

Medicare Secondary Payer (MSP) Considerations for Small Employers

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For most employers, Medicare Secondary Payer (MSP) rules treat the employer's group health plan as the primary payer to Medicare and significantly limit any differentiation in benefit offerings for individuals who are eligible for Medicare coverage. However, for small employers, where the employer's group health plan is the secondary payer to Medicare, the rules are different. It is important for small employers to understand how their group health plans are impacted by the MSP rules and what such employers are permitted to offer to Medicare-eligible employees. It is also important for employers to educate their employees and family members on how Medicare-eligibility may impact their coverage under the employer's group health plan.

Coordination of Benefits

The MSP rules contain specific instructions for determining which plan is required to pay primary when an individual is entitled to Medicare and is enrolled in an employer's group health plan (i.e., coordination of benefits). The carrier or third-party administrator (TPA) will typically handle coordination of benefits, but it is beneficial for the employer to know when its group health plan is the primary payer and to help employees understand as well.

Below is a chart that illustrates the [payer status of the employer's group health plan](#):

	Age-Based Medicare	Disability-Based Medicare	ESRD-Based Medicare
Active Employees			
<20 Employees	Secondary Payer	Secondary Payer	Primary Payer First 30 Months
20-99 Employees	Primary Payer	Secondary Payer	Primary Payer First 30 Months
100+ Employees	Primary Payer	Primary Payer	Primary Payer First 30 Months
Retired Employees	Secondary Payer	Secondary Payer	Primary Payer First 30 Months
COBRA Participants	Secondary Payer	Secondary Payer	Primary Payer First 30 Months

For age-based Medicare, the employer's group health plan is the secondary payer for employers with <20 employees. For disability-based Medicare, the employer's group health plan is the secondary payer for employers with <100 employees.

MSP General Requirements – Not Applicable to Small Employers

When the employer's group health plan is the primary payer to Medicare under MSP rules, the employer is:

- Prohibited from taking into account Medicare entitlement (e.g., must pay primary, cannot exclude those who are Medicare-eligible, cannot impose additional cost-sharing on those who are Medicare-eligible);
- Must offer those age 65 or older the same benefits offered to those who are under age 65; and
- Cannot incent individuals not to enroll in the employer's group health plan (e.g., providing financial or other incentives such as reimbursement of Medicare premiums).

For small employers, where the employer's group health plan, if any, would be the secondary payer to Medicare under MSP rules, the above requirements do not apply. A small employer could potentially exclude Medicare-eligible individuals, choose to pay only as a secondary payer, or provide reimbursement for Medicare premiums without running afoul of the MSP rules.

Plan Design Options

Exclude Medicare-Eligible Employees

A small employer whose group health plan coverage would be a secondary payer to Medicare could exclude Medicare-eligible employees and their family members from participating in the employer's benefits. Or the carrier for the insurance policy may not allow Medicare-eligible individuals to participate. Small employers should carefully review their plan eligibility rules to understand whether Medicare-eligible individuals are eligible to participate and then make sure to communicate accordingly to eligible employees and their family members.

Limit Coverage to Secondary Payments

It is more common that small employers (whose group health plan coverage would be a secondary payer to Medicare) will allow Medicare-eligible individuals to participate in their group health plans, but that the plan will only pay as a secondary payer, even if the individual is not actually enrolled in Medicare. In other words, the plan will only provide coverage as if Medicare was in place and provided coverage first. In many cases, carriers offering fully-insured or level-funded plans to small employers will only sell plans that contain secondary payer provisions for those who are Medicare-eligible.

This provision is perhaps even more important to be aware of and communicate to Medicare-eligible employees and their families than an eligibility exclusion. Too often individuals may choose to delay Medicare enrollment and remain enrolled in the employer's group health plan, only to find out after incurring significant claims that the plan will cover only minimal amounts (as if Medicare covered the rest). In situations where a secondary payer provision is in place for those who are Medicare-eligible, it is generally in the individual's best interest to enroll in Medicare upon becoming eligible.

Reimbursing Medicare Policies/Premiums

For small employers whose group health plan coverage would be a secondary payer to Medicare, the employer could help pay for Medicare premiums or allow employees to make pre-tax contributions toward the premiums through the employer's cafeteria plan. In addition, there is a limited exception to the general ACA prohibition on

reimbursement of individual or Medicare premiums that small employers can use (this arrangement does not work for large employers whose group health plan would be primary to Medicare).

ACA Exception for Medicare Premium Reimbursement Arrangements

If the Medicare premium reimbursement arrangement will be available to 2 or more active employees (thereby forming an employer payment plan), it must satisfy certain requirements to avoid violating the ACA's general prohibition on employer payment plans. The requirements differ slightly depending upon whether Medicare-eligible employees are eligible for the employer's group medical plan.

IRS Notice 2015-17 provides that a Medicare reimbursement arrangement may be integrated with another group health plan to satisfy the market reforms if:

- The employer offers a separate group health plan to the employee that doesn't consist solely of excepted benefits and provides minimum value;
- The employee participating in the employer payment plan is enrolled in Medicare Parts A and B;
- The employer payment plan is available only to employees who are enrolled in Medicare Part A and Part B or Part D; and
- The employer payment plan is limited to reimbursement for Medicare Part B or Part D premiums, and excepted benefits (including Medigap).

In addition, for employers that do not offer major medical group health plan coverage to employees who are Medicare beneficiaries, the guidance allows premium reimbursement arrangement (via an HRA or other account-based plan) for Medicare Part B or D premiums with Medicare, as long as:

- The employer offers a major medical group health plan to employees not eligible for Medicare;
- The employee receiving the HRA or account-based plan is enrolled in Medicare Part B or D;
- The HRA or account-based plan is available only to employees enrolled in Medicare Part B or D; and
- Under the terms of the HRA or account-based plan, an employee or former employee is permitted to permanently opt out of and waive future reimbursements at least annually and, upon termination of employment, either the remaining amounts are forfeited or the employee is permitted to permanently opt out of and waive future reimbursements.

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