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**CENTERS FOR MEDICARE & MEDICAID SERVICES
RETIREE DRUG SUBSIDY (RDS) PROGRAM GUIDANCE**

QUALIFYING COVERED RETIREES

Introduction

This document provides guidance for plan sponsors (sponsors) participating in the Retiree Drug Subsidy (RDS) program concerning who can be a qualifying covered retiree under the RDS program under 42 CFR §423.882. This document incorporates existing guidance published on December 30, 2005, in a document titled “Frequently Asked Questions Regarding: Qualifying Covered Retirees for the Retiree Drug Subsidy.” That document addressed several frequently asked questions about the definition of qualifying covered retiree, including how the rules apply to spouses and dependents and to individuals eligible for Medicare coverage due to disability or end stage renal disease.

Among the criteria for an individual to be a qualifying covered retiree is that the individual not be enrolled in a Medicare Part D plan. This document also includes new guidance that encourages sponsors to clearly and regularly give their retirees information about the consequences of the retirees’ Medicare Part D enrollment on existing employment-based retiree coverage. This document supersedes the above-mentioned December 30, 2005 guidance document.

Definition of Qualifying Covered Retirees

Pursuant to §1860D-22 of the Social Security Act, effective January 1, 2006, sponsors of qualified retiree prescription drug plans became eligible for subsidy payments for each qualifying covered retiree under the plan. In general, 42 CFR §423.882 defines a qualifying covered retiree as a *Part D eligible individual* who is not enrolled in a Medicare Part D plan but who is *covered by employment-based retiree health coverage* (as the participant, or as the participant’s spouse or dependent) that meets the standards in 42 CFR §423.884 to be considered a qualified retiree prescription drug plan. (42 CFR §423.884 addresses application and actuarial attestation requirements.)

Part D Eligible Individual

A Part D eligible individual is an individual who meets the standards in 42 CFR §423.30(a). Generally, these standards require that the individual be entitled to (i.e., receiving) Medicare benefits under Medicare Part A or enrolled in Medicare Part B, and live in the service area of a Medicare Part D plan.

Covered By Employment-Based Retiree Health Coverage

A person is covered under employment-based retiree health coverage if the coverage is under a group health plan and based on an individual's status as a retired participant or as the spouse or dependent of a retired participant. In general, sponsors have flexibility to determine whether an individual is a retiree, and to determine who are spouses and dependents of retirees, based on the coverage rules under the plan.

However, a participant is presumed not to be covered under employment-based retiree health coverage from a sponsor if, under the Medicare Secondary Payer (MSP) rules in 42 CFR §411.104 and related CMS guidance, the participant is receiving health coverage based on "current employment status" from that sponsor. (The fact the participant may receive health coverage based on current employment status from a subsequent employer is irrelevant in this case.)

This presumption applies whether or not the MSP rules actually apply to the sponsor (e.g., the MSP rules do not apply if the sponsor has less than a specified number of employees). Under 42 CFR §411.104, a participant generally is eligible for coverage by reason of current employment status if the participant has coverage because he/she is actively working. In addition, an individual who is not actively working is still considered to be receiving coverage due to current employment status in certain situations (e.g., for the first six months of disability benefits from an employer). Sponsors should review the MSP regulations and relevant CMS guidance for more information on the operation of these rules concerning active employment.

Various Scenarios for Spouses and Dependents

The following summary lists different scenarios under which a spouse/dependent can be a qualifying covered retiree under the participant's group health plan. The summary assumes that the spouse/dependent is covered under the group health plan and the spouse's or dependent's employer is not the same as the participant's employer.

- The spouse/dependent is eligible for but not enrolled in Part D and does not have coverage from his or her employer based on current employment status, in situations where the participant has those same two characteristics.
- The spouse/dependent is eligible for but not enrolled in Part D and has coverage from his or her employer based on current employment status, in situations where the participant is eligible for Part D and does not have coverage from his or her employer based on current employment status.
- The spouse/dependent is eligible for but not enrolled in Part D and does not have coverage from his or her employer based on current employment status, in situations where the participant is not eligible for Part D and does not have coverage from his or her employer based on current employment status.

The following summary lists different scenarios under which a spouse/dependent cannot be a qualifying covered retiree under the participant's group health plan. The summary assumes that the spouse/dependent is covered under the group health plan and the spouse's or dependent's employer is not the same as the participant's employer.

- The spouse/dependent is eligible for but not enrolled in Part D and has coverage from his or her employer based on current employment status, in situations where the participant has those same two characteristics.
- The spouse/dependent is eligible for but not enrolled in Part D and does not have coverage from his or her employer based on current employment status, in situations where the participant is eligible for but not enrolled in Part D and has coverage from his or her employer based on current employment status.
- The spouse/dependent is not eligible for Part D and does not have coverage from his or her employer based on current employment status, in situations where the participant is eligible for but not enrolled in Part D and does not have coverage from his or her employer based on current employment status.

The following chart illustrates the different scenarios described immediately above.

DETERMINING WHEN SPOUSES AND DEPENDENTS ARE QUALIFIED COVERED RETIREES ELIGIBLE FOR THE RETIREE DRUG SUBSIDY

	Is the individual eligible for Part D?*	Does the individual have coverage from his or her employer based on current employment status?***	Can the individual be a qualifying covered retiree?
Scenario 1			
Participant	Y	Y	N
Spouse/Dependent	Y	Y	N
Scenario 2			
Participant	Y	N	Y
Spouse/Dependent	Y	N	Y

	Is the individual eligible for Part D?*	Does the individual have coverage from his or her employer based on current employment status?***	Can the individual be a qualifying covered retiree?
Scenario 3			
Participant	Y	N	Y
Spouse/Dependent	Y	Y	Y
Scenario 4			
Participant	Y	Y	N
Spouse/Dependent	Y	N	N
Scenario 5			
Participant	Y	N	Y
Spouse/Dependent	N	N	N
Scenario 6			
Participant	N	N	N
Spouse/Dependent	Y	N	Y

* Assumes individual is not enrolled in a Part D plan.

** Assumes spouse or dependent's employer is not the same as the participant's employer.

Frequently Asked Questions (FAQs)

The following frequently asked questions provide guidance on spouses and dependents:

Question 1:

The sponsor covers drug expenses for a participant and his/her spouse. Both the participant and the spouse are Part D eligible individuals, but only the participant is retired. The spouse is actively employed with a different employer but has drug coverage through the retired participant. Can the sponsor qualify for retiree drug subsidy payments for the spouse's allowable retiree costs?

Answer 1:

Yes. As long as the participant is receiving retiree coverage, and the spouse's coverage with the sponsor is not due to his/her current employment status with the sponsor, the spouse can be a qualifying covered retiree. The spouse must also satisfy the other underlying requirements for being a qualifying covered retiree (i.e., the individual is entitled to (i.e., receiving) Medicare benefits under Medicare Part A or enrolled in Medicare Part B, and lives in the service area of a Medicare Part D plan, but is not enrolled in a Medicare Part D plan). This rule applies regardless of the spouse's working status with respect to employers other than the sponsor. The same answer would apply with respect to dependents.

Question 2:

Does the answer to Question 1 stay the same if the participant is not a Part D eligible individual?

Answer 2:

Yes. As long as the participant is retired and receives employment-based retiree health coverage, his/her spouse or dependent can be a qualifying covered retiree if the other requirements in the CMS regulations are satisfied (e.g., the spouse is a Part D eligible individual not enrolled in a Part D plan). That is the case regardless of whether the participant is entitled to Medicare Part A or enrolled in Part B or if the participant is entitled to Medicare Part D and has enrolled in a Part D plan.

Question 3:

Sponsor's group health plan covers prescription drugs for a participant and his/her spouse. The participant is receiving drug coverage based on current employment status with that sponsor. Can his/her spouse or dependent be a qualifying covered retiree if the spouse is retired?

Answer 3:

No. If the participant's coverage is based on current employment status, the participant's spouse or dependent is not a qualifying covered retiree with respect to the coverage received from that sponsor's plan. That is the case regardless of whether the spouse or dependent is retired from his or her employer.

The following frequently asked questions provide guidance on individuals whose Part D Medicare eligibility is based on disability or end-stage renal disease (ESRD), rather than based on age:

Question 4:

Can a participant in a sponsor's employment-based retiree health coverage be a qualifying covered retiree if the participant has Medicare coverage due to disability and is covered under the employer's "active employee" plan?

Answer 4:

Yes. If the participant does not have coverage based on current employment status (which is typically the case with individuals entitled to Medicare based on disability) and if the other regulatory requirements for being a qualifying covered retiree are met (e.g., the participant is a Part D eligible individual who is not enrolled in Part D, the participant (and his/her spouse or dependent) can be a qualifying covered retiree. This is the case even if the coverage being provided to the participant is the same as the coverage provided to active workers and that coverage generally is not available to workers who retire based on age or years of service. Furthermore, if, for any reason, a sponsor has a retired Medicare eligible individual in its active plan, the employer can collect the subsidy for that retiree, provided he/she meets the other additional criteria to be a qualifying covered retiree, as long as he or she continues to be covered based on retirement and not based on current employment status.

Question 5:

Can a participant who is covered by Medicare under the rules that apply to End Stage Renal Disease (ESRD) be a qualifying covered retiree, even though ESRD rules require that Medicare be the secondary payer (and the employer plan is the primary payer) for 30 months?

Answer 5:

Yes. ESRD Medicare recipients can be qualifying covered retirees in the first 30 months of eligibility even though the employer's coverage is the primary coverage for that period and Medicare is secondary, as long as the other regulatory requirements for qualifying covered retirees are met.

Part D Enrollments

Frequently Asked Question (FAQ)

The following frequently asked question provides guidance to sponsors on how to help individuals determine whether it would be advantageous for them to enroll in a Medicare Part D plan.

Question 6:

How can an employer help individuals determine whether it would be advantageous for them to enroll in a Medicare Part D plan?

Answer 6:

A sponsor can receive the RDS only for eligible costs incurred by qualifying covered retirees that are enrolled in the sponsor's qualified retiree prescription drug plan. 42 CFR §423.882 specifies that the requirements for being a qualifying covered retiree include that the individual is eligible for Medicare Part D but is not enrolled in a Medicare Part D plan. CMS believes a sponsor should help individuals determine whether it would be advantageous for them to enroll in a Medicare Part D plan. A sponsor can do this by giving individuals information about the consequences of his/her Part D enrollment on existing employment-based retiree coverage.

CMS encourages sponsors to clearly and regularly communicate to their retirees the consequences of enrolling into a Medicare Part D plan. Also, in instances where a sponsor, participating in the RDS program, learns of a retiree's enrollment in Part D, CMS strongly encourages sponsors to ensure the retiree understands the consequences of their Part D enrollment, including whether the retiree and/or the retiree's spouse or dependent(s) would lose drug and/or medical coverage under the sponsor's plan, before the coverage is permanently affected.

Also, if an RDS sponsor receives information from the CMS RDS Center stating that a given retiree is not eligible for the subsidy (for example, the retiree is enrolled in a Part D plan), but the sponsor and/or the retiree has evidence to the contrary, CMS recommends that sponsors attempt to resolve such discrepancies with the CMS RDS Center to avoid any adverse and unintended consequences a termination from the sponsor's plan may cause to the retiree. For instructions regarding how to resolve such issues, see the *How to Request Covered Retiree Lists* document at: http://www.rds.cms.hhs.gov/how_to/request_covered_retiree_list.htm