

ALERT
Demonstrating Approved Small Employer Exception
Requests for Working Aged

Record of Approved Small Employer Exception (SEE) Requests

It is important that COBC have a record of approved SEE requests so that CMS does not inadvertently establish MSP occurrence records as a result of the mandatory reporting required by Section 111 of the Medicare, Medicaid and SCHIP Extension Act of 2007. COBC has been responsible for receiving and approving SEE requests since 2001. Very few requests have been received and approved.

It is possible that some multi-employer plans (or their authorized insurers) have neglected to request a SEE. In this case, a multi-employer plan may wish to request SEE for one or more of the employers in the plan before Section 111 reporting is required. Information on how to request a SEE may be found at www.cms.hhs.gov/EmployerServices/05_smallemployereexception.asp. The next section in this ALERT also provides general background on the SEE.

It is also possible that some multi-employer plans may have submitted SEE requests with all required supporting information to an incorrect Medicare contractor or the appropriate contractor prior to 2001 and either received no response or approvals. To the extent that this happened and the multi-employer plan submits dated copies of those requests (with required supporting information) to the COBC, CMS will honor the original request date with respect to SEE request approvals. These copies, with explanatory cover letters, must be sent to COBC at the following address:

Mailed Requests:

Medicare Coordination of Benefits
Attn: Small Employer Exception Request
P.O. Box 660
New York, New York 10274

Faxed Requests:

Address fax to:
Medicare Coordination of Benefits Contractor
Attn: Small Employer Exception Request
Fax #: (646) 458-6761

Small Employer Exception (SEE):

If an employer, having fewer than 20 full and/or part-time employees, sponsors or contributes to a single-employer GHP, the MSP rules applicable to individuals entitled to Medicare on the basis of age do not apply to such individuals. Nonetheless, if such an employer participates in a multiple employer or multi-employer GHP (multi-employer GHP) and at least one participating employer has at least 20 full and/or part-time employees, these MSP rules apply to all individuals entitled to Medicare on the basis of age, including those associated with the employer having fewer than 20 employees. However, the law provides that a multi-employer GHP may be granted an exception with respect to certain individuals entitled to Medicare on the basis of age and who are covered as a named insured or spouse (covered individual) of an employer with fewer than 20 full and/or part-time employees.

In order for an MSP SEE to exist, the multi-employer GHP *must request* and the Centers for Medicare & Medicaid Services' (CMS') Coordination of Benefits Contractor (COBC) *must approve* the requested exception to the Working-Aged MSP rules. An approved exception will apply only with respect to the specifically named and approved beneficiaries associated with a specifically named employer participant in a specifically identified multi-employer plan. This exception applies only to individuals entitled to Medicare on the basis of age. All approvals are *prospective*. To request Medicare approval of a SEE, the multi-employer GHP must submit a written request, with all required supporting documents, to the CMS' COBC stating that the plan seeks to elect Medicare as the primary payer for identified beneficiaries who are associated with identified employers that participate in the specific multi-employer plan.

For purposes of requesting the SEE, the term multi-employer GHP shall mean any trust, plan, association or any other arrangement made by one or more employers to contribute, sponsor, directly provide health benefits, or facilitate directly or indirectly the acquisition of health insurance by an employer member. (If such facilitation exists, the employer is considered to be a participant in a multi-employer GHP even if it has separate contract with an insurer.) However, the GHP can, by agreement or otherwise, delegate the responsibility for requesting the SEE to the insurer.