MEDICARE PART B PREMIUM INCREASES RESULTING FROM THE HOLD HARMLESS PROVISION

For individuals who have their Medicare Part B premiums deducted directly from their Social Security checks – about 70 percent of Part B enrollees – any increase in Part B premiums in a given year is limited, by the "hold harmless" provision, to their increase in Social Security benefits from the annual cost-of-living adjustment (COLA). When there is a zero or small COLA, the remaining enrollees – about 30 percent – are forced to bear the full cost burden of premium increases required for the entire program.

This brief examines this issue, how it affected projected 2016 Medicare Part B premiums, the legislative fix enacted as part of the Bipartisan Budget Act of 2015, P.L. 114-74 (the November 2015 budget deal), the implications for 2017 premiums, and legislative proposals to address this issue permanently.

2016 Medicare Premiums

The 2015 Medicare Trustees Report projected Part B premiums would increase in 2016, primarily due to higher than expected utilization of outpatient (Part B) services.[1] Without the effect of the hold harmless provision (explained below), the standard Medicare Part B premium was expected to increase from $104.90 per month to $120.70 per month. But because there was no projected COLA to Social Security benefits, the standard premium was projected, absent any intervening legislative action, to increase to $159.30 per month for the 30 percent of enrollees who would not be held harmless.

The Hold Harmless Provision

Pursuant to 42 U.S.C. 1395r(f) – the so-called hold harmless provision – the dollar increase in the Medicare Part B premium is limited to the dollar increase in an individual's Social Security benefit from the annual cost-of-living adjustment. This provision applies to most beneficiaries whose Medicare Part B premiums are deducted directly from their Social Security checks.

Because there was no COLA to Social Security benefits in 2016, the hold harmless provision applied to an estimated 70 percent of Medicare beneficiaries, meaning for most, their Part B premium remained stable at $104.90. Absent legislative action, the remaining 30 percent would be forced to shoulder the *full* premium increase.

Premium Cost-Shifting Effect

Pursuant to 42 U.S.C. 1395r(a)(1), the Secretary of Health and Human Services ("the Secretary") estimates a monthly actuarial rate for Medicare Part B enrollees ages 65 and older based on the projected benefits and administrative costs payable from the trust fund for the upcoming calendar year. This subsection also directs the Secretary to include "an appropriate amount for a contingency margin."

Pursuant to 42 U.S.C. 1395r(a)(3), the standard monthly premium is half of the monthly actuarial rate (or 25 percent of Part B costs, including the contingency margin). That monthly premium for many individuals is held constant pursuant to the hold harmless provision.

The Administration has interpreted these sections to allow the Secretary to take into account the lost premium income resulting from the application of the hold harmless provision when setting the contingency margin. In

[1] The Boards of Trustees, Federal Hospital Insurance and Federal Supplementary Medical Insurance Trust Funds, "2015 Annual Report of the Boards of Trustees of the Federal Hospital Insurance and Federal Supplementary Medical Insurance Trust Funds," (July 2015), available at: https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/ReportsTrustFunds/Downloads/TR2015.pdf (p. 84).

this way, the lost premium income spirals back up to the determination of the monthly actuarial rate, which determines the standard monthly premium.

While it appears the Administration believes it has some flexibility to set a lower contingency margin – and thus a lower monthly premium – it does not believe it has the ability to prevent those who are not held harmless from shouldering a disproportionate burden of premium costs in any given year.

Who Is Not Held Harmless?

Enrollees not held harmless, and thus forced to pay more, include federal retirees covered by the Civil Service Retirement System (CSRS) who do not receive Social Security (or do not receive large enough Social Security payments to pay Part B premiums from their Social Security checks). This group also includes state government retirees not covered fully by Social Security.

Other adults and people with disabilities affected by premium increases resulting from the hold harmless provision include new Medicare enrollees (2.8 million); individuals not collecting Social Security benefits or only collecting minimal Social Security benefits, including federal retirees covered under CSRS with insufficient private-sector earnings (1.6 million); and beneficiaries already paying higher, income-related premiums (3.1 million). Nine million beneficiaries dually eligible for Medicare and Medicaid are also subject to the higher premiums, but state Medicaid programs bear this cost.

Legislative Compromise Applying to 2016 & 2017 Medicare Part B Premiums

Enacted as part of the Bipartisan Budget Act of 2015, P.L. 114-74, the standard Medicare Part B baseline figure for 2016 does not take into account the lost premium from those held harmless. Originally projected at $120.70, the standard premium was set at $118.80. Premiums for those held harmless did not change; they remained stable at $104.90 in 2016. For most beneficiaries who are not held harmless, premiums rose to $121.80, which includes a $3 surcharge, as explained below.

To make up for the lost revenue to the Medicare Trust Fund as a result of lower premiums, beneficiaries are charged a monthly surcharge of $3. The $3 surcharge will not apply to those held harmless this year, but it will apply to those individuals in future years in which they are not held harmless. Medicare beneficiaries who pay higher premiums due to their income level saw their premiums adjusted from the $118.80 baseline, plus a proportional surcharge. The surcharge is expected to last five years.

If there is no COLA for 2017, the same mechanism will apply, wherein the lost premium revenue is made up by a monthly surcharge over time. However, if there is a very small COLA, which could still hold harmless a substantial majority of beneficiaries, but not all, this fix does not apply. NARFE is concerned that such a situation could occur.

Solutions

NARFE supports applying the effect of the hold harmless provision to all Medicare beneficiaries permanently. Essentially, this would apply permanently the solution embodied by two bills that NARFE supports: H.R. 3696, the Medicare Premium Fairness Act, introduced by Rep. Dina Titus, D-NV; and S. 2148, the Protecting Medicare Beneficiaries Act of 2015, introduced by Sen. Ron Wyden, D-OR. Congress should address this issue now, before another crisis arises, rather than wait until the last minute.

For more information, please contact Jessica Klement, Legislative Director, at jklement@narfe.org, or John Hatton, Deputy Legislative Director, at jhatton@narfe.org.