
CMS Manual System

Pub. 100-05 Medicare Secondary Payer

Department of Health &
Human Services (DHHS)
Centers for Medicare &
Medicaid Services (CMS)

Transmittal 18

Date: August 27, 2004

CHANGE REQUEST 3120

I. SUMMARY OF CHANGES: This instruction adds information to the Medicare Secondary Payer (MSP) for the working aged provision, as well as the MSP for the disabled provision for former spouses, and certain family members with coverage under the Federal Employees Health Benefits (FEHB) Program.

NEW/REVISED MATERIAL - EFFECTIVE DATE: November 29, 2004

***IMPLEMENTATION DATE: November 29, 2004**

Disclaimer for manual changes only: The revision date and transmittal number apply only to red italicized material. Any other material was previously published and remains unchanged. However, if this revision contains a table of contents, you will receive the new/revised information only, and not the entire table of contents.

II. CHANGES IN MANUAL INSTRUCTIONS:

(R = REVISED, N = NEW, D = DELETED)

R/N/D	CHAPTER/SECTION/SUBSECTION/TITLE
R	2/10/10.2/Individuals Not Subject to the Limitation on Payment
R	2/30/30.2/Individuals Not Subject to MSP Provision

***III. FUNDING:**

These instructions should be implemented within your current operating budget.

IV. ATTACHMENTS:

X	Business Requirements
X	Manual Instruction
	Confidential Requirements
	One-Time Notification
	Recurring Change Notification

***Medicare contractors only**

Business Requirements

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SUBJECT: Application of the Medicare Secondary Payer for the Working Aged Provision and the Medicare Secondary for the Disabled Provision to Former Spouses and Certain Family Members with Coverage Under the Federal Employees Health Benefits (FEHB) Program

I. GENERAL INFORMATION

A. Background:

This instruction advises the order of payment for former spouses and certain family members who have Federal Employees Health Benefits (FEHB) coverage under the Spouse Equity Act. Under this Act, certain former spouses of Federal employees, former employees, and annuitants may qualify to enroll in a health benefits plan under the FEHB program. The former spouse may elect a self only or a self and family enrollment. (A self and family enrollment covers only the spouse and any uninsured dependent natural or adopted children.) Under the Spouse Equity provisions an individual has coverage by virtue of:

- Having a right under a divorce decree to a portion of a future retirement annuity and/or to a survivor annuity; and
- The status of the former spouse as either: an active worker; an individual entitled to a future annuity; or an annuitant.

Since employment of the former spouse can be one of the conditions for receiving coverage, Section I.B. addresses whether the coverage is by virtue of current employment status, and therefore, subject to the Medicare secondary payer for the working aged provision as well as the Medicare secondary for the disabled provision.

B. Policy:

The Medicare law in §1861(b)(1)(A) of the Social Security Act states that Medicare is secondary payer for individuals age 65 or over who have group health plan coverage by virtue of their own or a spouse's current employment status. The Medicare law in §1862(b)(1)(B) of the Social Security Act states that Medicare is secondary payer for disabled individuals under age 65 who have large group health plan coverage by virtue of their own current employment status or the current employment status of a family member. The question has been raised as to whether FEHB coverage provided to former spouses under the Spouse Equity Act is secondary to Medicare under the working aged provision. Also the question has been raised as to whether FEHB coverage provided to the spouse and family members under the Spouse Equity Act, is secondary to Medicare under the disability provision.

Under the Spouse Equity Act the individual is no longer on the former spouse's policy. The coverage is considered to be a self-only policy, i.e., not dependent coverage, but a policy

separate from the former spouse. The employer makes no contributions to the coverage. Since the language in the Spouse Equity Act gives the former spouse the separate right to enroll in FEHB whether or not the spouse himself or herself is enrolled, the FEHB former spouse coverage is not considered employment based, and Medicare would be primary once the former spouse is entitled to Medicare under the working aged provision. Under the Medicare secondary for the disabled provision Medicare would be primary for the former spouse as well as any covered family members since the coverage is not considered employment based.

C. Provider Education:

A provider education article related to this instruction will be available at www.cms.hhs.gov/medlearn/matters shortly after the CR is released. You will receive notification of the article release via the established “medlearn matters” listserv. Contractors shall post this article to their Web site, and include in it a listserv message if applicable, within one week of the availability of the provider education article. In addition, the provider education article must be included in your next regularly scheduled bulletin.

II. BUSINESS REQUIREMENTS

“Shall” denotes a mandatory requirement
“Should” denotes an optional requirement

Requirement #	Requirements	Responsibility
3120.1	The contractor shall notify providers of this instruction through provider education as specified in Section I.C.	Contractors

III. SUPPORTING INFORMATION AND POSSIBLE DESIGN CONSIDERATIONS

A. Other Instructions: N/A

X-Ref Requirement #	Instructions

B. Design Considerations: N/A

X-Ref Requirement #	Recommendation for Medicare System Requirements

C. Interfaces: N/A

D. Contractor Financial Reporting /Workload Impact: N/A

E. Dependencies: N/A

F. Testing Considerations: N/A

IV. SCHEDULE, CONTACTS, AND FUNDING

<p>Effective Date: November 29, 2004</p> <p>Implementation Date: November 29, 2004</p> <p>Pre-Implementation Contact(s): Eve Fisher at 410-786-5641</p> <p>Post-Implementation Contact(s): Eve Fisher at 410-786-5641</p>	<p>These instructions should be implemented within your current operating budget.</p>
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10.2 - Individuals Not Subject to the Limitation on Payment

(Rev. 18, Issued: 08-27-04, Effective: 11-29-04, Implementation: 11-29-04)

A3-3491.3, B3-3336.1, B3-3336.9, HO- 253.4, SNF-336.4, HH-253.4

The Medicare secondary provision for working aged does not apply to:

- Individuals enrolled in Part B only;
- Individuals enrolled in Part A on the basis of a monthly premium.
- Anyone who is under age 65. (Medicare is secondary to large group health plans that cover at least one employer of 100 or more employees for certain disabled individuals under age 65.);
- Individuals covered by a health plan other than *a* GHP as defined above, e.g., one that is purchased by the individual privately, and not as a member of a group, and for which payment is not made through an employer;
- Employees of employers of fewer than 20 employees who are covered by a single employer plan;
- Members of multi-employer plans, which have been approved by CMS for the "multi-employer exemption", whom the plan identified as employees of employers with fewer than 20 employees;
- Retired beneficiaries who are covered by GHPs as a result of past employment and who do not have GHP coverage as the result of their own or a spouse's current employment status;
- Individuals enrolled in single employer GHPs of employers of fewer than 20 employees; or
- Members of multi-employer plans whom the plan identified as employees of employers with fewer than 20 employees, provided the plan formally elected (see [§10.4](#)) to exempt the plan from making primary payment for employees and spouses of employees of specifically identified employers with fewer than 20 employees.
- Domestic partners who are given "spousal" coverage by the group health plan. Federal law defines spouse as a person of the opposite sex who is a husband or a wife. Thus a domestic partner cannot be recognized as a spouse; *and*
- *Former spouses who have Federal Employees Health Benefit (FEHB) coverage under the Spouse Equity Act.*

30.2 - Individuals Not Subject to MSP Provision

(Rev. 18, Issued: 08-27-04, Effective: 11-29-04, Implementation: 11-29-04)

B3-3337.2, A3-3492.C

Medicare is **not** secondary under the MSP for the disabled provision for individuals:

- Who work for employers of fewer than 100 employees unless the GHP is a multi-employer plan in which at least one employer of 100 or more employees participates;
- Covered by an LGHP as a result of past employment (e.g., as a retired former employee or as the spouse of a retired former employee) and whose coverage is not also based on current employment status of their own or a family members current employment status (see Chapter 1, §50);
- Covered by a health plan other than an LGHP (e.g., one that is purchased by the individual privately and not through an employer); *or*
- *Who have FEHB coverage under the Spouse Equity Act.*