

# **Ten Things You Need to Know About Medicare**

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## I. INTRODUCTION

An elder law attorney must be knowledgeable about many different areas of the law. In representing elder law clients, attorneys may be required to do probates; they may be involved in drafting powers of attorney; they may be involved in estate planning matters and are many times involved in long-term care planning matters. Many elder law attorneys develop a niche in certain areas of practice and spend most of their time concentrating on that particular area. However, all elder law attorneys will—from time to time—be asked a question about one of the other areas of law that affect our elderly clients. To serve our clients' needs, experienced elder law attorneys develop a base of knowledge dealing with a myriad of legal issues.

Elder law attorneys will likely be asked about Medicare during their career. An attorney may be asked to assist a client with determining when and how to apply for Medicare benefits or to file an appeal of a denial of Medicare coverage for medical treatment that a client has received. In some cases, the elder law attorney may be asked to assist a client with selecting a Medicare Part D plan to cover prescription medications.

The needs of our elder law clients require knowledge of a vast landscape of law and regulations. Some clients may seek help with their estate plans, need wills drafted, or need to probate a will, but every client over the age of sixty-five (65) who comes into your office will be a Medicare beneficiary. Many of those clients will have questions about the Medicare program and his or her benefits.

As previously stated, most experienced elder law attorneys have a working knowledge of the different parts of Medicare and how most people obtain eligibility for Medicare. Because Medicare is such an important program to our elderly clients, when there are major changes in the Medicare program, information on the changes is readily available either through legal publications or, in some instances, through the general news media. For instance, when the Medicare Part D program was created, Congress debated different parts of the program for an extended period of time, and during that time, news media coverage was extensive on how Part D would work and the cost of the Part D program. Even a casual observer of the evening news could have obtained some knowledge about the program and its benefits to Medicare beneficiaries.

Because Medicare is so prevalent in the lives of so many elder Americans, there are tens of thousands of articles written every year on different aspects of the Medicare program. These articles range in subject matter from issues concerning eligibility and coverage issues to tangential issues, such as the cost of Medicare supplemental policies and Medicare managed-care.

This article will concentrate on ten specific areas that are representative of the types of questions that elder law attorneys might expect over the course of their practice. It is presumed that the reader is reasonably familiar with, and has a working knowledge of, the Medicare system in general. No attempt is made to explain generally about the

Medicare program except in instances when specific knowledge of a portion of the law is required to understand the subject matter.

## II. ISSUE #1: SHOULD I SIGN UP FOR PART B?

Should I sign up for Part B of the Medicare program (formally known as Supplementary Medical Insurance (SMI) Benefits for the Aged and Disabled)?<sup>1</sup> This is a very common question because there are many individuals or spouses of retired persons who are working past the age of 65. If a person is over the age of 65 and still working, he or she may be covered by a group insurance policy. The person is receiving Part A and needs to decide whether to also take Part B (requires payment of a premium). The issue may also arise when a retired person has health insurance through a spouse who is working.

To obtain coverage under Part B, a beneficiary must pay a monthly premium. The standard Part B premium amount in 2020 is \$144.60 (or higher, depending on income). If a couple's modified adjusted gross income is above a certain amount, they may pay an Income Related Monthly Adjustment Amount (IRMAA). Medicare uses the modified adjusted gross income reported on a person's IRS tax return from two years prior (that is the most recent tax return information provided to Social Security by the IRS) to determine premium amounts. If a couple's yearly income in 2018 was between \$174,000 and \$218,000, their Part B premium payment each month in 2020 would be \$220.40.

It is possible that the retired spouse of a currently working person may be covered by a Group Health Plan (GHP) through the working spouse's company. The GHP coverage may be free or cost less than Part B premiums. The client may want to know if there is any reason he or she should take Part B and pay monthly premiums even when they have coverage under a GHP. The monthly cost of the benefit is not the only reason that potential beneficiaries might be concerned about this question. If a client does not sign up for Part B when first eligible, he or she may have to pay a late enrollment penalty.<sup>2</sup> That penalty comes as increased premiums for as long as the person is enrolled in Part B. The monthly premium for Part B may go up 10% for each full 12-month period that a person could have had Part B but did not sign up for it.<sup>3</sup> Also, if a person does not enroll at initial enrollment, he or she may have to wait until the General Enrollment Period (from January 1 to March 31) to enroll in Part B, and coverage starts July 1 of that year.

Example: A client's Initial Enrollment Period ended September 30, 2009. She

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<sup>1</sup> 42 U.S.C. § 1395j.

<sup>2</sup> 42 C.F.R. § 408.22.

<sup>3</sup> *Id.*

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