

DECOUPLE MEDICARE HOSPITAL INSURANCE FROM SOCIAL SECURITY

Due to an administrative guidance by the Social Security Administration (SSA), senior citizens may not refuse Medicare Part A coverage without compromising their eligibility for monthly Social Security benefits.

BACKGROUND

According to the SSA, individuals may not waive entitlement to Medicare Part A hospital insurance coverage (HI coverage) and remain eligible for monthly benefits.¹ This policy stems from an administrative update to the Programs Operations Manual System (POMS) issued during the Clinton administration. The change was made outside the formal rulemaking process and was not subject to public notice-and-comment.

Retirees seeking to maintain their existing private coverage, including former House Majority Leader Dick Armey, mounted a legal challenge to reject HI coverage and retain their other Social Security benefits. Ultimately, the U.S. Court of Appeals for the D.C. Circuit upheld the SSA's policy in *Hall v. Sebelius*.²

Writing for the majority, Judge Brett Kavanaugh noted, "Because plaintiffs are entitled to Social Security benefits and are 65 or older, they are automatically entitled to Medicare Part A benefits. The statute offers no path to disclaim their legal entitlement to Medicare Part A benefits."³

Most seniors meeting age requirements and filing for Social Security are entitled to receive Social Security benefits.⁴ Entitlement to Social Security benefits results in automatic enrollment in HI coverage.⁵ While enrollment in Social Security is a precondition to receiving HI coverage, relevant statutes do not require HI coverage to maintain Social Security benefits. The SSA has exceeded its authority in effectively establishing this requirement. Given the Medicare program's fiscal challenges, individuals should be able to both retain private healthcare plans and save the government money.

Since most Medicare beneficiaries pay no additional premiums,⁶ allowing beneficiaries to refuse HI coverage should result in a net savings for Medicare.

CONSTITUTIONAL AUTHORITY AND REPUBLICAN PRINCIPLES

Congress has the authority to "make all laws which shall be necessary and proper" to carry out its mandate "to ... provide for the ... general welfare."⁷ Federal social safety nets should operate consistent with authorizing legislation, and agencies charged with administering them should not usurp congressional authority.

Quick Take

The Social Security Administration's operations manual currently prevents seniors from rejecting hospital insurance coverage without losing Social Security benefits.

Congress should pass legislation which allows seniors to keep their private insurance without losing monthly Social Security payments.

POLICY SOLUTIONS

In October 2019, President Trump issued an executive order directing the Department of Health and Human Services Secretary to revise current rules “to preserve the Social Security retirement insurance benefits of seniors who choose not to receive benefits under Medicare Part A.”⁸ H.R. 2108, the Retirement Freedom Act of 2019, would codify the proposal to restore seniors’ freedom to choose the health insurance plan that meets their unique needs without losing entitlement to Social Security.

Please contact Cameron Smith or Kelsey Wall with the Republican Policy Committee at (202) 225-4921 with any questions.

¹ U.S. Social Security Administration, *Program Operations Manual System, Waiver of HI Entitlement by Monthly Beneficiary*, (2010), <https://secure.ssa.gov/poms.nsf/lnx/0600801002>

² 667 F.3d 1293 (D.C. Cir. 2012)

³ *Id.* at 1297.

⁴ 42 U.S.C. § 402(a) (2012).

⁵ 42 U.S.C. § 426(a) (2012).

⁶ U.S. Centers for Medicare & Medicaid Services, *Part A costs: How much does Part A cost*, <https://www.medicare.gov/your-medicare-costs/part-a-costs> (last visited July 5, 2019).

⁷ U.S. Const. art. 1, § 8.

⁸ Exec. Order No. 13,890, 84 Fed. Reg. 53573 (Oct. 8, 2019).