

**Appeals Brief  
xxx**

**SHN-xxx**

**Summary  
Issue & Introduction**

Does Covered CA have any authority to cancel unsubsidized coverage effective May 2021 due to the applicant having Medicare Part A Hospital with zero premium, when Covered CA has known this since 2018 and even sent out a renewal in November 2020 for 2021 stating that she had Medicare and wasn't eligible for subsidies?

**Suggested Resolution**

Covered CA provide coverage till July 2022 when xxx can enroll in Medicare Part B Outpatient Doctor Visits by signing up in January 2021 during the General Enrollment Period. She could then also sign up for Part D Rx based on loss of creditable coverage.

**References & Citations**

<https://www.medicare.gov/Pubs/pdf/11086-Enrolling-Medicare-Part-A-Part-B.pdf#page=13>

<https://www.medicare.gov/sign-up-change-plans/when-can-i-join-a-health-or-drug-plan/special-circumstances-special-enrollment-periods>

<https://www.medicare.gov/drug-coverage-part-d/costs-for-medicare-drug-coverage/part-d-late-enrollment-penalty/3-ways-to-avoid-the-part-d-late-enrollment-penalty>

**DRAFT - Never Filed**

## Background

Narrative

## Timeline Facts

1/1/2004 xxx qualifies for Medicare due to being on SSDI <https://www.ssa.gov/pubs/EN-05-10029.pdf> See attached pdf exhibits

2018 diagnosed with cancer

10/26/2018 Covered CA informed xxx that she didn't qualify for subsidies as she attested to having Medicare. See attached pdf exhibits

12/1/2018 Coverage issued with subsidies, Exhibit # 1 in "Screen Shots"

2/1/2019 – 12/31/2019 Coverage issued no subsidies, Exhibit # 3 in "Screen Shots"

4/2019 xxx states she was advised by Covered CA to drop Part B Medicare to maintain eligibility

8/23/2019 Covered CA informs xxx of special opportunity to enroll in Medicare Part B and that she can't have subsidized coverage. See attached pdf exhibits.

1/1/2020 – 12/31/2020 Coverage issued no subsidies Exhibit # 4 in "Screen Shots"

2/28/2020 Covered CA sends letter that xxx might have to cancel coverage if she is getting subsidies and becomes eligible for Medicare – See attached pdf exhibits.

11/4/2020 Covered CA informs xxx that she qualifies for Health Coverage without subsidies and confirms they know that xxx has Medicare.

### **"Covered CA Eligibility**

*You qualify for health & dental insurance through Covered California"*

*"Our records indicate that you have Medicare"*

See attached pdf exhibits.

4/30/2021 Covered CA broker portal shows unsubsidized coverage terminated 4/30/2021 Exhibit # 2 in "Screen Shots"

4/29/2021, 5/4/2021, 5/12/2021, 5/15/2021 Covered CA sends meaningless letters that she doesn't qualify for subsidies as xxx has Medicare but doesn't mention anything about unsubsidized coverage. See attached pdf exhibits.

5/19/2021 Covered CA Broker Services email states coverage cancelled because of Medicare See attached pdf exhibits

5/22/2021 Covered CA portal shows eligibility through 6/1/2021 and states this is because of existing Medicare coverage. Exhibit # 5 in "Screen Shots"

*"You are not eligible to a Covered CA plan because of existing Medicare coverage"*

**"Covered California**

*Your eligibility for this program will end 06/01/2021"*

5/25/2021 Covered CA broker services advises Mr. Steve Shorr, via email that xxx attested she was eligible for Medicare, BUT not enrolled. Thus, Ms. Xxx is NOT eligible as stated in the Medicare Fact Sheet See attached pdf exhibits

<https://www.coveredca.com/pdfs/Medicare-CC-Fact-Sheet-English.pdf>

5/?/2021 xxx calls Covered CA – CPCS @ 1 855.795.0634 per instructions on Appeal Form to ask that her Blue Shield Platinum PPO be continued during appeal. She is told by \_\_\_\_\_ that the problem was possible Medi Cal eligibility and that she can stay on an unsubsidized plan.

DRAFT - NEVER FILED

**LAW**

**Argument  
Discussion**

**Reasons xxx is entitled to the relief requested**

**Incontestability Clause**

Excerpt of Blue Shield EOC page 48 See attached pdf exhibits

**“After your contract has been in effect for 24 months, Blue Shield of Covered California cannot rescind coverage for any reason”**

**Waiver & Estoppel**

Covered CA has known from the inception of coverage on or about October 2018 that xxx had Medicare Part A. Thus they can't cancel now.

<https://www.freeadvice.com/insurance/what-does-waiver-and-estoppel-mean-to-you-on-your-life-disability-and-health-insurance-claim/>

**Health Care.Gov & Medicare.Gov  
Clearly states xxx can keep her plan!!!**

Health Care.Gov website

Medicare and the Marketplace  
Changing from the Marketplace to Medicare

**↳ If you like, you can keep your Marketplace plan too.** But once your Medicare Part A coverage starts, you'll no longer be eligible for any premium tax credits or other cost savings you may be getting for your Marketplace plan. So you'd have to pay full price for the Marketplace plan.

<https://www.healthcare.gov/medicare/changing-from-marketplace-to-medicare/>  
and see attached pdf exhibits

Medicare Guide to which Insurance Plan pays 1<sup>st</sup> page 10

you can choose to keep your Marketplace plan

<https://www.medicare.gov/Pubs/pdf/02179-medicare-coordination-benefits-payer.pdf>

### Supremacy Clause

When state law and federal law conflict, federal law displaces, or preempts, state law, due to the [Supremacy Clause](#) of the Constitution. [U.S. Const. art. VI., § 2](#). Preemption applies regardless of whether the conflicting laws come from legislatures, courts, administrative agencies, or constitutions.

### Citations & Références

<https://www.law.cornell.edu/wex/preemption>

<https://constitutioncenter.org/interactive-constitution/interpretation/article-vi/clauses/31>

<http://law2.umkc.edu/faculty/projects/ftrials/conlaw/preemption.htm>

[https://en.wikipedia.org/wiki/Supremacy\\_Clause](https://en.wikipedia.org/wiki/Supremacy_Clause)

**Blue Shield EOC  
and  
Medicare Dual Coverage allow xxx to keep her plan**

### Excerpts from Blue Shield EOC

**8 Outpatient Prescription Drug Coverage:  
Medicare Part D-creditable coverage-**

This Plan's prescription drug coverage is on average equivalent to or better than the standard benefit set by the federal government for Medicare Part D (also called creditable coverage). Because this plan's prescription drug coverage is creditable, **you do not have to enroll in Medicare Part D** while you maintain this coverage; however, you should be aware that if you do not enroll in Medicare Part D within 63 days following termination of this coverage, you could be subject to Medicare Part D premium penalties.

### Limitation for duplicate coverage

#### Medicare

**If you receive Medicare**, Blue Shield will provide your Benefits but Medicare will typically be the primary payor and Blue Shield will be the secondary payor as determined by Medicare regulations.

When Blue Shield is the secondary payor, your combined Benefits from Medicare and Blue Shield will equal but not exceed what Blue Shield would pay if you were not eligible for Medicare. Blue Shield's payment will be based on an amount that may be lower than the Medicare allowed amount but will not exceed the Medicare allowed amount. You must pay any applicable Deductibles, Copayments, and Coinsurance for your Blue Shield plan before Blue Shield will provide Benefits.

See attached pdf exhibits for EOC

See above Section on Health Care.Gov & Medicare allow it

Medicare Guide to who pays first Publication # 02179

<https://www.medicare.gov/Pubs/pdf/02179-medicare-coordination-benefits-payer.pdf>

### Unlawful Post Claims Underwriting

Covered CA appears to be canceling only because claims have run \$40-90K

Future claims – xxx states that her specialists are about \$750 a month. Medicine about \$2.5k a month. MRI about \$3k. Surgery "can't even guess... Maybe \$40-50k.

<https://shernoff.com/articles/personal-advantage-what-to-do-if-an-insurance-company-tries-to-rescind-your-policy/>

<https://content.naic.org/sites/default/files/model-law-915-improper-termination.pdf>

### Conclusions

### Suggested Order

### Formatting:

All motions or other papers must be filed with a title page. The title page must include the name, address, and telephone number of the person filing the paper and it must have a caption as well as the agency and OAH case numbers. The title page must include a brief statement describing the paper filed, and the dates of the hearing and any pre-hearing or settlement conferences. Papers must be filed on 8 1/2" x 11 stock paper of customary weight and quality, with two normal sized holes punched at the top (centered 2 1/2 inches apart, and 5/8 inch from the top of the paper). All papers must be typed.