

Congress Can Restore Medicare Freedom

Issue Executive Order to Rescind POMS Instructions that Link Social Security & Medicare

Summary:

As a result of SSA POMS instructions issued without Congressional authority, America's senior citizens are denied access to Social Security benefits if they refuse Medicare Part A. If they dis-enroll, they must repay all Medicare and Social Security benefits. The POMS instructions trap citizens in Medicare and make Medicare the person's primary insurance even if they have other preferred coverage. This Congress has the opportunity to right the wrong by passing a simple bill to separate these two entitlements and establish a pathway to health freedom -- and to lifelong insurance.

History:

- August 30, 1993 – with no law mandating it, SSA Secretary added two restrictive instructions to its Program Operations Manual System (without public notice or comment), which are enforced by SSA and HHS/CMS.
- May 23, 2002 – SSA added another restriction to POMS (again without public notice or comment)
- February 7, 2012 – Court of Appeals decided against plaintiffs in a 2008 lawsuit that included Dick Armey as a plaintiff (*Hall v. Sebelius*)
- January 7, 2013 – U.S. Supreme Court denied petition for writ of certiorari.

Social Security/Medicare Instructions:

- *HI 00801.002*: "Individuals entitled to monthly benefits which confer eligibility for HI may not waive HI entitlement. The only way to avoid HI entitlement is through withdrawal of the monthly benefit application. Withdrawal requires repayment of all RSDI [Retirement, Survivors, Disability Insurance] and HI benefit payments made."
- *HI 00801.034*: "To withdraw from the HI program, an individual must submit a written request for withdrawal and must refund any HI benefits paid on his/her behalf as explained in GN 00206.095 B.1.c. An individual who filed an application for both monthly benefits and HI may:
 - Withdraw the claim for monthly benefits without jeopardizing HI entitlement; or
 - Withdraw the claim for both monthly benefits and HI.
 - The individual may not elect to withdraw only the HI claim.
 - An individual who filed an application for HI only may withdraw the claim at any time (see HI 00801.002)."
- *GN 00206.020*: "We base HI coverage on entitlements to monthly RSDI cash benefits. Therefore, a claimant who is entitled to monthly RSDI benefits cannot withdraw HI coverage and keep the cash benefits only. For information on a

waiver of HI entitlement by an RSI beneficiary, see HI 00801.002. The claimant with HI entitlement may withdraw the:

- RSI cash benefits only; or
- Both RSI cash benefits and Medicare coverage..., or
- Medicare - only claim...; or
- End-stage Renal Disease (ESRD) Medicare Application...”

The Dissent of 2012 Appeals Court Decision:

- Judge Henderson:
 - “The relevant language of both statutes, 42 U.S.C. §§ 402(a) and 426(a), reads identically in that they both provide that an individual ‘shall be entitled’ to benefits if he meets certain qualifying conditions. Neither statute requires an “entitled” individual to accept the benefits.”
 - “Because there is no statutory basis for the challenged provisions of the POMS, they are *ultra vires*. “The legislative power of the United States is vested in the Congress, and the exercise of quasi-legislative authority by governmental departments and agencies must be rooted in a grant of such power by the Congress and subject to limitations which that body imposes.’ See *Chrysler Corp. v. Brown*, 441 U.S. 281, 302 (1979).”
 - “Here, the scope of the relevant provisions of the Medicare and Social Security Acts is as plain as the definition of ‘entitled.’ Under 42 U.S.C. § 426(a), a person who is ‘entitled’ to SSRB and has reached age 65 ‘shall be entitled’ to Medicare, Part A benefits. ‘Entitled’ is synonymous with ‘eligible,’ which means ‘capable of being chosen’ or ‘legally qualified.’ BLACK’S LAW DICTIONARY 521 (6th ed. 2002) (emphases added). To ‘entitle’ means ‘to give a right or legal title to; qualify (one) for something; furnish with proper grounds for seeking or claiming something.’ WEBSTERS THIRD NEW INTERNATIONAL DICTIONARY 758 (1993).”

Additional Actions to Protect & Inform Medicare Recipients:

- Require Advance Beneficiary Notice for all seniors -- and allow cash payments
- Public Awareness of Medicare Restrictions – Required Notice:
 - Inform Medicare recipients of loss of S.S. benefits if opt out
 - Inform Medicare recipients of possible placement in ACOs
 - Inform Medicare recipients that if CMS says ‘no’ to treatment options, with few exceptions, senior citizens cannot pay physicians privately.