. You may also qualify for a SEP for Medicare Part A and Part B if you are a volunteer, and you are serving in a foreign country. This [link](#) is very useful in helping you to decide when you should enroll in Medicare.

If you qualify for a SEP, you have eight months to sign up for Part A and/or Part B. The eight-month window begins on the earlier of:

- the month after employment ends; or
- the month after group health plan insurance based on current employment ends.

Usually, if you qualify for a SEP, you will not have to pay a late-enrollment penalty as long as you sign up during the SEP.

Winston Takeaway: *Employers offering retiree medical coverage or a retiree health reimbursement arrangement for Medicare-eligible retirees often require enrollment in Medicare Parts A and B in order to qualify for benefits under the employer retiree medical plan. In light of the difficulties with Medicare enrollment due to SSA office closures, employers may want to consider relaxing certain eligibility requirements, or extending enrollment deadlines, to allow retirees more time to qualify for benefits under the employer plan.*

For Medicare Part D (prescription drug coverage), once you reach age 65, if you are covered under a health plan that offers creditable coverage, you do not have to immediately enroll in Part D coverage. "Creditable coverage" means your health plan covers prescription drug coverage in an amount that, on average, is at least as much as the standard Medicare prescription drug coverage would pay. Unlike under Medicare Part B, if you enroll in COBRA that provides creditable coverage, you can delay enrolling in Medicare Part D without penalty. You will be provided a 63-day SEP to enroll in Medicare Part D once you no longer have creditable coverage either under COBRA or another health plan. As long as you enroll in Medicare Part D within that 63-day period, you will not be subject to a late-enrollment penalty.

Waiting until after COVID-19 to enroll in Medicare

If you become eligible for Medicare during the COVID-19 crisis, you may have difficulty enrolling in Medicare for the reasons described above. If you are age 65 or older, delaying enrollment in Medicare could cause problems unless you or your spouse are still working and you are covered under your or your spouse's group health plan based on that current employment. Under these circumstances, you may qualify for a SEP that will let you sign up for Part B within the eight-month period that begins the month after your or your spouse's employer's group health plan's coverage, or the current employment upon which it is based, ends.

If you don't enroll in Medicare Part B when you're first eligible and you don't have other group health plan coverage due to current employment status, your monthly Part B premium may go up 10% for each 12-month period you could have enrolled in Medicare Part B, but didn't sign up. For example, if you retire and you enroll in COBRA for 18 months, and then enroll in Medicare Part B in month 19, you will pay a Medicare Part B penalty when you enroll. In most cases, you'll have to pay this penalty each time you pay your premiums, for as long as you have Medicare Part B. And, the penalty increases the longer you go without Medicare Part B coverage. You may also lose your guaranteed issue right to buy a Medigap (Medicare supplemental) policy.

In addition, if you enroll in COBRA, retiree health insurance, VA coverage or individual coverage VA coverage, or individual health coverage (such as through the Health Insurance Marketplace) after employment ends, you are **not**

considered to have coverage based on current employment status for Part B purposes. If you are enrolled in COBRA or retiree health coverage, this will not qualify you for a SEP when that coverage ends, or after your seven-month Initial Enrollment Period. To avoid paying a higher premium, make sure you sign up for Medicare when you're first eligible.

Besides the late-enrollment penalty under Medicare Part B, there is also a separate late-enrollment penalty under Medicare Part D. The Medicare Part D late-enrollment penalty applies if, for any continuous period of 63 days or more after your Initial Enrollment Period is over, you go without one of these:

- A Medicare Prescription Drug Plan (Part D);
- A Medicare Advantage Plan (Medicare Part C) or another Medicare health plan that offers Medicare prescription drug coverage; or
- Creditable prescription drug coverage.

Thus, although COBRA would not qualify you for a SEP under Medicare Part B, COBRA that offers creditable coverage would qualify you for a SEP with respect to your later enrollment in Medicare Part D, but you must enroll in Medicare Part D within 63 days of when your creditable coverage ends.

What if I am enrolled in a Health Savings Account?

You cannot make or receive tax-qualified contributions to a Health Savings Account (HSA) once you enroll in any part of Medicare. You can still use your HSA funds to reimburse yourself for eligible medical expenses, but you cannot contribute or receive employer tax-free contributions to your HSA once you are enrolled in any component of Medicare. If you want to continue making contributions to your HSA, you can delay enrolling in both Part A and Part B until you (or your spouse) stop working or you lose that employer coverage. As discussed above, you will not pay a penalty for delaying your enrollment in Medicare as long as you enroll within eight months of the earlier of when you lost employer coverage or stopped working.

For additional information or guidance, please contact a member of the Winston & Strawn Employee Benefits and Executive Compensation Practice Group or your Winston relationship attorney.

View all of our COVID-19 perspectives [here](#). Contact a member of our COVID-19 Legal Task Force [here](#).

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