



COMMONWEALTH OF PUERTO RICO

OFFICE OF THE COMMISSIONER OF INSURANCE

October 6, 1994

CIRCULAR LETTER NO. AV-1-9-1361-94

TO ALL AUTHORIZED DOMESTIC HEALTH INSURERS, GENERAL AGENTS AND MANAGERS OF FOREIGN HEALTH INSURERS, HEALTH SERVICES ORGANIZATIONS AND NON PROFIT HOSPITAL AND MEDICAL SERVICES ASSOCIATIONS WHICH MARKET MEDICARE SUPPLEMENT CONTRACTS IN PUERTO RICO

RE: Implementation of Medicare Secondary Payer (MSP) End Stage Renal Disease (ESRD) Provisions of the Omnibus Budget Reconciliation Act of 1993 (OBRA '93)

Gentlemen:

On August 10, 1993, OBRA 1993 made various changes to the MSP provisions for ESRD.

We enclose information pertaining to the operation of the OBRA '93 change.

If you have any questions regarding this matter, you can contact this Office or Mrs. Beverly Caballero-Sánchez, Staff Member of the Medicare Department of the Health Insurance Benefits Intermediary, Cooperativa de Seguros de Vida de Puerto Rico, at (809) 758-9733, exts. 4425 or 4428.

Sordially yours,



Juan Antonio García  
Commissioner of Insurance

Enclosure



COOPERATIVA  
DE SEGUROS DE VIDA  
DE PUERTO RICO

# MEDICARE BULLETIN

## HEALTH INSURANCE BENEFITS INTERMEDIARY

August 16, 1994

Mr. Juan Antonio García Cardona  
Insurer Commissioner  
P.O. Box 8330  
San Juan, PR 00910

### **IMPLEMENTATION OF MEDICARE SECONDARY PAYER (MSP) END STAGE RENAL DISEASE (ESRD) PROVISIONS OF THE OMNIBUS BUDGET RECONCILIATION ACT OF 1993 (OBRA '93)**

On August 10, OBRA 1993 made various changes to the MSP provisions for ESRD.

Enclosed you will find additional information pertaining to the operation of the OBRA '93 change. Please forward this information to the Health Insurers.

#### **Supplemental Plans**

OBRA '93 provides, effective August 10, 1993, that if a beneficiary is eligible for or entitled to Medicare based on ESRD, Medicare will be the secondary payer during the first 18 months of ESRD-based eligibility or entitlement, or the portion of that period occurring after August 9, 1993, even if the beneficiary is also entitled to Medicare based on age or disability. Under prior law, any group health plan, including a retirement plan, was obligated to pay primary to Medicare during the first 18 months of ESRD-based eligibility or entitlement only when ESRD was the sole basis of that eligibility or entitlement. (The ESRD MSP provision was not keyed to active employment status. That aspect of the ESRD MSP provision did not change under OBRA '93.) The ESRD MSP provision now applies to dual eligibility/entitlement situations as well. Accordingly, **even retirement plans that have been supplementing Medicare for many years are now subject to the ESRD MSP provision.**

The law does not differentiate between plan types, nor does it provide special provisions applicable to health plans which purport to pay only for supplemental benefits. All group health plans (GHPs) which meet the GHP definition found at 5000(b)(1) of the Internal Revenue Code -- regardless of the type of coverage provided -- are required to pay primary during the coordination period.

### Effect of Dual Entitlement on Benefit Coordination

Paragraph 1 pertains to coordination periods governed solely by prior law. Paragraph 2 deals with coordination periods which are partially governed by prior law and partially governed by present law (as amended by OBRA 1993). Paragraph 3 deals with coordination periods governed solely by OBRA 1993. Paragraph 4 provides examples. Examples A and B reflect paragraph 1 and 2, respectively. Examples C and D reflect paragraph 3.

(1) Coordination Period Ended Before August 1993.

If the first 18 months of ESRD-based eligibility or entitlement ended before August 1993, Medicare was primary payer from the first month of dual eligibility/entitlement, irrespective of when dual eligibility/entitlement began.

(2) First Month of ESRD Eligibility/Entitlement and First Month of Dual Eligibility/Entitlement Between March 1992 and August 1993.

- (i) Medicare is primary payer from the first month of dual eligibility/entitlement through August 9, 1993;
- (ii) Medicare is secondary payer from August 10, 1993 through the 18th month of ESRD-based eligibility or entitlement; and
- (iii) Medicare again becomes primary payer after the 18th month of ESRD-based eligibility or entitlement.

(3) ESRD Eligibility/Entitlement March 1992 or Later; First Month of Dual Eligibility/Entitlement After August 1993.

- (1) Medicare is secondary during the first 18 month of ESRD-based eligibility or entitlement; and
- (ii) Medicare becomes primary after the 18th month of ESRD-based eligibility or entitlement.

(4) Examples

- (A) Mr. A, who is covered by a group health plan, became entitled to Medicare on the basis of ESRD in January 1992. On December 20, 1992, Mr. A attained age 65 and became entitled on the basis of age. Medicare became the primary payer because of dual entitlement effective December 1992. Since the first 18 months of ESRD entitlement ended before August 1993 (June 1993), OBRA 1993 has no effect on Medicare's status as the primary payer.
- (B) Miss B, who has group health plan coverage, became entitled to Medicare on the basis of ESRD in July 1992, and also became entitled on the basis of disability in June 1993. Medicare was

primary payer from June 1993 through August 9, 1993; secondary payer from August 10, 1993 through December 1993, the 18th month of ESRD-based entitlement; and again became primary payer beginning January 1994.

- (C) Mr. C, who has group health plan coverage, is diagnosed as having ESRD. He begins a course of maintenance dialysis on January 27, 1993, and becomes entitled to Medicare on the basis of ESRD effective April 1, 1993. On September 27, 1993, Mr. C reaches age 65 (dual Medicare entitlement is effective September 1, 1993). Medicare is secondary throughout the first months of ESRD-based entitlement, and becomes primary payer beginning October 1, 1994.
- (D) Mrs. D, who is retired and entitled to Medicare on the basis of age, is also covered under a group health retirement plan. Mrs. D is diagnosed as having ESRD, and begins a course of maintenance dialysis on June 27, 1993. Effective September 1, 1993, Mrs. D is eligible for Medicare on the basis of ESRD. Medicare, which was primary because Mrs. D's group health plan coverage was not by virtue of current employment, becomes secondary payer from September 1, 1993 through February 1995, the 18th month of ESRD eligibility. Medicare again becomes primary beginning March 1995.

If you have any questions regarding this matter, you can contact Mrs. Beverly Caballero-Sánchez of my staff at (809) 758-9733, exts. 4425 or 4428.

*Jose A Brull Cestero*  
 JOSE A. BRULL CESTERO  
 VICE PRESIDENT  
 MEDICARE

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94-MP-438