



Medicare Advocacy Toolkit

Medicare Part B Enrollment for New York Older Adults

An Advocate’s Toolkit for Helping Individuals Age 65+ Enroll in Medicare Part B

Spring 2020

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About the Medicare Rights Center

Based in New York, the Medicare Rights Center 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. Since 1989, Medicare Rights has helped people with Medicare understand their rights and benefits, navigate the Medicare system, and secure the quality health care they deserve. Medicare Rights is committed to:

1. Serving as a **kind and expert** health insurance counselor, educator, and advocate for those who need it most.
2. Providing **independent, timely, and clear** information on Medicare, Medicaid for dual-eligibles, and related topics to communities nationwide.
3. Fostering **diverse** partnerships and points of view.
4. Finding **lasting** solutions to systemic problems that prevent older adults and people with disabilities from accessing needed health coverage and care.

About the Medicare Advocacy Toolkits

With 30 years of counseling and advocacy experience, the Medicare Rights Center possesses specialized knowledge about the barriers people with Medicare face in accessing affordable health care, as well as strategies for overcoming these barriers. This series of Medicare Advocacy Toolkits has been developed for any New York advocate who is helping older adults and people with disabilities navigate health insurance benefits. The goal of this project is to empower New York advocates and those they serve to navigate Medicare coverage so that they can access needed care. While intended for a New York audience, the Medicare Advocacy Toolkits may offer lessons to other states and be useful resources as advocates and policymakers think about ways to improve the federal Medicare program, which today serves 60 million Americans.

Advocates with additional questions can contact Medicare Rights' professional email inbox at professional@medicarerights.org. Consumers with questions can call Medicare Rights' national consumer helpline at 1-800-333-4114.

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The Medicare Rights Center provides these Medicare Advocacy Toolkits as a public service. They are not intended as personalized legal advice, nor is Medicare Rights acting as a private attorney in providing toolkit content. For the latest information about toolkit topics and customized assistance, contact Medicare Rights, 1-800-MEDICARE, or a local [State Health Insurance Assistance Program](#) (SHIP).

Introduction: Medicare Part B Enrollment for New York Older Adults

More than a quarter of calls to the Medicare Rights Center's national helpline relate to Part B enrollment. This part of Medicare is vital, covering medically necessary outpatient services, including services received from a licensed health professional, durable medical equipment, and preventive services.¹ While many individuals are automatically enrolled in Part B when they turn 65,² and many others affirmatively enroll when they turn 65³ or when they or their spouse retire, too many others delay enrollment based on misinformation or lack of information and later discover they face penalties and gaps in coverage.

This Medicare Advocacy Toolkit serves as a step-by-step resource to help advocates and people eligible for Medicare navigate Part B enrollment challenges. The toolkit first describes the problem and target audience, then explains strategies for enrolling in Part B and offers a case example to demonstrate how to evaluate and use these strategies in a complex scenario. Throughout the toolkit, content is organized in a way that parallels how our counselors evaluate and troubleshoot actual Medicare issues. In addition, the toolkit contains a wealth of citations to the relevant rules that form the basis for helping people solve their Medicare problems.

The Problem

An estimated 10,000 Americans turn 65 each day.⁴ Timely Part B enrollment is critically important for ensuring that these individuals avoid late enrollment penalties, higher out-of-pocket health care costs, and gaps in coverage that can present barriers to accessing needed services. An individual who does not enroll in Part B when first eligible can incur a 10% late enrollment penalty (LEP) on their Part B premium for each 12-month period they remain un-enrolled.⁵ If the premium goes up, as it tends to do from year to year, so does the penalty.⁶ For most individuals, the LEP is a lifetime penalty.⁷ In 2017, an estimated 701,000 people with Medicare were paying a Part B LEP, with the average penalty amounting to nearly a 30% increase in the monthly premium.⁸

¹ [42 U.S.C. §§ 1395j–1395w-6](#); The Social Security Administration's (SSA's) Program Operational Manual System (POMS), [HI 00805.001\(A\)\(1\)](#); Medicare Rights Center, [Introduction to Medicare](#) and [Medicare Part B-Covered Services](#).

² Beneficiaries are automatically enrolled in Parts A and B of Medicare when they turn 65 if they have been receiving benefits from Social Security or the Railroad Retirement Board for at least four months. POMS, [HI 00805.125\(A\)](#); Medicare.gov, [How do I get Parts A & B?](#)

³ POMS, [HI 00805.060\(A\)](#); [42 C.F.R. § 407.12](#); Medicare Rights Center, [How to enroll in Medicare if you are turning 65](#).

⁴ Doherty, Tucker: [Medicare's time bomb, in 7 charts](#), Politico (September 2018).

⁵ POMS, [HI 01001.010\(A\)\(1\)](#) and (B).

⁶ POMS, [HI 01001.010\(A\)\(2\)](#); [42 U.S.C. § 1395r\(b\)](#).

⁷ Medicare Rights Center, [Medicare Part B late enrollment penalties](#).

⁸ Medicare Rights Center, [Medicare Trends and Recommendations: An Analysis of 2017 Call Data from the Medicare Rights Center's National Helpline](#).

A Medicare beneficiary who waits until they are 70 to enroll in Part B may face a 50% penalty on their monthly premium. In 2020, with a standard Part B premium of \$144.60, this beneficiary would pay \$216.90 for Part B each month.

In addition to the late enrollment penalty, individuals who wait to enroll in Part B may face periods of time in which they have no access to primary health insurance. Employer coverage that is not through current employment (like retiree coverage)⁹ does not have to pay primary once someone is eligible for Medicare due to age.¹⁰ After the initial opportunity to enroll (known as the Initial Enrollment Period (IEP)), many individuals will have to wait to enroll until the annual General Enrollment Period (GEP). The GEP runs from January 1 through March 31 each year.¹¹ When an individual enrolls during the GEP, their coverage will not start until July 1 of that year.¹² This means that if someone misses their IEP, they may be without primary insurance—or any health insurance—for over a year.

Target Audience

This Medicare Advocacy Toolkit is designed to help advocates address the needs of New Yorkers who are eligible for:

1. **Medicare due to age.** This means that they are age 65 or older and either 1) receive Social Security/Railroad Retirement benefits, or 2) are a U.S. citizen or legal permanent resident who has lived in the U.S. continuously for five years prior to applying.¹³

-----AND-----

2. **Premium-free Part A.** This means that they either 1) have at least 40 calendar quarters of work during which they paid Social Security taxes, 2) are eligible for Railroad Retirement benefits, or 3) have a qualifying spouse or former spouse who is eligible for Social Security benefits.¹⁴

It is important to understand that other groups of Medicare beneficiaries have different enrollment processes and, consequently, may require different advocacy strategies. Thus, this toolkit is not intended for use with individuals who are eligible for Medicare due to disability or because they have End-Stage Renal Disease (ESRD). The toolkit is also not for use with individuals who do not qualify for premium-free Part A. For these groups, please contact 1-800-MEDICARE or Medicare Rights' professional email inbox at professional@medicarerights.org.

⁹ The exception to this is for Federal Employee Health Benefits (FEHB) for retired federal employees. Unlike other retiree insurance, FEHB will pay primary if you do not enroll in Part B. Medicare Rights, [Federal Employee Health Benefits \(FEHB\) basics; Making Part B enrollment decisions with FEHB retiree coverage](#).

¹⁰ CMS, Medicare Secondary Payer (MSP) Manual, [Ch. 2](#), § 10.

¹¹ POMS, [HI 00805.025\(A\)](#); Medicare Rights Center, [How to enroll in Medicare if you missed your Initial Enrollment Period](#).

¹² POMS, [HI 00805.025\(B\)\(3\)](#).

¹³ [42 C.F.R. § 407.10\(a\)](#); POMS, [HI 00805.005\(A\)\(1\)-\(2\)](#); Medicare Rights Center, [Medicare eligibility for those 65+](#).

¹⁴ [42 U.S.C. §§ 426\(a\), 402](#); [42 C.F.R. § 406.10\(a\)](#); POMS, [HI 00801.006\(B\)](#); Medicare Rights Center, [Eligibility for premium-free Part A if you are over 65 and Medicare-eligible](#) and [Qualifying for premium-free Part A based on your spouse's work history](#).

Enrolling in Part A

This toolkit specifically addresses enrollment in Medicare Part B for individuals who are eligible for Medicare due to age and who qualify for premium-free Medicare Part A. Individuals in this group can enroll in Part A with Social Security at any time without a delay in coverage or a penalty. Please keep these facts in mind:

1. If an individual is collecting Social Security/Railroad retirement benefits when they turn 65, they will be automatically enrolled in Part A (as long as they were receiving those benefits at least four months prior to their 65th birthday¹⁵). An individual may not opt out of Part A once they elect to receive these benefits.¹⁶
2. Once eligible, if an individual chooses to delay enrollment in premium-free Part A, they may enroll later. Once the individual decides to enroll in Part A (or decides to receive Social Security or Railroad Retirement benefits), Part A will also be applied six months retroactively from the first day of the month that they enroll.¹⁷ The exception to this rule is when an individual first becomes eligible for Medicare less than six months before they file for Social Security retirement benefits, in which case Part A is retroactive to their first month of Medicare eligibility (e.g. their 65th birthday month).¹⁸ Note that since the retroactive effective date is mandatory, it can pose problems for those contributing to a Health Savings Account (HSA).¹⁹

Strategies: Enrolling in Medicare Part B

The Part B enrollment strategies are presented here in the order that the Medicare Rights Center talks about them on its national consumer helpline. There are three standard enrollment periods for Part B: the Initial Enrollment Period (IEP: when an individual first becomes eligible), the Part B Special Enrollment Period (SEP: when an individual moves from job-based insurance), and the General Enrollment Period (GEP: available to all Medicare-eligible individuals annually). There are also three alternative, lesser-known Part B enrollment strategies, available to certain individuals. These include enrollment in a Medicare Savings Program (MSP), equitable relief, and equitable relief for Marketplace enrollees.

Here are the basic steps that Medicare Rights follows when counseling individuals in need of Part B enrollment:

1. **Check the individual's eligibility for the IEP or Part B SEP**, since these are usually the easiest ways to enroll in Part B without penalty.
2. If the individual has missed their IEP or SEP, **check their income to see if they might qualify for a Medicare Savings Program (MSP)**. MSPs pay the monthly Part B

¹⁵ POMS, [HI 00805.125\(A\)](#); Medicare.gov, [How do I get Parts A & B?](#)

¹⁶ [42 C.F.R. § 406.6\(b\)](#); Medicare Rights Center, [How to enroll in Medicare if you are turning 65](#).

¹⁷ [42 C.F.R. § 406.6\(d\)\(4\)](#); POMS, [HI 00801.022\(A\)](#).

¹⁸ Ibid.

¹⁹ Medicare Rights Center, [Health Savings Accounts and Medicare](#).

premium for lower-income individuals and, importantly, will also enroll an individual in Part B without penalty (or will erase the penalty of an individual who already has one).

3. For those with incomes too high for an MSP or who need a significantly retroactive Part B effective date, **check to see if misinformation or a mistake might allow them to request one of two forms of equitable relief.** Equitable relief does not apply to most individuals, usually takes longer, and is less certain to be successful than other enrollment mechanisms.
4. **Help the individual enroll in Part B through the GEP.** Although it is available to anyone eligible for Part B, it is last on the list since it is the most likely to result in penalties and gaps in coverage.

Determining how your client should enroll in Part B

If someone 65+ has premium-free Part A and wants to enroll in Part B, they will use one of the following methods:

- Initial Enrollment Period**
Has the individual recently turned 65?
- Part B Special Enrollment Period**
Does the individual have, or have they recently had, primary coverage through their or a spouse's job?
- Medicare Savings Program**
Is the individual's income low enough to qualify for an MSP?
- Equitable Relief**
Did a federal employee make a mistake or provide misinformation to the individual?
- Equitable Relief for Marketplace Enrollees**
Did the individual decline Part B because they misunderstood their tax credits or cost-sharing with a Marketplace plan?
- General Enrollment Period**
For use when all else fails. The GEP runs January 1 through March 31, with Part B coverage effective on July 1.

Enrolling in Part B through the Initial Enrollment Period

Who is eligible: Individuals have an IEP when they are about to turn 65.

When to enroll: Individuals who are not automatically enrolled in Medicare Part B may enroll using their IEP during or around their 65th birthday month. The IEP is a seven-month period that includes the three months before, the month of, and the three months following the person's 65th birthday.²⁰ The date Medicare coverage begins depends on when they sign up:

- If they enroll during the first three months of their IEP, coverage begins the month in which they first become Medicare-eligible.
- If they enroll during the fourth month of their IEP, coverage begins the month following the month of enrollment.
- If they enroll during the fifth month of their IEP, coverage begins the second month following the month of enrollment.
- If they enroll during the sixth or seventh month of their IEP, coverage begins the third month following the month of enrollment.²¹

For example: If individual turns 65 in June...	
Enroll anytime in	Coverage starts
March	June 1
April	June 1
May	June 1
June	July 1
July	September 1
August	November 1
September	December 1

The one exception is for people whose birthday falls on the first of the month. In these cases, the IEP is moved up one month, so their IEP is the seven months surrounding the month prior to the month of their 65th birthday.²² For example, if an individual turns 65 on June 1, their IEP runs from February 1 to August 31.

How to enroll: Complete form [CMS 40B](#) and submit to a local Social Security office (this form may not be submitted online).²³ Individuals should take notes on the details of their visit in case there are any problems.

²⁰ POMS, [HI 00805.015\(B\)](#); Medicare Rights Center, [How to enroll in Medicare if you are turning 65 without Social Security or Railroad Retirement benefits](#). When the last day of an individual's IEP ends on a weekend or federal holiday, the IEP is extended for an additional business day. [POMS HI 00805.135](#).

²¹ POMS, [HI 00805.165\(B\)](#).

²² POMS, [HI 00805.153](#).

²³ An individual may find their local Social Security office by using the [Social Security Office Locator](#).

Troubleshooting Tips

Social Security generally processes IEP enrollments quickly and correctly. In rare cases, Medicare Rights has seen applications that take more than three months to process and others that are incorrectly denied.

- **If the application is delayed:** Reach out to the local office and a staff person can find where the application is being processed and ask that it be expedited.²⁴ In more urgent cases, such as when an individual is not able to access needed health care due to a delay, Medicare Rights has also reached out to Social Security’s public affairs specialists and federal elected officials.²⁵
- **If the application is denied:** Appeal the decision.²⁶ Social Security should send a decision letter with directions for how to appeal, though it can be faster to go back to the local office to have it resolved informally. If the deadline to appeal has expired, consider using equitable relief (explained later in this toolkit).

Enrolling in Part B through the Special Enrollment Period (SEP)²⁷

For tens of thousands of people today—including those who work past age 65—transitioning from other types of health insurance coverage to Medicare is not an automatic process. Roughly 20% of adults over 65 continue to work, and those with primary health insurance through their or their spouse’s job often choose to enroll in Medicare Part A and decline Part B in order to save money on the monthly Part B premium.²⁸ These individuals should be eligible for the Part B Special Enrollment Period (SEP).²⁹ (Note that there are different enrollment rules for individuals who are eligible for Medicare due to disability, and individuals who have Medicare due to ESRD do not qualify for the SEP even if they also have Medicare due to age.)³⁰

If an individual enrolls in Part B during their SEP, they will typically avoid a Part B late enrollment penalty.³¹ However, they will still be responsible for any health care costs incurred in the months after losing job-based coverage and before Medicare takes effect.

²⁴ POMS, [GN 01070.228](#).

²⁵ Social Security, New York Region, [Public Affairs Specialists](#).

²⁶ [20 CFR § 405.904\(a\)\(1\)](#).

²⁷ [42 U.S.C. § 1395p\(i\)](#); [42 C.F.R. §§ 406.24](#) and [407.20](#); CMS, Medicare General Information, Eligibility, and Entitlement [Ch. 2](#) §§ 40.3 and 40.3.3; CMS, Medicare Secondary Payer Manual [Ch. 1](#) and [Ch. 2](#).

²⁸ Edelson, Harriet: [More Americans Working Past 65](#), AARP (April 2019).

²⁹ [42 U.S.C. § 1395p\(i\)](#).

³⁰ POMS, [HI 00805.266](#): E.g. definitions of “family member” and “Large Group Health Plan”; [HI 00805.265\(A\)](#): “Individuals with end-stage renal disease (ESRD) are not eligible for the SEP or premium surcharge rollback. This includes individuals who are dually-entitled to Medicare based on ESRD and age or disability.”

³¹ POMS, [HI 00805.751\(B\)\(2\)](#); Medicare Rights Center, [Enrolling in Medicare with job-based insurance](#).

Individuals should consider enrolling in Part B if their job-based insurance is from a small employer.

Job-based coverage from an employer with fewer than 20 employees is secondary to Medicare for those eligible for Medicare due to age.³² Therefore, individuals with coverage through small employers who delay Part B enrollment may have no primary health insurance; the job-based insurance may start denying primary payments and only pay their share as secondary insurer. People with Medicare due to age can still qualify for the Part B SEP with small employer coverage.³³ Medicare Rights advises its client to speak with Social Security about any enrollment decisions they are making, document who they talked to, when, and what was said.³⁴ If a mistake is made, that information can be used to apply for equitable relief, discussed later in this toolkit.

Who is eligible: To qualify for the SEP, a beneficiary must be eligible for Medicare because of age and have:

1. Insurance from a current job (or their spouse's³⁵ or their divorced spouse's current job), or must have had such insurance in the last eight months;³⁶ and
2. Been continuously covered by job-based insurance or Part B since becoming Medicare-eligible, including the first month they became Medicare-eligible.³⁷

³² POMS, [HI 00805.266](#).

³³ Ibid.

³⁴ Medicare Rights Center, [Questions to ask Social Security during Medicare enrollment](#).

³⁵ Social Security does not consider a domestic partner to be a "spouse." Therefore, individuals with Medicare due to age cannot generally qualify for the Part B SEP through job-based coverage from their domestic partner's current employment. POMS, [HI 00805.266](#). There is one exception: if someone eligible for Medicare due to age declined or disenrolled from Part B prior to 2005 because they were covered by a domestic partner's job-based coverage through current employment, they may be able to get equitable relief. [HI 00805.322](#).

³⁶ POMS, [HI 00805.265\(A\)](#); [HI 00805.266](#).

³⁷ POMS, [HI 00805.270\(A\)\(1\)](#). If the individual enrolls in Part B using their IEP, then later drops it, they may still qualify for the Part B SEP even if they were not enrolled in Part B during the first month they became Medicare eligible. In order to qualify, the individual would need to have had employer coverage the month they terminated Part B.

It is important that the job-based insurance the individual is receiving is from **current employment**, rather than from a retirement plan,³⁸ a severance package, or COBRA.³⁹ An individual is not eligible for the SEP when these types of coverage end. Individuals are also not eligible for the SEP as a result of their incarceration ending.⁴⁰ There is a small exception for individuals with hours' bank arrangements (most commonly through a union). Such arrangements can provide temporary job-based coverage in-between active employment and after employment ends. As a result, this coverage is treated as coverage through current employment while the arrangement holds, even if the employment has ended.⁴¹ This is a limited exception and only applies to hours' bank arrangements, not to severances or other situations where coverage carries over after employment ends.⁴²

The Part B SEP lasts for as long as an individual has job-based insurance through current employment and for eight months after that coverage or employment ends.⁴³ A beneficiary is ineligible for the SEP if, at any point, they have had more than eight consecutive months without coverage from either Medicare or current employment since becoming Medicare-eligible.⁴⁴ If an individual is enrolling in Part B within the eight months after their job-based coverage or employment has ended, they are eligible for the SEP regardless of whether the employee quit their job or retired, their position was terminated, or the employee whose employer provided the coverage passed away. If the job-based health plan is terminated retroactively, the Part B SEP is triggered when the employee is notified of this, not when the coverage actually ends.⁴⁵

The Part B SEP can be used repeatedly: An individual who uses the SEP can do so again if they later disenroll from Part B for qualifying job-based coverage and then re-enroll into Part B within eight months.⁴⁶ Once they fail to meet the qualifications, however, (i.e. letting an eight-month period or their first month of eligibility go by without enrolling in Part B or job-based coverage through current employment), they lose access to the Part B SEP even if they later enroll in job-based insurance through current employment.⁴⁷ If they have had gaps in coverage shorter than eight months, they are still eligible for the SEP.⁴⁸

³⁸ The exception to this is for Federal Employee Health Benefits (FEHB) for retired federal employees. Unlike other retiree insurance, FEHB will pay primary if you do not enroll in Part B. Medicare Rights, [Federal Employee Health Benefits \(FEHB\) basics; Making Part B enrollment decisions with FEHB retiree coverage](#).

³⁹ [42 C.F.R. § 407.20\(c\)](#).

⁴⁰ Medicare Rights Center, [Medicare coverage during incarceration](#).

⁴¹ POMS, [HI 00805.278](#).

⁴² The employer (usually a union) should complete the hours' bank section of form CMS L564 in order to qualify the individual for the Part B SEP.

⁴³ POMS, [HI 00805.275\(A\)](#). When the last day of an individual's SEP ends on a weekend or federal holiday, the SEP is extended for an additional business day. [POMS HI 00805.135](#).

⁴⁴ POMS, [HI 00805.275\(E\)](#); This means to use the Part B SEP an individual must have been covered during the first month of their Medicare eligibility due to age (usually the month of their 65th birthday): [HI 00805.270\(A\)\(1\)](#).

⁴⁵ POMS, [HI 00805.275\(F\)](#).

⁴⁶ POMS, [HI 00805.270\(A\)\(2 – 3\)](#); [HI 00805.275](#).

⁴⁷ Ibid.

⁴⁸ POMS, [HI 00805.275\(G\)](#).

Most of the same Part B SEP requirements apply to self-employed individuals as well. Some unique provisions: A plan can count as job-based insurance if at least one employee of the self-employed person is also covered by the plan.⁴⁹ And self-employed people can have job-based insurance through associations, fraternal organizations, and other groups.⁵⁰

Individuals can also qualify for the Part B SEP if they were covered by a national health plan while living abroad and they or their spouse were working.⁵¹ In other words, Social Security treats a foreign national health plan as job-based insurance.⁵² An individual applying for the SEP must show proof of national health plan coverage and employment.⁵³

When to enroll: The Part B SEP allows an eligible individual to enroll in Part B at any time while they still have their current job-based insurance, or during the eight-month window beginning the month after the employment or their coverage ends (whichever comes first).⁵⁴ The eight-month period begins in the first full month someone does not have job-based insurance through current employment.⁵⁵

Early use of the SEP: Those using the SEP while still covered by job-based coverage or in the first full month after coverage ends can choose to have their Medicare coverage take effect either:

- The month they enroll, or
- Any of the three months after the month they enroll.⁵⁶

Later use of the SEP: For those using the SEP in the second (or later) month after employer coverage ends, Medicare coverage takes effect the month after they enroll.⁵⁷

SEP versus IEP and GEP: Since there is a shorter waiting period for those who use the SEP than for those who enroll at the end of their IEP, some individuals eligible for both might try to enroll using the SEP during their IEP. Unfortunately, this tactic does not usually work, since SEP requests filed during someone's IEP are processed as IEP enrollment requests (with an IEP effective date for coverage) except for one exception: people who have had Medicare because

⁴⁹ POMS, [HI 00805.290](#).

⁵⁰ Ibid.

⁵¹ POMS, [HI 00805.275\(A\)](#); POMS, [HI 00805.266](#): "We consider a person working for a foreign employer who has a plan that meets the definition of GHP, to have coverage under a GHP for purposes of the SEP and premium-surcharge rollback. This also applies to individuals working in countries with national health plans."

⁵² POMS, [HI 00805.266](#).

⁵³ POMS, [HI 00805.295\(E\)](#).

⁵⁴ [42 C.F.R. § 406.24\(b\)](#); POMS, [HI 00805.275\(A\)](#); Medicare Rights Center, [Enrolling in Medicare with job-based insurance](#).

⁵⁵ POMS, [HI 00805.275\(A\)](#).

⁵⁶ POMS, [HI 00805.276](#).

⁵⁷ [42 C.F.R. § 407.20\(e\)](#); POMS, [HI 00805.276](#).

of disability who enter the IEP because they will be turning 65 can use the SEP up until their 65th birthday.⁵⁸

If an individual tries to enroll in Part B using the SEP during the GEP (January 1 through March 31), they can choose a SEP effective date or the GEP effective date of July 1.⁵⁹

How to enroll: Complete and submit forms [CMS 40B](#) and [CMS L564](#) (for each employer) to a local Social Security office (these forms may not be submitted online).⁶⁰ See Medicare Rights' flier about the Part B SEP for a sample letter beneficiaries can use, too.⁶¹ Form CMS L564 requires that the employer (or employers) complete the bottom part of the form in order to provide evidence that the applicant had job-based health insurance.⁶² Individuals who are self-employed should have their job-based insurance complete the bottom part of form CMS L564.⁶³ Only employers (usually unions) who use hour's bank arrangements should complete the hours' bank section of the form.

To avoid delays from denied applications, it can be helpful to review the employer forms before submitting them. Employers will sometimes fail to complete the form (e.g. by leaving items blank or including the wrong end date for employment) or use incorrect information (e.g. listing the start date for health coverage to only be the start date of the most recent insurer rather the very first date the employee was covered by the employer's plan). It can save time to review these forms before submitting them.

Troubleshooting Tips

As with the IEP, in rare cases Part B SEP enrollments may be delayed or incorrectly denied. If this happens, follow the same troubleshooting steps provided in the IEP section of this toolkit. Unique to SEP enrollments are problems proving a beneficiary had job-based coverage. Often this happens when an employer is unwilling or unable to complete the form CMS L564, perhaps because the company is no longer in business or the employment was many years in the past.

- **If there is no form CMS L564:** Social Security is required to accept many different kinds of evidence of job-based coverage, including, but not limited to: income tax returns, W-2s, pay stubs, receipts/statements showing payment of health insurance premiums, and cards or claims paid by the health insurance company.⁶⁴ Individuals should point the Social Security representative to Social Security's handbook (the Program Operations Manual System) at [HI 00805.295\(B\)](#), which directs representatives to accept these kinds of alternative evidence. In some cases, where nothing else was available, Medicare Rights has had the beneficiary sign an affidavit attesting to having carried job-based insurance (e.g. using form [SSA 795](#)).

⁵⁸ POMS, [HI 00805.275\(B\)](#).

⁵⁹ POMS, [HI 00805.275\(C\)](#).

⁶⁰ POMS, [HI 00805.295](#). An individual may find their local Social Security office by using the [Social Security Office Locator](#).

⁶¹ Medicare Rights, [The Part B Special Enrollment Period](#).

⁶² POMS, [HI 00805.295\(A\)\(1\)](#).

⁶³ POMS, [HI 00805.290\(C\)](#).

⁶⁴ [HI 00805.295\(B\)](#).

Enrolling in Part B through a Medicare Savings Program (MSP)

MSPs are federally funded, state-run benefits that, at a minimum, pay the monthly Medicare Part B premium for beneficiaries with limited income and assets.⁶⁵ An MSP is not additional insurance; rather, it is a benefit program that assists with costs associated with a beneficiary’s existing Medicare coverage.

Importantly, enrollment in an MSP also enables an individual to enroll in Part B outside of usual enrollment periods and have any Part B late enrollment penalty waived.⁶⁶ Enrollment in an MSP also automatically enrolls, or deems, the individual in the Extra Help drug subsidy.⁶⁷ Using MSPs as an enrollment mechanism—through what is known as the Part B Buy-in—has enabled Medicare Rights to help many beneficiaries who had no other immediate enrollment period available to them.⁶⁸

Who is eligible: MSPs are available nationwide, but eligibility rules differ by state.⁶⁹ Most states have both income and asset requirements for MSP eligibility, but New York has no asset requirement.⁷⁰ Since income limits change annually based on federal poverty guidelines, it is important to use up-to-date numbers.⁷¹ Even if an individual’s income is above the threshold, they may still be eligible for an MSP if they can claim certain income disregards or they qualify for certain types of trusts.⁷² There are three primary types of MSP recipients: Qualifying Individual (QI), Specified Low-Income Medicare Beneficiary (SLMB), and Qualified Medicare Beneficiary (QMB). For information about the benefits available to enrollees in each program, visit Medicare Rights’ Medicare Interactive resource.⁷³ An important difference between the different MSP types are the different effective dates, since the effective date of the MSP will also be the effective date of Part B (if the individual does not already have Part B).⁷⁴

2020 New York State MSP Income Eligibility Levels			
MSP	Individuals	Couples	Effective Date of the MSP
QI	\$1,456	\$1,960	Three months before the month of application (or January if the month of application is January, February, or March).
SLMB	\$1,296	\$1,744	Three months before the month of application.
QMB	\$1,084	\$1,457	The month after the month of application.

⁶⁵ Medicare Rights Center, [Medicare Savings Program basics](#).

⁶⁶ [42 U.S.C. § 1395v\(a\),\(e\)](#); POMS, [HI 00815.001](#), [009](#), [018](#), [039](#), and [00801.140](#); Medicare Rights Center, [Using MSPs to enroll in Part B](#).

⁶⁷ POMS, [HI 03001.005\(A\)](#); Medicare Rights Center, [Extra Help basics](#).

⁶⁸ Medicare Rights Center, [Using MSPs to Enroll in Part B](#).

⁶⁹ Medicare.gov, [Medicare Savings Programs](#); National Council on Aging, [Medicare Savings Programs \(MSPs\): Eligibility and Coverage \(2019\)](#).

⁷⁰ Medicare Rights Center, [Medicare Savings Program financial eligibility guidelines](#).

⁷¹ Medicare Rights Center, [MSP information sheet](#).

⁷² *See, generally*, [18 CRR-NY § 360-4.3](#); New York State Department of Health, [Medicaid Reference Guide](#); New York State Department of Health, [GIS 19 MA/04](#).

⁷³ Medicare Rights Center, [MSP basics](#).

⁷⁴ POMS, [HI 00815.039](#).

How to enroll: Applications for MSPs are processed by local Departments of Social Services, such as the Human Resources Administration in NYC.⁷⁵ Applicants must complete form [DOH-4328](#) and submit proof of their income, date of birth, New York State residency, and identity.⁷⁶ The local Department of Social Services should notify someone within 45 days of the submission of their application if they are eligible for the MSP.⁷⁷ Medicare Rights helps New York advocates (and particularly those in New York City) assist their clients with MSP applications. **For assistance, contact Medicare Rights' professional email inbox at professional@medicarerights.org.** Local HIICAP offices also help with MSP applications.⁷⁸

Troubleshooting Tips

Medicare Rights has submitted tens of thousands of MSPs in New York City and understands the various reasons for application delays and incorrect denials. Counselors typically follow up directly with the Human Resources Administration, but beneficiaries and their advocates can also request a fair hearing if they would like their case heard.

- **If an MSP is incorrectly denied:** Request a fair hearing within 60 days of the date on the denial notice by following the directions on the notice. Beneficiaries can represent themselves in person at the hearing or have a lawyer, friend, or relative represent them. If the beneficiary does not have a notice of denial, they can still request a fair hearing by contacting the Office of Temporary Disability Assistance (OTDA) at 800-342-3334 or online. (Office of Temporary Disability Assistance, [Fair Hearing Request Form](#)). For more details on the process, see Medicare Rights' Fair Hearing flier. (Medicare Rights Center, [Fair Hearings in New York State](#).)

Enrolling in Part B through Equitable Relief

Sometimes an individual delays enrolling in Medicare Part B because of an error, misrepresentation, or inaction by a federal employee, such as a Social Security or 1-800-MEDICARE representative.⁷⁹ For example, Medicare Rights' callers have been incorrectly told by Social Security representatives that they can delay enrolling in Part B without penalty because they have retiree insurance. In other instances, Medicare Rights' helpline callers have applied for Part B during an enrollment period but never heard back from Social Security. In these cases, the individual may be able to enroll in Part B through a process known as equitable relief.⁸⁰

Who is eligible: When federal government employees (usually a Social Security or 1-800-MEDICARE representative) make a mistake that negatively affects an individual's Part B

⁷⁵ Medicare Rights, [Applying for a Medicare Savings Program](#).

⁷⁶ New York State Department of Health, [Medicare Savings Program Application](#).

⁷⁷ [45 C.F.R. § 206.10\(a\)\(3\)\(i\)](#).

⁷⁸ New York State Office for the Aging, [HIICAP Local Offices](#).

⁷⁹ Unfortunately, misinformation provided by state employees, employers, insurance companies, and benefits administrators does not seem to be covered by equitable relief. See [42 C.F.R. § 407.32](#): "...a Federal employee or any person authorized by the Federal Government to act in its behalf..."

⁸⁰ Medicare Rights Center, [Equitable relief](#).

enrollment, the individual can request equitable relief from Social Security.⁸¹ If approved, the individual will receive prospective or retroactive Part B enrollment and have their Part B late enrollment penalty waived.⁸²

How to enroll: To request equitable relief, an advocate or beneficiary should write a letter to the local Social Security office explaining that an error, misinformation, or inaction by a federal employee caused a delay in Part B enrollment. (Medicare Rights offers step-by-step directions and a [model letter](#) on its website.⁸³) The letter should be as specific and detailed as possible. For example, if a Social Security representative has provided misinformation, the letter should include the representative's name or description, the office they work in, what they said, the date and time they said it, and whether the information was conveyed in person or by phone. Such detailed information will not be available in all cases, but as much information as possible should be included in the letter to help ensure its chances of success. In addition, the letter should clearly request the result the beneficiary seeks (e.g., to be enrolled in Part B retroactive to a specific date, to have a Part B LEP waived).

Social Security is not required to respond to equitable relief requests within any set timeframe, though Medicare Rights typically sees action taken within three months. In addition, Social Security does not have to send the beneficiary a formal decision letter in response to the equitable relief request and, as a result, such letters are rare.

Typically, the effective Part B date for successful equitable relief applications will be the same as if the error, misrepresentation, or inaction had not happened. This means that the effective date could be retroactive and the beneficiary may need to inform Social Security as to how they will pay for back premiums. However, if retroactive coverage would involve six or more months of back premiums, beneficiaries can also elect to have Part B start prospectively.⁸⁴

⁸¹ Created under federal law, [42 U.S.C. § 1395p\(h\)](#), the equitable relief provision permits Social Security to adjust a beneficiary's record to grant retroactive coverage or waive a penalty if the beneficiary's "enrollment or coverage rights have been prejudiced by the error, misrepresentation, action or inaction of an employee or agent of the Government." POMS, [HI 00830.001](#) *et seq*; *see also* CMS, Medicare General Information, Eligibility, and Entitlement [Ch. 2](#) § 40.8.

⁸² [42 U.S.C. § 1395p\(h\)](#); [42 C.F.R. § 407.32](#).

⁸³ Medicare Rights Center, [Part B Enrollment Toolkit](#).

⁸⁴ POMS, [HI 00805.195](#).

Troubleshooting Tips

Equitable relief is tricky because Social Security is not required to respond to a request within any set timeframe, they do not always send any response at all, and an equitable relief decision does not come with official appeal rights.

- **If you do not receive a response within two months:** Submit a new letter or reach out to Social Security's public affairs specialists and federal elected officials.⁸⁵
- **If equitable relief is denied:** The beneficiary may (or may not) receive a letter with appeal rights and, if so, they can try to appeal. In most cases, Medicare Rights would submit a new letter (with additional details, if possible) or ask for a meeting with the local Social Security office, since equitable relief decisions are not supposed to be appealable.⁸⁶

Retroactive Part B

When someone is awarded retroactive Medicare Part B, they gain the benefit of being covered by Medicare back to their retroactive start date. This means that they or their providers can submit claims to Medicare and get reimbursement for health expenses incurred during the retroactive period. To ensure the retroactive benefit actually covers their health care, individuals should reach out to their providers with copies of their Social Security award letter showing a retroactive Part B effective date. This letter serves as a notice to providers and allows them to submit old claims—even claims submitted more than one year from the date of service.⁸⁷

When Part B is retroactive, the individual is also responsible for paying the Part B back premiums. Often, Social Security representatives ask individuals getting a retroactive Part B award to pay the back premiums immediately. Individuals who might be unable to pay their back premiums in a lump sum can request an installment plan.

Enrolling in Part B through Equitable Relief for Marketplace Enrollees

Equitable relief for Marketplace enrollees is a very specific type of equitable relief for beneficiaries who have delayed enrolling in Medicare Part B to stay in a Marketplace plan, more formally known as a Qualified Health Plan (QHP). Medicare Rights has witnessed how confusion about QHPs and Medicare can lead to Medicare enrollment mistakes. For example, some helpline callers have enrolled in Part A and declined Part B because their subsidized QHP

⁸⁵ Social Security, New York Region, [Public Affairs Specialists](#).

⁸⁶ POMs, [HI 00805.170\(A\)\(5\)](#).

⁸⁷ CMS, Medicare Claims Processing Manual, [Ch. 1](#) §70.7.2.

is cheaper than Part B. These individuals often do not realize that they will lose their QHP subsidy (cost assistance) because of their Medicare eligibility. Other callers do not realize they have made a mistake until the QHP stops paying primary for health costs or disenrolls them once they became Medicare-eligible.

It is rarely a good idea to have a QHP and Medicare at the same time.⁸⁸ This is because 1) when an individual enrolls in Medicare, they are generally no longer eligible to receive cost assistance from their QHP 2) there is no guarantee that a QHP will pay for care once an individual is Medicare-eligible, and 3) an individual who keeps their QHP after becoming Medicare-eligible may face gaps in coverage and late enrollment penalties if they choose to enroll in Medicare at a later date.⁸⁹

Who is eligible: Equitable relief for Marketplace enrollees is designed to help certain Marketplace enrollees who have made Medicare enrollment mistakes. (Note that this relief is not available to those who have a QHP through the Small Business Health Options (SHOP) program.)⁹⁰ Those approved will have the opportunity to enroll in Part B and have their Part B late enrollment penalty waived or reduced.⁹¹

There are very specific criteria a beneficiary must meet to request this type of equitable relief. Namely, they must be (or have been) enrolled in a QHP, have premium-free Part A, and:⁹²

- Have an IEP that began between April 1, 2013, and March 1, 2020; or
- Have been notified of retroactive premium-free Part A enrollment between October 1, 2013, and June 30, 2020; or
- Have a Part B SEP that ended between October 1, 2013, and June 30, 2020.

For those requesting only that their Part B LEP be eliminated or reduced, they must have received the penalty after enrolling in Part B during a General Enrollment Period (GEP) between 2015 and 2020.

How to enroll: Request equitable relief for Marketplace enrollees from a local Social Security office. The process is uncommon, so Medicare Rights recommends that individuals go in person with a copy of the Emergency Message ([EM-16033 REV 6](#)), which explains exactly what the Social Security representative should do.⁹³ Individuals should take notes on the details of their visit in case there are any problems. In a situation where the beneficiary and their representative have been unable to go in person, we have also submitted a letter requesting equitable relief for Marketplace enrollees with evidence of QHP enrollment and form [CMS 40B](#).

Whether in person or in a letter, the individual should include three pieces of information:

⁸⁸ Medicare Rights Center, [Making Part B enrollment decisions with QHP coverage](#).

⁸⁹ CMS, [Fact sheet on Medicare and the Marketplace](#).

⁹⁰ Ibid.

⁹¹ SSA, Emergency Message [EM-16033 REV 6](#).

⁹² Ibid.

⁹³ Ibid.

1. They are requesting equitable relief for Marketplace enrollees.
2. The specific relief they are seeking (i.e. Part B enrollment effective on such and such date or waiver of their Part B late enrollment penalty).⁹⁴
3. Proof of Marketplace coverage.⁹⁵

As with standard equitable relief, Social Security is not required to respond to this type of equitable relief request within any set timeframe, though Medicare Rights typically sees action taken within three months. In addition, Social Security does not have to send the beneficiary a formal decision letter in response to the equitable relief request and, as a result, such letters are rare.

Typically, the effective Part B date for successful applications for this type of equitable relief is the month the beneficiary requested relief. Alternatively, the beneficiary can choose that their Part B effective date be either of the two months prior to their request for relief.⁹⁶ Beneficiaries cannot use equitable relief for Marketplace enrollees if they are currently in their IEP or SEP.

Troubleshooting Tips

Social Security offices are sometimes unfamiliar with equitable relief for Marketplace enrollees. As a result, many of Medicare Rights' clients have seen their applications denied, delayed, or ignored.

- **If the request is not accepted:** Go to a different Social Security office or back to the same one and try again. Firmly but politely ask the representative to review the emergency message that explains what the representative should do.⁹⁷ Explain how the eligibility criteria are met. Even if the representative is doubtful of the process, be firm in asking them to process the application. You can also ask for a supervisor or manager.
- **If the request is delayed:** Reach out to the local Social Security office, and a representative can find where the application is being processed and ask that it be expedited.⁹⁸ In more urgent cases, such as when someone is not able to access needed health care due to the delay, Medicare Rights has also reached out to Social Security's public affairs specialists and federal elected officials.⁹⁹

⁹⁴ Ibid: Individuals can request a Part B effective the same month they are applying for relief or either of the two months prior to the month they are applying.

⁹⁵ Ibid: Proof of Marketplace coverage can come in many forms including (but not limited to): Marketplace Eligibility notices, Marketplace and Medicare notice, IRS form [1095 A](#) showing months of Marketplace coverage or subsidy amounts, Marketplace premium invoices and proof of payment, receipt from a Marketplace issuer indicating payment, and other Marketplace notices confirming enrollment.

⁹⁶ Ibid.

⁹⁷ Ibid.

⁹⁸ POMS, [GN 01070.228](#).

⁹⁹ Social Security, New York Region, [Public Affairs Specialists](#).

Enrolling in Part B through the General Enrollment Period

Who is eligible: Individuals who cannot use any of the Medicare Part B enrollment pathways described previously can enroll in Part B during the General Enrollment Period.

When to enroll: The GEP runs from January 1 through March 31 each year, with Part B coverage effective on July 1¹⁰⁰. Most people who use the GEP to enroll will face a Part B late enrollment penalty.¹⁰¹

How to enroll: Eligible individuals should complete form [CMS 40B](#) and submit to the local Social Security office (this form may not be submitted online).¹⁰² If the individual had job-based insurance through current employment at any point while they were eligible for Medicare, they should also submit form [CMS L564](#) employer in order to avoid an LEP.¹⁰³

Troubleshooting Tips

Social Security successfully processes the majority of GEP enrollments. This is true even if an individual requests a GEP enrollment outside the January through March enrollment timeframe. In those cases, most Social Security offices will hold onto the application until the next GEP. One problem that can arise is when an individual tries to enroll in Part B during their IEP or SEP and Social Security incorrectly processes the request as a GEP enrollment. Since GEP enrollments are not effective until July 1, the individual could experience a gap in coverage.

- **If the individual is using the Part B SEP during the GEP:** They can choose whether their application is processed as an SEP or GEP enrollment.¹⁰⁴
- **If the individual is using their IEP during the GEP:** Their application should be processed as an IEP enrollment.¹⁰⁵
- **If an IEP or SEP enrollment is incorrectly processed as a GEP enrollment:** Appeal the enrollment decision following the directions on the Social Security notice informing the applicant of their Medicare enrollment and effective date. If there is no such letter or the appeals timeframe has expired, request equitable relief (following the steps laid out in the equitable relief section of this toolkit).

¹⁰⁰ When the last day of the GEP ends on a weekend or federal holiday, the GEP is extended for an additional business day. [POMS HI 00805.135](#).

¹⁰¹ [42 U.S.C. 1395r](#); POMS, [HI 01001.010](#); Medicare Rights Center, [Medicare Part B Late Enrollment Penalties](#).

¹⁰² An individual may find their local Social Security office by using the [Social Security Office Locator](#).

¹⁰³ POMS, [HI 01001.010](#)(A)(1) and (B): One CMS L564 form should be submitted for each employer that provided insurance while the individual was eligible for Medicare.

¹⁰⁴ POMS, [HI 00805.275](#)(C).

¹⁰⁵ POMS, [HI 00805.030](#).

What if an individual loses Part B and needs to re-enroll?

The strategies outlined in this toolkit can also apply to situations where someone has disenrolled (or been disenrolled) from Part B and wants to re-enroll. For example, someone disenrolling from Part B because they started a job with employer coverage can re-enroll in Part B using the Part B SEP. There are three instances, however, that bear specific mention.

First, individuals may lose Part B and want to re-enroll if there has been a failure to pay the Part B premium. This happens both purposefully, when an individual thinks they do not need Part B or cannot afford it, and accidentally, when an individual paying directly for their premium (rather than having it taken out of their Social Security check) forgets to make a payment. If an individual has only recently been disenrolled, the best course of action is often to go into the local Social Security office with a check made out for the missing premiums. While simply going into the office is an informal mechanism that often works, beneficiaries officially only have a 90-day grace period to pay their premiums.¹⁰⁶ This period can be extended to 180 days for those who show “good cause” (usually a physical or mental incapacity that prevented an individual from paying their Part B premium).¹⁰⁷ Individuals without the ability to pay the full price of their back premiums can request to pay on an installment plan and should also consider whether they are eligible for the Medicare Savings Program.

Second, individuals may want to re-enroll in Part B if they have been incorrectly disenrolled from Part B due to administrative error. This can happen, for instance, if a systems error is made when an individual is collecting spousal benefits and then begins collecting retirement benefits on their own work history.¹⁰⁸ It can also happen if Social Security fails to deduct an individual’s Part B premiums from their Social Security benefit.¹⁰⁹ In either case, beneficiaries should pursue the equitable relief strategy, though they may also try informally resolving the issue at the local Social Security office.

Third, individuals may want to re-enroll in Part B if they have disenrolled themselves from Part B and realize later they made a mistake. If their disenrollment request has not yet been processed, individuals can often withdraw their declination of Part B (i.e. stop their disenrollment before it goes through) by contacting the local Social Security office.¹¹⁰ Advocates should probe why the individual disenrolled themselves to see if misinformation was provided by a federal employee and, if so, help the individual apply for equitable relief.

¹⁰⁶ [42 U.S.C.A. § 1395g\(b\)\(2\)](#); [HI 01001.350](#); [HI 01001.355](#).

¹⁰⁷ [42 U.S.C.A. § 1395g\(b\)\(2\)](#); POMS, [HI 01001.360](#).

¹⁰⁸ POMS, [HI 00805.215](#).

¹⁰⁹ POMS, [HI 00805.220](#).

¹¹⁰ There is also a specific provision for those individuals who were automatically enrolled in Part B, declined it, changed their mind, and are still in their IEP. POMS, [HI 00805.055\(B\)](#).

Case Example

Aaron is a single 67-year-old enrolled only in Marketplace coverage and premium-free Part A who has been collecting Social Security benefits since he turned 64. In December 2019, Aaron learns from his QHP that he will stop receiving tax subsidies to pay for his plan and will be disenrolled at the end of the year. He is told this is because he was supposed to have enrolled in Medicare when he turned 65. At that time, Aaron declined Part B after speaking to a representative from 1-800-MEDICARE, who explained, incorrectly, that Aaron did not need to enroll because he already had health insurance and his tax subsidies for the Marketplace would continue. How do you help Aaron?

- Can Aaron use his IEP? No. Aaron cannot use his IEP, since it is well after his 65th birthday.
- Can Aaron use the Part B SEP? No. Aaron cannot use the Part B SEP, since he wasn't covered by job-based insurance from current work.
- Ask for Aaron's income to see if he qualifies for an MSP. This would enroll him in Part B without a penalty and, at a minimum, pay his Part B premiums going forward. If Aaron is eligible for QI, his Part B would be effective starting three months before the month he applied (or January if he applies in January, February, or March). If Aaron is eligible for SLMB, his Part B would be effective starting three months before the month he applied. If Aaron is eligible for QMB, his Part B would be effective the month after the month he applied.
- It sounds like Aaron is eligible for equitable relief, since misinformation from a representative of the federal government led him to delay enrolling in Part B. This is the only strategy that would allow for Aaron's Part B effective date to be retroactive back to his 65th birthday. You should ask for any details he has about his conversation with 1-800-MEDICARE (e.g., Does he know the date and time he called or can he look it up in his phone records? Does he know the name of the person he spoke to? Does he remember what was said?). Since the retroactive effective date would involve six or more months of back premiums, Aaron could request the retroactive date (and pay the back premiums) or a prospective effective date. In New York, the state Marketplace has stopped QHPs from retroactively disenrolling their Medicare-eligible members in the cases Medicare Rights has seen. If that is true for Aaron, it probably would not make sense for him to pay for retroactive Medicare coverage. The exception would be if there are medical bills or cost-sharing the QHP did not cover, but Medicare would cover, that are worth more than the Medicare back premiums Aaron would have to pay.
- It sounds like Aaron may also be eligible for equitable relief for Marketplace enrollees, since he declined Part B thinking his QHP subsidies would continue. Pursuing this option would allow Aaron's Part B effective date to be the month he applies or either of the two months prior. If Aaron does not qualify for an MSP and he does not need Medicare to be retroactive more than a couple of months, then this could be his preferred option, since the application process is usually more straightforward and less discretionary than applying for equitable relief.