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**National Senior Citizens Law Center**

Protecting the Rights of Low-Income Older Adults

July 23, 2014

# Medicare & Medicaid Post-DOMA: Changes for Same Gender Couples?

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*The National Senior Citizens Law Center is a non-profit organization whose principal mission is to protect the rights of low-income older adults. Through advocacy, litigation, and the education and counseling of local advocates, we seek to ensure the health and economic security of those with limited income and resources, and access to the courts for all. For more information, visit our Web site at [www.NSCLC.org](http://www.NSCLC.org).*

# Housekeeping

- ❖ All on mute. Use Chat function for questions and for technical concerns.
- ❖ Problems with getting on to the webinar? email [trainings@nsclc.org](mailto:trainings@nsclc.org).
- ❖ You will be sent copies of the slides after the presentation. Slides and a recording will also be available at [www.nsclc.org](http://www.nsclc.org).

# Today

Marriage definitions

Medicare

Medicaid

Next steps: What to expect

# sage<sup>SM</sup>

Services & Advocacy  
for Gay, Lesbian, Bisexual  
& Transgender Elders

## Services & Advocacy for GLBT Elders (SAGE)

Services & Advocacy for GLBT Elders (SAGE) is the country's largest and oldest organization dedicated to improving the lives of lesbian, gay, bisexual and transgender (LGBT) older adults. Founded in 1978 and headquartered in New York City, SAGE is a national organization that offers supportive services and consumer resources for LGBT older adults and their caregivers, advocates for public policy changes that address the needs of LGBT older people, and provides training for aging providers and LGBT organizations, largely through its National Resource Center on LGBT Aging. With offices in New York City, Washington, DC and Chicago, SAGE coordinates a growing network of 26 local SAGE affiliates in 19 states and the District of Columbia.

- See more at: <http://www.sageusa.org/about/index.cfm#sthash.bdbSbtXD.dpuf>

# Marriage definitions

# Two approaches—as of today!

## IRS: “Place of celebration”

- “Place of celebration,” including foreign jurisdictions.
- Does not include non-marriage unions.

## “State of residence”

- Includes civil unions and registered domestic partnerships, and reciprocal beneficiary relationships, if state recognizes same rights of distribution of intestate property as for spouse.
- Medicare and Medicaid linked to SSA and SSI.
- Medicaid “unique state-federal partnership.”

# Medicare

## What are the issues?

### Part A

- Eligibility for benefits, premium levels, enrollment penalties

### Part B

- Enrollment and penalties

### Part B and D

- Income surcharge

### Part C

- Nursing Facility choice for Medicare Advantage members

### Part D

- Low Income Subsidy

## Part A

# Qualifying for Premium Free Part A, The Medicare Hospital Benefit

### Rule: State of domicile.

An individual may use his own or spouse's work history to qualify for premium-free Part A:

- Premium free Part A-requires 40 quarters for individual or spouse.
- Must be married one year.
- If spouse is deceased, must have been married one year.
- If divorced, must have been married 10 years.
- Spouse with work history must have turned 62.

More info: <https://secure.ssa.gov/apps10/poms.nsf/lnx/0200210002>.

## Part A

# Qualifying for Premium Free Part A

Look to domicile of the insured spouse.

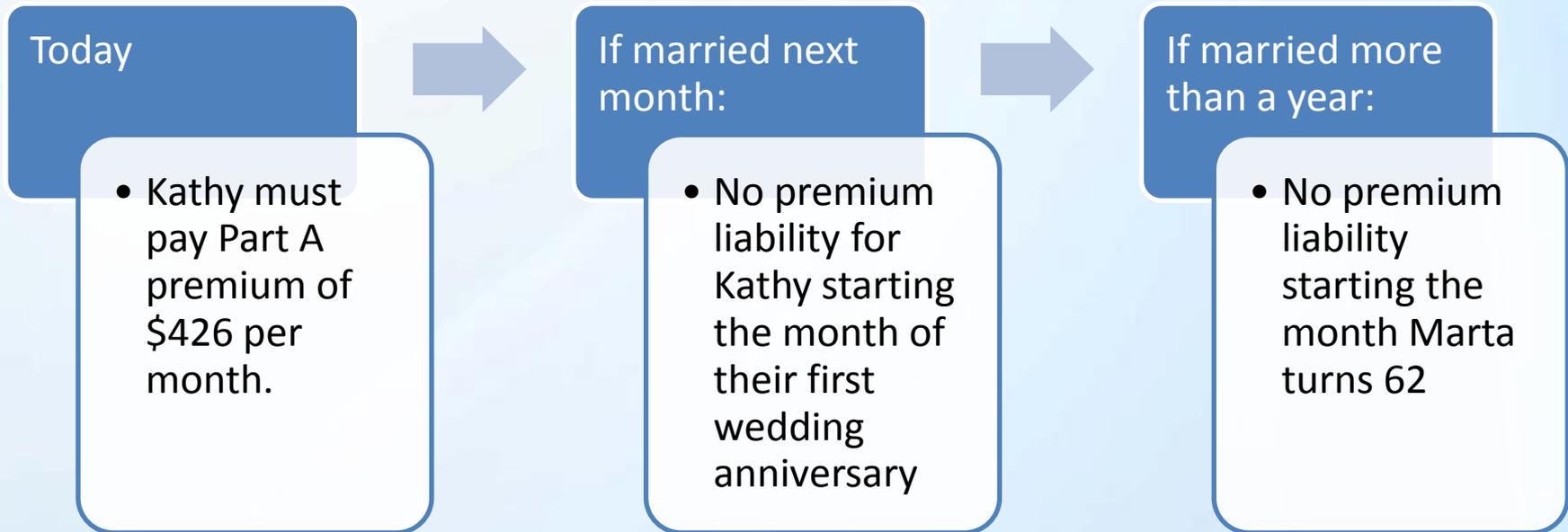
- If spouse with work credits is alive, look to state of residence at the time of application.
- If spouse is deceased, look to spousal definitions of state of residence of deceased at time of death.
- If deceased spouse resided abroad, look to spousal recognition definitions of District of Columbia.

More info: <https://secure.ssa.gov/apps10/poms.nsf/lnx/0200210002>.

## Part A

# Qualifying for Premium Free Part A

**Example:** Kathy (65): no quarters and Marta (61): qualifying work history. They live in Massachusetts, a marriage recognition state.



## Part A

# Reduction of Medicare Part A premiums

### Rule: Place of celebration

- Insured spouse must have at least 30 quarters.
- Premium reduced from \$426 to \$234/mo.
- Marriage must be at least one year.
- If widowed: one year.
- If divorced: 10 years.
- More information:  
<https://secure.ssa.gov/apps10/poms.nsf/lrx/0200210706>.

## Part A

# Reduction of Medicare Part A premiums

**Example:** Kathy (65): no quarters and Marta (61): qualifying work history. They were married in Massachusetts and now live in Florida, a non-recognition state.

Today

- Kathy must pay the full Part A premium of \$426/mo.



If married more than one year:

- Premium liability reduced to \$234/mo. starting the month Marta turns 62

## Part A

# Apply!!

If you think you may qualify, call Social Security and apply NOW!

[www.ssa.gov](http://www.ssa.gov) 1-800-772-1213

## Part B

# Enrolling in Medicare Part B (and Premium Part A)

**Enrolment period:** Enroll in Part B (and premium Part A) during initial enrollment period or face a late enrollment penalty.

**SEP:** Employees still working and covered spouses can delay Part B enrollment (and premium Part A) while covered by employer insurance and enroll during a Special Enrollment Period (SEP).

**Penalties:** Others must wait until the next General Enrollment Period and pay late enrollment penalties.

## Part B

# Enrolling in Medicare Part B

### Rule: Place of celebration

- Same gender spouses covered by an employer plan can now get SEP and do not face a late enrollment penalty.
- Current domicile does not matter.
- Civil unions and domestic partnership generally do not qualify, unless an individual has a disability.
- SSA is processing requests for reductions in Part A and Part B late enrollment penalties:
  - <https://secure.ssa.gov/apps10/poms.nsf/lnx/0200210700>
  - <https://secure.ssa.gov/apps10/poms.nsf/lnx/0200210701>

## Part D

# Qualifying for the Low Income Subsidy (LIS or “extra help”)

Automatic if receiving SSI or Medicaid (including MSP) regardless of state recognition

- Income and resource standards if not automatic:
  - Income: \$1,459/mo single; \$1,966/mo with spouse
  - Assets: \$13,440 single; \$26,860 w/spouse (asset limit includes \$1500 per person for burial expenses).
  - Use SSI resource rules w/ certain exclusions
  - Use SSI income counting rules

## Part D

# Qualifying for the Low Income Subsidy (LIS or “Extra Help”)

No specific post-Windsor guidance. General guidance is marriage must be recognized by state of domicile.

- Qualify based in income and asset of individual applicant and spouse living in the same home.
- Any relative of applicant or spouse living in the home for whom applicant or spouse contributes at least ½ of support will be counted to determine family size.
- Mid-year Status Changing Event: Marriage, divorce, separation/reunification, annulment, or death of spouse.

Part B  
and Part  
D

# IRMAA premium surcharges

## Rule: Place of Celebration

Higher income individuals face a premium surcharge for Medicare Part B and Part D premiums. For married individuals filing jointly, surcharge is calculated based on joint income. Surcharges are called Income Related Monthly Adjustment Amounts (IRMAA and IRMAA-D). Based on MAGI (modified adjusted gross income) from income tax filing two years earlier.

## Part B and Part D

# Medicare Part B and Part D Premiums

- For most, Part B premium --\$104.90/mo (2013)
- Higher income pay more for Part B and for Part D
- Uses MAGI-Modified Adjusted Gross Income from most recent income tax filing—usually 2 years back. **In 2014 use 2012 filing.**
- If married filing jointly --MAGI >\$170,000
- Other status-- MAGI >\$85,000
- Increase based on a sliding scale
- Relief based on “life changing events” like job loss for either spouse, marriage, divorce, death of spouse.

What are the \$\$?

Top penalty for Part B: premium + \$230.80

Top penalty for Part D: premium + \$66.60

## Part C

# Nursing Facility Choice

### Rule: Place of celebration

**Issue:** Member of a Medicare Advantage plan who needs to enter a Skilled Nursing Facility has the right to go to an out-of-network facility where the member's spouse currently resides.

CMS requires Medicare Advantage plans to apply to all same sex spouses, using place of celebration rule. More info:

[www.cms.gov/Medicare/Health-plans/HealthPlansGenInfo/Downloads/HPMS\\_Memo\\_US\\_vs\\_Windsor\\_Aug13.pdf](http://www.cms.gov/Medicare/Health-plans/HealthPlansGenInfo/Downloads/HPMS_Memo_US_vs_Windsor_Aug13.pdf).

# Medicaid

# What are the issues?

## Eligibility

- Traditional Medicaid – Aged and Disabled
- Medicare Savings Programs
- Expansion Medicaid

## Spousal Impoverishment

## Estate Recovery

## Asset Transfers

## Personal Care Attendant Services

# Who is a spouse?

**CMS Guidance:** States have the option to use federal definition or follow state law.

- Marriage recognition states can treat same sex spouses as they would treat opposite sex spouses.
- Non-recognition states can choose to apply state law and treat individuals legally married in another jurisdiction as single for Medicaid purposes.
- States that recognize civil unions or domestic partnerships can do so for Medicaid purposes.
- Non-recognition states can still use hardship exceptions to protect non-recognized spouses.

CMS State Medicaid Director Letter #14-005 (May 30, 2014), [www.medicaid.gov/Federal-Policy-Guidance/Downloads/SMD-14-005.pdf](http://www.medicaid.gov/Federal-Policy-Guidance/Downloads/SMD-14-005.pdf).

# Eligibility Nuances for SSI recipients

## 209(b) states

- CT, HI, IL, IN, MN, MO, NH, ND, OH, OK, VA
- State can make own determination of marital status. But must continue to exclude SSI payments in the income eligibility calculation.

## 1634 states and “criteria” states:

- All other states
- Medicaid eligibility is mandatory for all SSI recipients.

# Qualifying based on age or disability

- 1) States count income and assets of spouse and include spouse and dependent relatives in household size. Use SSI methodology with variability among states.

Impact of recognition/non-recognition depends on amount and distribution of income and number of dependent relatives living in the home.

# Qualifying for Medicaid-MSP

**Medicare Savings Programs: Count spouse's income and assets**

**QMB:**  
Qualified  
Medicare  
Beneficiary  
(Part A and B  
premiums and  
co-pays)

**SLMB:** Special  
Low-Income  
Medicare  
Beneficiary  
(Part B  
premiums)

**QI:**  
Qualified  
Individual  
(Part B  
premiums)

# Qualifying for Medicaid-Expansion Medicaid

**Current status:** Non-recognition states have discretion to use state definition of spouse.

- Use Modified Adjusted Gross Income (MAGI) from income tax filing.
- No asset limits.
- If filing jointly, the spouse's income will count.
- More info: CMS State Health Official Letter # 13-006 (Sept. 27, 2013), [www.medicaid.gov/Federal-Policy-Guidance/downloads/SHO-13-006.pdf](http://www.medicaid.gov/Federal-Policy-Guidance/downloads/SHO-13-006.pdf).

# Spousal Impoverishment Protection: What is it?

- Applies when one spouse lives in an institution or is receiving NF level of care in the community.
- Part of a couple's combined resources is protected for the spouse living in the community.
- A certain amount of income belonging to the spouse in the institution can also be set aside for the community spouse's use.

# What are the \$\$?

## Varies by state:

Minimum monthly  
maintenance needs  
allowance:  
\$1,891.25-\$2,898.00

Community spouse  
monthly housing  
allowance :  
\$567.38 (more in AK and  
HI)

Community spouse  
resource standard:  
\$23,184-\$115,920

Home equity limits:  
\$536,000-\$802,000

# CMS Guidance on Spousal Impoverishment

## **CMS Guidance:**

- State may use its own definition of marriage. Must be consistent with eligibility definitions.
- Non-recognition states may use discretion for hardship exceptions to protect non-recognized spouse.

Impact: Varies. Recognition can help low income non-LTC spouse. Might hurt spouse with higher income.

# Spousal Impoverishment

**Example:** Joe and Peter are married  
Joe is in a nursing home on Medicaid  
Joe's income: \$2,000 per month  
Peter's income: \$1,500 per month

**Recognition state with MMNA of \$1,891.25**

Peter keeps \$391.25 of Joe's income, raising his total income to \$1,891.25.

**Non-recognition state**

Peter's income remains \$1500.

# Estate Recovery

## What is it?

CMS requires states to attempt to recover from a beneficiary's estate certain Medicaid costs expended on the beneficiary

### Any age:

May put lien on home for nursing home costs  
NO LIEN if spouse lives in home

### 55 and over:

Nursing costs +most HCBS, and related hospital and prescription drug services.

### Both:

May seek recovery of other Medicaid costs; NO RECOVERY during life of surviving spouse

# Estate Recovery Guidance

## **CMS Guidance:**

- State may use its own definition of marriage. Must be consistent with eligibility definitions.
- Non-recognition states may use discretion for hardship exceptions to protect non-recognized spouse

Impact: Non-recognition can hurt interest of surviving spouse.

Use of hardship exemption can limit negative impact.

# Asset transfer penalty: What is it?

- 1) If an individual transfers an asset at less than fair market value during 5-year look-back period, transfer penalty delays right to Medicaid coverage.
- 2) Applies to individuals receiving LTC and HCBS waiver services and their spouses.
- 3) Transfers to spouses OK.
- 4) Interaction with estate recovery.

# Asset transfer penalty: What is it?

Impact: Varies. Non-recognition can help or hurt. Bad for intra-spousal transfers. Can protect third party transfers by spouse.

# Personal care attendant services

- 1) Medicaid benefit—non-medical assistance. Bathing, toileting, food prep, protective supervision, etc.
- 2) Rules more restrictive for spouse v. roommate
  - Many states won't pay spouse
  - Others have limits, restrictions
  - Why? Spouse is “legally responsible party”

Medicaid

# Personal care attendant services

Impact: Non-recognition may be a plus. Allows more income to flow to household.

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# Next steps: What to expect

# What's next

Watch for more policy announcements ,  
watch the courts, watch for legislation



Apply now



Individualized counseling—everyone's  
situation is different

# Resources

SSA POMS GN 00210 et seq

<https://secure.ssa.gov/apps10/poms.nsf/subchapterlist!openview&restricttcategory=02002>

CMS State Medicaid Director Letter #14-005 (May 30, 2014),

<http://www.medicaid.gov/Federal-Policy-Guidance/Downloads/SMD-14-005.pdf>

CMS State Health Official Letter # 13-006 (Sept. 27, 2013),

<http://www.medicaid.gov/Federal-Policy-Guidance/downloads/SHO-13-006.pdf>

State Medicaid Director Letter #11-0006, <http://downloads.cms.gov/cmsgov/archived-downloads/SMDL/downloads/SMD11-006.pdf>

Internal Revenue Ruling 2013-17 (aug. 29, 2013)

SAGE Blog: Medicare & the Windsor Decision: Where Do We Stand?

<http://blog.sageusa.org/blog/2014/06/medicare-the-windsor-decision-where-do-we-stand-.html#sthash.OUiUjbEB.dpuf>

After DOMA-What it means for you. [www.glad.org/uploads/docs/publications/post-doma-medicare.pdf](http://www.glad.org/uploads/docs/publications/post-doma-medicare.pdf)

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[www.nsclc.org](http://www.nsclc.org)