

# MSP & COBRA Compliance Risk Assessment

This document helps benefits managers identify and address compliance risks related to Medicare Secondary Payer rules and COBRA obligations. Complete the assessment to determine your organization's risk level and discover how Aevitas can help implement practical solutions to prevent penalties and violations.

Use this checklist to identify clients at risk of compliance violations related to Medicare Secondary Payer (MSP) rules and COBRA obligations. Check the box for any "NO" answers:

- ☐ **Are employees age 65+ actively tracked and reviewed for Medicare eligibility and coordination requirements?**  
*[No = Potential MSP or COBRA compliance gap]*
- ☐ **Have you conducted a COBRA and Medicare compliance review following any RIF or layoff of 20+ employees?**  
*[No = High exposure to COBRA timing and notice violations]*
- ☐ **Do you understand how different EINs under your organization affect MSP thresholds and Medicare primacy?**  
*[No = Risk of misclassifying Medicare's payer status]*
- ☐ **Is your HR or payroll team trained on how HSA contributions conflict with Medicare enrollment?**  
*[No = Employees could face IRS penalties and employer liability]*
- ☐ **Have you issued accurate COBRA notices to Medicare-eligible employees within the last 12 months?**  
*[No = Potential excise tax exposure and Part B/Part D risk to employees]*
- ☐ **Do you actively monitor employee Medicare enrollment status when determining group plan eligibility?**  
*[No = Risk of improperly paying claims Medicare should cover]*
- ☐ **Do your COBRA administrators provide education on how COBRA and Medicare work together?**  
*[No = Employees may delay Medicare inappropriately, increasing your liability]*
- ☐ **Has your organization responded to all CMS inquiries or data match requests in the past year?**  
*[No = Indicates possible audit risk and unresolved reporting issues]*
- ☐ **Were all Part D Creditable Coverage Notices delivered on time this year?**  
*[No = Non-compliance with annual disclosure rules]*
- ☐ **Do your offboarding materials explain the Medicare enrollment window and penalties for delay?**  
*[No = Employee complaints or SEP violations could result]*

If you answered "No" or "Not Sure" to **2 or more questions**, your organization or client is likely at elevated compliance risk. These gaps can lead to:

- **Medicare Secondary Payer (MSP) Violations:**  
Up to \$1,000 per day, per employee, in penalties for paying claims Medicare should have covered.
- **COBRA Non-Compliance Fines:**  
\$100–\$200 per day, per affected employee, plus exposure to ERISA litigation and class action risk.
- **Claim Reimbursement Demands from CMS:**  
CMS may recoup improperly paid claims, potentially totaling tens of thousands of dollars.
- **IRS Excise Tax Liabilities:**  
For employees contributing to HSAs while Medicare-enrolled, triggering 6% penalties on ineligible contributions.
- **Employee Legal Complaints:**  
For denial of Medicare rights, coverage gaps, or delayed enrollment penalties—especially among age 65+ employees.
- **CMS or DOL Audits:**  
Missed notices, unresolved data matches, or improper documentation can trigger audits with significant cost and disruption.
- **Reputational Damage & HR Burden:**  
Employee confusion and benefit errors lead to mistrust, turnover, and internal administrative strain.

# Risk Assessment Process



## Complete the Checklist

Answer key questions about your Medicare and COBRA processes, including employee tracking, notice delivery, and coordination of benefits. If you answer "No" or "Not Sure" to two or more questions, your organization faces elevated compliance risk.



## Understand the Consequences

Compliance gaps can result in significant penalties including COBRA excise taxes, MSP penalties up to \$1,000 per day per employee, HSA/Medicare coordination violations, and missed Special Enrollment Periods leading to employee complaints.



## Take Action Promptly

Book a free risk review call with Aevitas to walk through your responses and determine exposure points. You'll receive a custom compliance summary outlining priorities and available support options.

## Aevitas Partnership Benefits

### Implementation Focus



While attorneys and advisors offer guidance, Aevitas puts compliance into action. Our team helps HR departments execute real-world offboarding steps, deliver timely notices, and maintain audit defense documentation.

Choose from PEPM programs or fixed-scope services specifically designed to address COBRA, Medicare, and MSP requirements with practical solutions that reduce administrative burden.

Aevitas partners with benefits teams to implement comprehensive compliance solutions that protect organizations from penalties while streamlining administrative workflows.

## Cumulative Risk Snapshot

- **Per-employee daily penalties (COBRA, MSP):** \$100–\$1,000
- **Excise taxes & claim recoupments:** \$10,000–\$150,000+ per event
- **Lawsuit potential:** Discrimination, fiduciary breach, denial of access to benefits
- **Audit trigger risks:** CMS, DOL, IRS, SSA

## How Aevitas Helps Avoid These Risks

- Real-time flagging of compliance gaps
- Exit documentation and Medicare education materials
- Pre-audit reviews and corrections
- Employee-specific Medicare and COBRA guidance

If any of these apply, contact **Aevitas** for a confidential risk review. We help employers protect against fines, simplify offboarding, and comply with MSP and COBRA rules—**before** regulators or employees take action.