AD-A160 402 THE CONGRESS SHOULD CONSIDER AMENDING THE MEDICARE SECONDARY PAYER PROVIS.. (U) GENERAL ACCOUNTING OFFICE WASHINGTON DC HUMAN RESOURCES DIV 30 SEP 85 1/1

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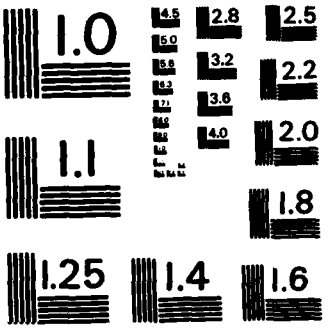

REPORT BY THE

# Comptroller General

OF THE UNITED STATES

# The Congress Should Consider Amending The Medicare Secondary Payer Provisions To Include Disability Beneficiaries

The Congress has amended the Social Security Act three times to make Medicare the secondary payer to employer-sponsored group health insurance. As a result, when Medicare beneficiaries between the ages of 65 and 70 and those with end stage renal disease are covered by group health insurance, this insurance pays for medical services to the extent of its benefits and Medicare pays the remainder. In addition, the Congress is considering extending the working aged provision to beneficiaries 70 and older. Disabled Medicare beneficiaries represent the last major group for whom Medicare is the primary payer when they are also covered by employer-sponsored group health insurance.

GAO estimates that 9 percent of disabled Medicare beneficiaries under age 65 are covered by their spouses' employer-sponsored group health insurance. GAO believes that the Congress should consider extending Medicare's secondary payer status to disabled beneficiaries. Doing so could reduce Medicare payments by up to $491 million in fiscal year 1986 and by up to $2.9 billion during fiscal years 1986-90.



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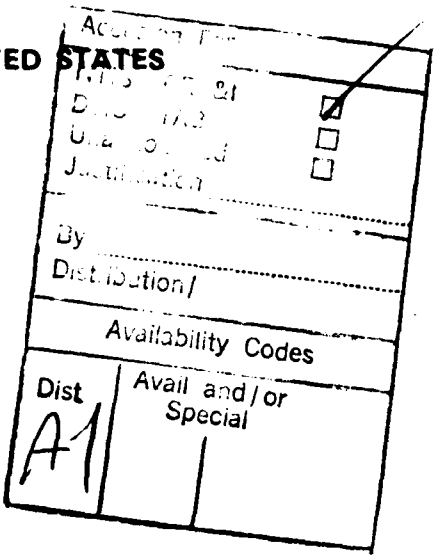


B-219892


The Honorable Bob Packwood
Chairman, Committee on Finance
United States Senate

The Honorable John D. Dingell
Chairman, Committee on Energy and Commerce
House of Representatives

The Honorable Dan Rostenkowski
Chairman, Committee on Ways and Means
House of Representatives

When enacted in 1965, Medicare was made the first or primary payer for beneficiaries' medical claims except for services covered by workers' compensation or provided by a federal hospital. In 1981, 1982, and 1984, the Congress amended the Social Security Act to require that private insurance pay for medical services before Medicare when beneficiaries between the ages of 65 and 70 and those with end stage renal disease are covered by employer-sponsored group health insurance. In addition, the Congress is considering extending the working aged provision to beneficiaries 70 and older. These provisions made Medicare the secondary payer for the affected beneficiaries--that is, group health insurance pays to the extent of its benefits and Medicare pays the remainder. The Congress took these actions because substantial savings would accrue to Medicare but the coverage of services or costs to the beneficiaries would not be directly or materially affected.

The amendments outlined above leave only two major groups of Medicare beneficiaries for whom Medicare is the primary payer when they are also covered by employer-sponsored group health insurance. They are persons covered by their spouses' group health insurance who have received disability benefits under title II of the act for at least 24 consecutive months and thereby qualify for Medicare coverage and beneficiaries 70 and older.[1] We estimate that 9.13 percent of these disabled Medicare beneficiaries under age 65[2] are covered by their

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[1]Persons who receive disability benefits under the Railroad Retirement Act of 1935, as amended, also become eligible for Medicare after 24 months. The estimates in this report include these beneficiaries.

[2]Persons are considered disabled Medicare beneficiaries only until they reach age 65. After this, they are considered aged Medicare beneficiaries.

spouses' employer-sponsored group health insurance. We further estimate that, if Medicare was made secondary to that insurance, as is generally the case for spouses' insurance for aged Medicare beneficiaries, savings of as much as $491 million would accrue to Medicare during fiscal year 1986 and $2.9 billion during fiscal years 1986-90. Potential savings would be reduced by about 23 percent to about $2.2 billion if the Congress elects to enact legislation similar to that which covers the working aged beneficiaries ages 65 through 69. That legislation requires that available group health coverage be made primary only when employers have 20 or more employees.

Disabled Medicare beneficiaries covered by their spouses' employer-sponsored group health insurance are in a situation comparable to aged and end stage renal disease beneficiaries covered by such insurance. Therefore, we believe the Congress should consider extending Medicare's secondary payer status to disabled beneficiaries. As with the other beneficiaries, this action should not directly or materially affect the coverage of services or costs to the beneficiaries.

## BACKGROUND

The Medicare program, authorized by title XVIII of the Social Security Act (42 U.S.C. 1395), effective July 1, 1966, assists in paying health care costs for 28 million persons age 65 and older. Medicare also helps pay the health costs for about 89,000 persons with kidney failure and about 2.9 million disabled persons who are under 65.

In addition to their Medicare entitlement, beneficiaries may also be covered under employer-sponsored group health insurance policies. Before January 1, 1982, when this dual coverage existed, Medicare would pay first, with the other insurance generally paying what Medicare did not cover, such as Medicare coinsurance and deductibles.

In the Omnibus Budget Reconciliation Act of 1981, the Congress amended section 1862(b) of the Social Security Act to change the status of Medicare from the first, or primary, payer to the secondary payer after employer group health plans for end stage renal disease beneficiaries. Employer group health plans were to pay for these beneficiaries for the first 12 months of Medicare eligibility. To help assure that group health plans do not discriminate against persons with kidney failure, the Congress also amended the Internal Revenue Code to preclude employers from deducting their group health insurance expenses if their plan contained provisions that exclude payment of benefits for these patients.

In the Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982, the Congress further amended section 1862(b) of the Social Security Act to make employer group health plans the primary payer for working aged Medicare beneficiaries. In the Deficit Reduction Act (DEFRA) of 1984, the Congress also provided that Medicare would be secondary for beneficiaries between ages 65 and 70 covered under their working spouse's group health insurance. These provisions apply to employers with 20 or more employees. The Health Care Financing Administration (HCFA), which administers Medicare, estimates that about 618,000 aged Medicare beneficiaries are covered under employer group health insurance plans that should, as a result of these amendments, pay before Medicare. The Congress is considering a bill (H.R. 3290) that would remove the 70-year age limitation and make Medicare secondary payer to employer group health plans for all Medicare beneficiaries 65 years and older.

To assure that employer group health coverage would be made available to aged beneficiaries, TEFRA and DEFRA also amended the Age Discrimination in Employment Act (ADEA). The ADEA amendments require that employers with over 20 employees offer the same group health plan to their Medicare workers, or working spouses of Medicare beneficiaries, as they do to their other workers. The individual chooses which will be primary, the group insurance or Medicare. ADEA applies to persons between 40 and 70 years old.

The Congress took these actions to achieve substantial Medicare savings without directly or materially affecting beneficiary services or costs. Savings of $260 million in 1982 and 1983 were estimated to result from the 1981 change for end stage renal disease beneficiaries. Projected savings under the TEFRA provision for fiscal years 1983-85 were $1.48 billion.

## OBJECTIVE, SCOPE, AND METHODOLOGY

During our current evaluation of HCFA's program implementing section 1862(b) provisions, we noted instances where hospitals had identified disabled Medicare beneficiaries who were also covered under their working spouses' employer group health plans. We examined hospital admissions from January 1 through March 31, 1985, at three hospitals in Washington State. Of the 223 disabled Medicare patients, 29 (about 13 percent) were married and indicated at admission that they were covered by their employed spouses' insurance. However, because Medicare secondary payer provisions do not apply to disabled beneficiaries, Medicare was the primary payer.

In light of the Congress' actions to make Medicare the secondary payer for other beneficiaries covered under employer group health plans, we set out to estimate how much could be saved by extending these provisions to include Medicare disabled beneficiaries.

To do this we first estimated the number of disabled beneficiaries covered by their spouses' employer group health plans. The best available national data on this were in the 1984 Bureau of the Census' "Current Population Survey," which included data on group health insurance that allowed us to estimate the number of disabled beneficiaries with working spouses who have employer group health coverage. We projected the Medicare savings achievable if these employer group health plans were primary to Medicare based on the incidence of insurance coverage reported by Census' data. (See app. I.) We discussed our estimates with HCFA and Congressional Budget Office staff, who generally agreed with our methodology for computing the savings estimates.

We also reviewed the legislative history of the Medicare secondary payer provisions. Our review was conducted in July and August 1985, in accordance with generally accepted government auditing standards.

## MEDICARE REMAINS THE PRIMARY PAYER FOR DISABLED BENEFICIARIES

Persons who receive Social Security disability payments for 24 consecutive months because they cannot work become eligible for Medicare benefits. As of 1985, there were about 2.9 million Medicare disability beneficiaries. Because these beneficiaries are unemployed, they would not be covered under an employer group health plan. However, their spouses may be working and enrolled in such a plan that also covers the disabled beneficiaries. The group health plan under current law is a secondary payer to Medicare. Using 1984 Bureau of the Census data on Medicare beneficiary coverage by health insurance, we estimate that about 264,800 disabled Medicare beneficiaries are covered under their working spouses' employer group health plans.

These plans are secondary payers to Medicare because section 1862(b) of the Social Security Act does not specifically include disabled beneficiaries in its provisions making employer group health insurance plans primary to Medicare. The legislative history of Medicare's secondary payer provisions is silent about why disabled beneficiaries with employer group health plan coverage were not included.

## MILLIONS OF DOLLARS COULD BE SAVED IF MEDICARE WAS SECONDARY PAYER

We estimated that the maximum savings available to Medicare would be about $491 million in fiscal year 1986 for disabled Medicare beneficiaries also covered under their working spouses' employer group health plans. For fiscal years 1986-90, our savings estimate totaled $2.9 billion. (See app. I for a discussion of how we derived our estimates.) These estimates assume that all employers regardless of size would be required to provide group health insurance which is primary to Medicare as is required for end stage renal disease benefits. If the Congress decides to pass legislation, as it did regarding working aged beneficiaries, which makes group health insurance primary only when employers have 20 or more employees, then these estimated savings would be reduced by about 23 percent.

The extent to which such potential savings would be realized under either approach would depend on how well the Medicare contractors process such Medicare claims and how well providers of services identify and bill the employer group health plans. Medicare contractors are required to screen Medicare claims for indications of other primary payers. Therefore, administrative procedures are in place to identify and bill third-party resources for disabled beneficiaries.

If section 1862(b) is amended, we believe that safeguards to preclude discrimination against spouses of disabled beneficiaries by employer group health insurance plans should also be adopted. One way to do this would be to amend the Internal Revenue Code in a manner similar to how the Congress amended it to apply to beneficiaries with kidney failure.

## CONCLUSIONS

Until 1982 Medicare generally was the primary payer for all covered items and services furnished to beneficiaries even if the beneficiary was entitled to other health insurance. In the last 4 years the Congress has amended the Social Security Act three times to make Medicare the secondary payer to employer-sponsored group health plans. Each of these amendments was passed to achieve substantial savings for the Medicare program. We believe that disabled Medicare beneficiaries covered by their spouses' employer-sponsored group health insurance are essentially similar to aged and end stage renal disease beneficiaries covered by such insurance. The Congress should consider extending Medicare's secondary payer status to disabled

beneficiaries. Substantial savings to the Medicare program should result, and the coverage of services or costs to beneficiaries should not be directly affected.

## MATTER FOR CONSIDERATION BY THE CONGRESS

The Congress should consider extending the provision making Medicare a secondary payer to include working spouses' employer-sponsored group health insurance that covers disabled Medicare beneficiaries. If the Congress does so, section 162(i)(1) of the Internal Revenue Code should also be amended to provide safeguards against possible discrimination against spouses of disabled beneficiaries by employer group health plans. Appendix II contains suggested legislative language for these amendments.

## AGENCY COMMENTS AND OUR EVALUATION

In commenting on this report (see app. III), HHS agreed that Medicare's primary payer status for disabled beneficiaries covered by their spouses' employer-sponsored group health insurance is an important issue that requires careful consideration. HHS stated that it has been reviewing the issue internally. HHS, however, believes further analysis is required to determine whether our proposals can be implemented. In our opinion, implementing the legislation we propose for congressional consideration should be no more difficult than implementing similar legislation already enacted for aged and end stage renal disease beneficiaries covered under employer group health plans.

Additionally, HHS stated that it did not have sufficient time to carefully review the statistical information we used to estimate potential savings.

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We are sending copies of this report to the Director, Office of Management and Budget; the Secretary of Health and Human Services; various congressional committees and subcommittees; and other interested parties.

Charles A. Bowsher

Comptroller General
of the United States

## METHODOLOGY AND PROJECTED 5-YEAR SAVINGS

Neither HCFA nor the Social Security Administration maintains any current national data on the marital or private health insurance status of disabled Medicare beneficiaries. The Bureau of the Census, however, in its 1984 "Current Population Survey" included a nationwide random sample of 18,854 Medicare eligibles. Of this group, 1,774 were disabled and under 65 years old, and about 9.13 percent, based on Census Bureau weighting factors, had health insurance coverage under their working spouses' employer group health plans.

Applying the 9.13-percent estimate to the Medicare disabled population, we estimated that about 264,800 of the Medicare disabled beneficiaries were covered under their spouses' group health insurance plans. To determine what Medicare would pay over the next 5 years in medical benefits for the 264,800 covered beneficiaries, we used the average Medicare cost per disabled beneficiary ($2,679 for fiscal year 1986) contained in the 1985 Medicare Trustees' report multiplied by our estimate of the number of affected beneficiaries. This showed that the covered beneficiaries would use about $709 million in services in fiscal year 1986 and about $4.3 billion over the next 5 years.

To determine the estimated savings achievable to the Medicare program, we reduced these above amounts by 15 and 60 percent for Medicare parts A and B, respectively. These percentages represent the estimated payments that Medicare would still incur for services provided to a beneficiary covered under other insurance. The reduction factors are the same as HCFA normally uses in making saving projections in the Medicare secondary payer program.

Table I.1

Estimate Of Potential Savings If Medicare Was Secondary Payer To Employer Group Health Insurance Plans Covering Disabled Beneficiaries[a]

| | Fiscal year | | | | | |
|---|---|---|---|---|---|---|
| | 1986 | 1987 | 1988 | 1989 | 1990 | 5-year total |
| | (millions) | | | | | |
| Total part A reimbursement[b] | $461.1 | $499.8 | $543.7 | $589.3 | $638.1 | $2,732.0 |
| Less 15 percent that Medicare would still incur as secondary payer | 69.2 | 75.0 | 81.6 | 88.4 | 95.7 | 409.9 |
| Potential part A savings | 391.9 | 424.8 | 462.1 | 500.9 | 542.4 | 2,322.1 |
| Total part B reimbursement[b] | 248.3 | 274.3 | 310.3 | 350.7 | 396.6 | 1,580.2 |
| Less 60 percent that Medicare would still incur as secondary payer | 149.0 | 164.6 | 186.2 | 210.4 | 237.9 | 948.1 |
| Potential part B savings | 99.3 | 109.7 | 124.1 | 140.3 | 158.7 | 632.1 |
| Total estimated savings to Medicare for parts A and B | $491.2 | $534.5 | $586.2 | $641.2 | $701.1 | $2,954.2 |

[a]These savings estimates assume that the primary payer status of group health insurance would apply to all employers as it does for end stage renal disease beneficiaries. If the Congress chooses to make group health insurance primary only for employers of 20 or more employees, as in the working aged program, then these savings estimates would be reduced by about 23 percent.

[b]Estimated total cost of services used by married disabled beneficiaries who have health insurance coverage under their working spouses' employer group health plan.

## SUGGESTED LEGISLATIVE LANGUAGE

If the Congress amends the Social Security Act to establish Medicare for disabled beneficiaries as secondary payer to working spouses' employer-sponsored group health insurance, this could be done by adding the underlined portion to section 1862 (b)(3)(A)(iii) as follows:

> "(iii) The provisions of clauses (i) and (ii) shall apply to an individual only for the period beginning with the month in which such individual becomes entitled to benefits under this title under section 226(a) or 226(b) and ending with the month before the month in which such individual attains the age of 70 and shall not include any month for which the individual would, upon application, be entitled to benefits under section 226A."

If the Congress amends the Internal Revenue Code to preclude employers from deducting their group health insurance expenses if the employer's plan contains provisions that exclude payments of benefits for covered spouses who are entitled to Medicare benefits under title XVIII of the Social Security Act, as provided through section 226(b) of that act, this could be done by adding the underlined portion to section 162(i)(1) of the Internal Revenue Code of 1954 (relating to trade or business expenses):

> "(1) GENERAL RULE.-The expenses paid or incurred by an employer for a group health plan shall not be allowed as a deduction under this section if the plan differentiates in the benefits it provides between (i) individuals having end stage renal disease and other individuals covered by such plan on the basis of the existence of end stage renal disease, the need for renal dialysis, or in any other manner, or (ii) covered spouses who are entitled to benefits under title XVIII of the Social Security Act, as provided through section 226(b) of that Act, and other covered spouses who are not entitled to benefits under title XVIII of the Social Security Act as provided through section 226(b) of that Act."

To cover only employers of 20 or more employees, the above suggested language could be modified by adding immediately after "(ii)" the following "(for employers of 20 or more individuals)."

APPENDIX III

**DEPARTMENT OF HEALTH & HUMAN SERVICES** Office of Inspector General

SEP - 4 1985

Mr. Richard L. Fogel
Director, Human Resources
Division
United States General
Accounting Office
Washington, D.C. 20548

Dear Mr. Fogel:

The Secretary asked that I respond to your request for the Department's comments on your draft report "Congress Should Consider Amending the Medicare Secondary Payer Provisions to Include Disability Beneficiaries." Since your request allowed only 15 days in which to submit comments, our review was necessarily limited and did not permit careful consideration of the propriety of GAO's statistical information upon which savings are estimated.

In essence, we agree that this issue is an important one that requires careful consideration. Indeed, the Department has been reviewing this issue internally. We are not yet able to determine, however, whether the proposal can be implemented. Further analysis will be required.

While we appreciate the opportunity to comment on this draft report before its publication, please recognize that this response represents the tentative reaction of the Department and is subject to reevaluation when the final version of this report is received.

Sincerely yours,

Bryan Mitchell
For Richard P. Kusserow
Inspector General

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