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## Medicare Secondary Payer

Medicare Secondary Payer (MSP) is the term generally used when the Medicare program does not have primary payment responsibility - that is, when another entity has the responsibility for paying before Medicare. When Medicare began in 1966, it was the primary payer for all claims except for those covered by Workers' Compensation, Federal Black Lung benefits, and Veteran's Administration (VA) benefits.

In 1980, Congress passed legislation that made Medicare the secondary payer to certain primary plans in an effort to shift costs from Medicare to the appropriate private sources of payment. The MSP provisions have protected Medicare Trust Funds by ensuring that Medicare does not pay for items and services that certain health insurance or coverage primarily responsible for paying. The MSP provisions apply to situations when Medicare is not the beneficiary's primary health insurance coverage. Medicare statute and regulations require that all entities that bill Medicare for items or services rendered to Medicare beneficiaries must determine whether Medicare is the primary payer for those items or services.

Primary payers are those that have the primary responsibility for paying a claim. Medicare remains the primary payer for beneficiaries who are not covered by other types of health insurance or coverage. Medicare is also the primary payer in certain instances, provided several conditions are met.

### Common Situations of Primary vs. Secondary Payer Responsibility

The following list identifies some common situations when Medicare and other health insurance or coverage may be present, and which entity will be the primary or secondary payer.

#### 1. Working Aged (Medicare beneficiaries age 65 or older) and Employer Group Health Plan (GHP):

- *Individual is age 65 or older, is covered by a GHP through current employment or spouse's current employer AND the employer has less than 20 employees:*

**Medicare pays Primary, GHP pays secondary**

- *Individual is age 65 or older, is covered by a GHP through current employment or spouse's current employer AND the employer has 20 or more employees (or at least one employer is a multi-employer group that employs 20 or more individuals):*

**GHP pays Primary, Medicare pays secondary**

- *Individual is age 65 or older, is self-employed and covered by a GHP through current employment or spouse's current employment AND the employer has 20 or more employees (or at least one employer is a multi-employer group that employs 20 or more individuals):*

**GHP pays Primary, Medicare pays secondary**

#### 2. Disability and Employer GHP:

- *Individual is disabled*, is covered by a GHP through his or her own current employment (or through a family member's current employment) AND the employer has 100 or more employees (or at least one employer is a mul employer group that employs 100 or more individuals)  
GHP pays Primary, **Medicare pays secondary**

### 3. End-Stage Renal Disease (ESRD):

- Individual has ESRD, is covered by a GHP and is in the first 30 months of eligibility or entitlement to Medicare  
GHP pays Primary, **Medicare pays secondary during 30-month coordination period for ESRD**
- Individual has ESRD, is covered by a Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA plan) and is in the first 30 months of eligibility or entitlement to Medicare  
COBRA pays Primary, **Medicare pays secondary during 30-month coordination period for ESRD**

Please see the **ESRD** page for more information.

### 4. Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) – the law that provides continuing coverage of group health benefits to employees and their families upon the occurrence of certain qualifying events where such coverage would otherwise be terminated.

- *Individual has ESRD*, is covered by COBRA and is in the first 30 months of eligibility or entitlement to Medicare  
COBRA pays Primary, **Medicare pays secondary during 30-month coordination period for ESRD**
- *Individual is age 65 years or older* and covered by Medicare & COBRA:  
**Medicare pays Primary**, COBRA pays secondary
- Individual is disabled and covered by Medicare & COBRA:  
**Medicare pays Primary**, COBRA pays secondary

### 5. Retiree Health Plans

- *Individual is age 65 or older* and has an employer retirement plan:  
**Medicare pays Primary**, Retiree coverage pays secondary

### 6. No-fault Insurance and Liability Insurance

- *Individual is entitled to Medicare and was in an accident or other situation where no-fault or liability insurance i involved.*  
**No-fault or Liability Insurance pays Primary for accident or other situation related health care services claimed or released**, Medicare pays secondary

### 7. Workers' Compensation Insurance

- Individual is entitled to Medicare and is covered under Workers' Compensation because of a job-related illness injury:  
**Workers' Compensation pays Primary for health care items or services related to job-related illness or injury claims.** Medicare generally will not pay for an injury or illness/disease covered by workers' compensation. all or part of a claim is denied by workers' compensation on the grounds that it is not covered by workers' compensation, a claim may be filed with Medicare. Medicare may pay a claim that relates to a medical service or product covered by Medicare if the claim is not covered by workers' compensation. Prior to settling a workers'

compensation case, parties to the settlement should consider Medicare's interest related to future medical service and whether the settlement is to include a Workers' Compensation Medicare Set-aside Arrangement (WCMSA).

Note: When there is evidence that the no-fault insurer, liability insurer, or workers' compensation plan will not pay promptly, Medicare may make a conditional payment. A conditional payment is a payment Medicare makes for service another payer may be responsible for. Medicare makes this conditional payment so that the beneficiary won't have to use his own money to pay the bill. The payment is "conditional" because it must be repaid to Medicare when a settlement, judgment, award or other payment is made.

Federal law takes precedence over state laws and private contracts. Even if an entity believes that it is the secondary payer to Medicare due to state law or the contents of its insurance policy, the MSP provisions would apply when billing for services.

## **Responsibilities of Beneficiaries Under MSP**

As a beneficiary, we advise you to:

- Respond to MSP claims development letters in a timely manner to ensure correct payment of your Medicare claims;
- Be aware that changes in employment, including retirement and changes in health insurance companies may affect your claims payment;
- When you receive health care services, tell your doctor, other providers, and the Coordination of Benefits Contractor (COBC) about any changes in your health insurance due to you, your spouse, or a family member's current employment or coverage changes;
- Contact the COBC if you, or an attorney on your behalf, takes legal action for a medical claim;
- Contact the COBC if you are involved in an automobile accident; and
- Contact the COBC if you are involved in a workers' compensation case.

Please select *Beneficiary Services* in the Related Links section below for more information.

## **Responsibilities of Providers Under MSP**

As a Part A institutional provider (i.e., hospitals), you should:

- Obtain billing information prior to providing hospital services. It is recommended that you use the CMS questionnaire, or a questionnaire that asks similar types of questions; and
- Submit any MSP information to the intermediary using condition and occurrence codes on the claim.

As a Part B provider (i.e., physicians and suppliers), you should:

- Follow the proper claim rules to obtain MSP information such as group health coverage through employment or non-group health coverage resulting from an injury or illness;
- Inquire with the beneficiary at the time of the visit if he/she is taking legal action in conjunction with the service performed; and
- Submit an Explanation of Benefits (EOB) form with all appropriate MSP information to the designated carrier. If submitting an electronic claim, provide the necessary fields, loops, and segments needed to process an MSP claim.

Please select *Provider Services* in the Related Links section below for more information.

## Responsibilities of Employers Under MSP

As an employer, you must:

- Ensure that your plans identify those individuals to whom the MSP requirement applies;
- Ensure that your plans provide for proper primary payments where by law Medicare is the secondary payer;
- Ensure that your plans do not discriminate against employees and employees' spouses age 65 or over, people who suffer from permanent kidney failure, and disabled Medicare beneficiaries for whom Medicare is secondary payer; and
- Accurately complete and submit Data Match reports timely on identified employees.

Please select *Employer Services* in the Related Links section below for more information.

## Statutory and regulatory provisions

The information above provides only a very high level overview of the MSP provisions. See 42 U.S.C. 1395y(b) [secti 1862(b) of the Social Security Act], and 42 C.F.R. Part 411, for the applicable statutory and regulatory provisions.

## MSP Training Materials

CMS has made available a curriculum of computer-based training (CBT) courses that will assist you in understanding the fundamentals of MSP. You can access these CBTs from the Downloads section below. Please see the "MSP Curriculum" document for a complete listing of the courses, their descriptions, and course lengths.

Show entries: <input type="text" value="10"/>			
Filter On: <input type="text"/>			
<u>ID</u>	<u>Title</u>	<u>Type</u>	<u>Description</u>
<u>01</u>	Curriculum	PDF	A printable listing of the courses and their descriptions for the MSP CBT Curriculum.
<u>02</u>	Introduction to Medicare	PDF	The Introduction to Medicare course provides background and history on Medicare a comparison of Medicare and Medicaid, an explanation of entitlement, including age, disability and End Stage Renal Disease (ESRD), and concludes with the parts of Medicare.
<u>03</u>	MSP Overview	PDF	The MSP Overview course begins with a definition of Medicare Secondary Payer. This course also explores the relationship of the provisions of Medicare Secondary Payer with State law. Next, it provides information on the two broad categories of MSP, Group Health Plan (GHP) and Non-group Health Plan (NGHP), and for a fine topic, addresses Coordination of Benefits.

<u>ID</u>	<u>Title</u>	<u>Type</u>	<u>Description</u>
<u>04</u>	MSP Working Aged	PDF	This course will provide an overview of the MSP provisions of the Social Security Act for beneficiaries entitled to Medicare based on age, provide guidelines for the small employer exception, provide examples showing when Medicare would be the secondary payer, and provide employer and Group Health Plan (GHP) guidelines for Working Aged MSP.
<u>05</u>	Medicare Secondary Payer Disability	PDF	This course provides an overview on the MSP provisions of the Social Security Act for beneficiaries entitled to Medicare based on a disability, provides guidelines in regards to employer size considerations, provides examples showing when Medicare would be the secondary payer, and provides employer and Group Health Plan (GHP) guidelines.
<u>06</u>	MSP End Stage Renal Disease (ESRD)	PDF	This course will provide an in-depth discussion of the MSP Guidelines for persons entitled to Medicare because of End Stage Renal Disease (ESRD). Multiple examples of ESRD MSP situations are provided. The course then addresses MSP as it relates to those individuals that have dual entitlement to Medicare, (i.e., entitled to Medicare for more than one reason), e.g., ESRD and Working Aged, or ESRD and Disability. Again, multiple examples are provided to assure clarity of the guidelines.

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## Related Links

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