

## **Employee Benefits Division Policy Memorandum**

**Number: Policy Memo 70r5**

**Revised: January 26, 2023**

**Subject: Medicare “Hold Harmless” Rules and Procedures**

### **PURPOSE:**

Determine when New York State Health Insurance Program (NYSHIP) members of a New York State Agency, Participating Agency, or Participating Employer may be held harmless for not enrolling in Medicare when first eligible for Medicare-primary coverage.

### **BACKGROUND:**

NYSHIP requires enrollees and dependents to enroll in Medicare Parts A and B when first eligible for Medicare-primary coverage. Based on the date of birth in the New York Benefits Eligibility Accounting System (NYBEAS), the Employee Benefits Division (EBD) can anticipate when NYSHIP members become eligible for Medicare due to turning age 65. When this occurs, EBD notifies its members of the requirement to enroll in Medicare Parts A and B about 5 months prior to their Medicare-primary date. Since enrollees and dependents who become eligible for Medicare due to age receive substantial information from NYSHIP, they are generally not held harmless.

Members who become eligible for Medicare due to a reason other than age do not receive the same notifications. In certain cases, members may not enroll in Medicare Part A and/or Part B because they are unaware of the requirement, misinformed, living outside the United States, or not eligible for Medicare (e.g. because the member is not a U.S. citizen and does not qualify for Social Security). In certain cases, Empire Plan members may be “held harmless,” meaning the Plan pays primary on claims that would have been paid primary by Medicare if they had enrolled. When NYSHIP holds an individual harmless, the individual is not eligible to be reimbursed for Medicare Part B because Medicare is not acting as the primary payer.

EBD does not have the authority to require its contracted health maintenance organizations (HMOs) to hold NYSHIP members harmless. Therefore, members enrolled in NYSHIP HMOs who do not enroll in or maintain Medicare Parts A and B will have their coverage cancelled.

Section 167a of New York State Civil Service Law precludes NYSHIP from being primary payer for any person to whom the employer is concurrently paying Medicare reimbursements. If a member who is held harmless has already received Medicare Part B reimbursements from NYSHIP or their Participating Agency for months in which they were not enrolled in Medicare Part B, they may choose either to continue to receive Medicare Part B reimbursements with NYSHIP secondary benefits until Part B coverage becomes effective, or they may choose to repay all Medicare Part B reimbursements retroactive to the Medicare Primacy date (up to a maximum of six years for NYS agency

enrollees and retirees), and NYSHIP will be the primary payer from the Medicare Primacy date.

**Please Note:** For purposes of this memo, the “Empire Plan” includes the Excelsior Plan unless otherwise noted, and references to the Social Security Administration (SSA) include the Railroad Retirement Board (RRB).

### POLICY:

**This policy is specific to Empire Plan members, as EBD does not have the authority to hold a NYSHIP HMO member harmless for failure to enroll in or maintain Medicare enrollment.**

Unless otherwise specified, a member approved for hold harmless will be held harmless through the effective date of their Medicare enrollment or the next April 1 (the latest possible effective date for individuals who apply for Medicare during the Medicare General Enrollment Period), whichever comes first. Empire Plan members can only be held harmless once (including those who reside out of the country). If an individual has been held harmless in the past, they may not be held harmless again. When EBD approves hold harmless for an individual, EBD staff will notify the Empire Plan vendors, and instruct them to pay primary on claims through the hold harmless period.

Any late enrollment penalties assessed by Medicare are the responsibility of the Medicare-eligible individual. The assessment of late enrollment penalties alone does not qualify an individual to be held harmless.

Empire Plan members who are not held harmless should be informed that they must enroll in Medicare as soon as possible. They will receive Medicare Part B reimbursement as of their Medicare primacy date (in accordance with Policy Memo 100 for members associated with State active and retiree plans and members associated with PE retiree plans).

### **Not Enrolled in Medicare When First Eligible**

If EBD discovers that an Empire Plan member is eligible for Medicare-primary benefits but is not yet enrolled in Medicare Parts A and/or B, EBD will reach out to the member in writing. An Empire Plan member who was not enrolled in Medicare when first eligible for Medicare-primary coverage may be held harmless under the following circumstances:

#### **Hold Harmless Qualifications:**

##### **If currently enrolled in Part B only, regardless of age:**

Such individuals may be held harmless if:

- The individual is ineligible for Medicare Part A; or

- The individual is eligible for Medicare Part A but is required to pay Medicare Part A premium.

The individual must provide EBD with documentation from the federal Social Security Administration (SSA) stating they are ineligible for Part A or they are required to pay Part A premium. If approved, such members will be held harmless indefinitely, unless they become eligible for premium free Part A at a later date.

**If not enrolled in Medicare or enrolled in Part A only:**

**Enrollees and dependents under age 65 and eligible for Medicare-primary benefits:**

These individuals (excluding those members of the Railroad Retirement Board [RRB]) will automatically be held harmless based on updates through our Voluntary Data Sharing Agreement (VDSA) with Centers for Medicare and Medicaid Services. Since enrollment information for members of the RRB is not available on VDSA, members of the RRB must notify EBD of their Medicare-primary status and provide proof such as a Medicare card or letter from RRB.

**Enrollees and dependents age 65 or older:**

Such individuals may be held harmless at EBD's management's discretion if the member was misinformed, and:

- There is written documentation and sufficient proof from the source of the error that the individual's failure to enroll in Medicare is the result of misinformation by the Department of Civil Service (DCS), an agency Health Benefits Administrator (HBA), or the Social Security Administration (SSA); or
- There is written documentation and sufficient proof SSA will not allow enrollment in Medicare as of the Medicare primacy date under special enrollment period rules because the individual is still within their initial enrollment period.

**Enrollees and dependents who are not United States citizens and do not qualify for Social Security:**

Such individuals may be held harmless upon providing proof to EBD that they cannot enroll in Medicare as they are ineligible due to not being a United States citizen and do not meet the Social Security eligibility requirements. The member may be held harmless indefinitely, or until they become eligible for Medicare under another individual.

**Enrollees and dependents of any age who live outside the United States:**

EBD recommends that enrollees and dependents who are moving to or live outside the U.S. and may return to the U.S for treatment in the future enroll in Medicare Parts A and B when first eligible to ensure there is not an interruption in coverage. However, when an individual who is not enrolled in Medicare returns to the U.S. for treatment, they may be held harmless. They will only be approved to be held harmless once and the duration will not be extended beyond the next April 1.

## **Retroactive Award of Social Security Disability Insurance and Medicare**

When a member is retroactively awarded Medicare due to a Social Security Disability Insurance (SSDI) entitlement they should enroll in Medicare Parts A and B. If they refuse, cancel, or don't enroll in Parts A and/or B they may be held harmless. The member must provide EBD with the SSDI award letter timely.

- If the SSDI is retroactively awarded to a member resulting in a Medicare eligibility date within 12 months of the date the enrollee notifies EBD, EBD will advise the member to enroll in Medicare Parts A and B as of the earliest possible date. The member will be held harmless for the period of time between their Medicare eligibility date and their Medicare enrollment date, if necessary.
- If the SSDI is retroactively awarded to a member resulting in an eligibility date greater than 12 months prior to the date of award, EBD will advise the member to enroll in Medicare Part A retroactive to the earliest possible date and Part B on a current basis (since Medicare will only consider claims payment up to 12 months past the date of service). The member will be held harmless for the period of time between their Medicare eligibility date and their Medicare enrollment date.