Understanding the New Medicare Prescription Drug Benefit

PBI Pub. No. 2005-4334
Published December 2005

© 2006 Pennsylvania Bar Institute. All rights reserved.
This file is licensed only to the person taking this class on PBI’s Online Campus, for printing and for saving to his or her personal computer. No further use is permitted. This file may not be shared electronically with any other person without the express written permission of the Pennsylvania Bar Institute.

The Pennsylvania Bar Institute does not render any legal, accounting, or other professional services. The Institute’s programs and publications are designed solely to help attorneys maintain their professional competence. In dealing with specific legal matters, the attorney using PBI publications or orally conveyed information should also research original sources of authority.

PBI seminars are developed in partnership with
the Philadelphia Bar Association and the Allegheny County Bar Association.
# Table of Contents

Chapter One  
**Understanding the New Medicare Prescription Drug Benefit**  
*Alissa Eden Halperin, Esq.; Leonardo D. Cuello, Esq.; M. Francesca Chervenak, Esq.; Erin Guay*  

I. Medicare Basics ................................................................. 3  
   A. Types of Coverage ......................................................... 3  
   B. Eligibility ........................................................................ 3  
      1. Medicare Eligibility and Enrollment—Part A ............ 3  
      2. Medicare Eligibility and Enrollment—Part B ............ 5  
      3. Medicare Eligibility and Enrollment—Part C ............ 5  
      4. Medicare Eligibility and Enrollment—Part D ............ 6  
   C. Coverage under Parts A, B, and D ............................... 6  
      1. Part A Coverage ......................................................... 6  
      2. Part B Coverage ........................................................ 9  
      3. Part C Coverage ........................................................ 10  
      4. Part D Coverage ........................................................ 10  

II. Medicare Part D – Generally – See generally 42  
   U.S.C 1395w-101 et seq. ....................................................... 10  
   A. Need Generally ............................................................. 10  
   B. Impact Generally ........................................................... 11  
   C. Legal Authority Generally ............................................. 11  

III. Basics of Part D ............................................................... 11  
   A. Structure of Benefit ....................................................... 11  
      1. Standard Plan ........................................................... 11  
      2. Alternative and Enhanced Alternative Plans ............. 12  
   B. Types of Plans ............................................................. 12  
   C. Availability of Plans ..................................................... 13  

IV. Basics of Low-Income Subsidy to Help with Costs  
    of Part D ........................................................................... 13  
   A. The Medicare Part D was Structured to  
      Include Many Associated Out-Of-Pocket  
      Costs for Medicare Beneficiaries  
      ................................................................. 13  
      1. Full Subsidy ............................................................. 13  
      2. Partial Subsidy .......................................................... 15
B. Getting the Subsidy .................................................................................................16
  1. Applying for the Subsidy ..................................................................................16
  2. Where to Apply ..................................................................................................17
C. Annual Review .......................................................................................................17
D. Appeal Rights .........................................................................................................17
E. Deemed Eligibility .................................................................................................18

V. Part D Enrollment .....................................................................................................18
  A. It is Important to Understand that Enrollment in a Medicare Part D Plan is Separate .................................................................18
  B. Application Made Directly to Plan ..................................................................18
  C. Enrollment timeframes .....................................................................................19
  D. Special Enrollment Rules for Dual Eligibles ....................................................20
  E. Penalties for Delayed Enrollment (42 USC 1985w-101(b)(6)) .........................24

VI. Basics of Part D Coverage .....................................................................................25
  A. What is Covered (42 USC 1395w-102(e)(1)) ..................................................25
  B. What is Not Covered (42 USC 1395w-102(e)(2)) .........................................26

VII. Specifics of Part D Coverage as Relates to Different Populations .........................27
  A. For Many People the Decision of Whether They Need to Enroll in a Part D Plan Turns on How Good Their Existing Coverage Is .....................................................27
  B. People on Medicaid ..........................................................................................27
  C. Employees and Retirees ..................................................................................28
  D. Veterans ...........................................................................................................29
  E. People with Medigap .......................................................................................29
  F. People with PACE ...........................................................................................31
  G. People in Nursing Homes, Other Institutions, and Community Residential Settings .........................................................................................32

VIII. Appeal Issues and Processes for Part D Plans .....................................................36
  A. Denial of Entry into a Part D Plan or Termination from a Part D Plan ................36
  B. Appeals of Plan Coverage Determinations ......................................................37
C. Appeals Process and Timeframes.................................................................38
D. Grievances..................................................................................................40
E. Due Process and Notice Issues.................................................................41
F. No Right to Continued Benefits Pending
   Appeal.........................................................................................................41
G. Failure to Provide Notice..........................................................................41
H. Complaints about Services ......................................................................41