



Office of Financial Management/Financial Services Group

September 22, 2008

Implementation of Medicare Secondary Payer Mandatory Reporting Provisions in
Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007
(See 42 U.S.C. 1395y(b)(7))

REMINDER:

- **Employer Size (vs. Covered Lives) Information Is Critical for Group Health Plan (GHP) Responsible Reporting Entities (RREs)**
- **Potential Small Employer Exception for Working Aged; No Exception for Disabled or End Stage Renal Disease (ESRD)**

Information on employer size (vs. the number of covered lives) has always been necessary for employers, insurers, third party payers, plans, and other plan sponsors to be able to determine the correct primary payer. Under the Section 111 reporting requirements, GHP RREs *must* have accurate information concerning employer size for all members of a multiple employer/multi-employer GHP in order to report accurately.

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 the 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.

Multi-Employer GHPs & Medicare Entitlement Based Upon Disability or ESRD:

If an employer participates in a multi-employer GHP and at least one participating employer has at least 100 full and/or part-time employees, the MSP rules apply to all individuals entitled to Medicare on the basis of disability, including those associated with the employer having fewer than 100 employees.

There are no exclusions to the MSP rules based upon employer size where Medicare entitlement is based upon ESRD/permanent kidney failure.

GHP RRE Section 111 Reporting with Respect to the SEE:

- If reporting on an active covered individual for whom a SEE has been granted, place the individual's HICN in MSP Input File Field 32, Small Employer Exception HICN. If the COBC can match this to its records using the SEE HICN, employer EIN, and insurer policy number, the insurance effective date from the submitted MSP file will be compared to the SEE start and end dates.
- If the insurance effective date is within the SEE start and end dates, no MSP working aged occurrence will be created and the coverage will not be considered primary to Medicare. A disposition of 'BY' (bypassed) and a SEE Response Code (field 81) of 'SA' (SEE Accepted) will be returned on the MSP Response File.
- If the insurance effective date is prior to the SEE start date, an MSP occurrence will be generated. The MSP effective date will be set as the insurance effective date submitted on the MSP Input File. The MSP termination date will be 1 calendar day prior to the SEE start date. The appropriate disposition for the updated record and a SEE response of 'SP' (SEE Partial) will be returned on the MSP Response File.
- If the insurance effective date is after the close of the SEE effective period the MSP effective date will be set to 1 calendar day after the SEE termination date and the MSP termination date will be set to open-ended. The appropriate disposition for the updated record and a SEE response of 'SP' (SEE Partial) will be returned on the MSP Response File.
- If an MSP occurrence is created because the MSP effective period is outside of the SEE effective period, the appropriate disposition for the updated record and a SEE response of 'SN' (SEE Not Applicable) will be returned.
- If a SEE match (HICN, EIN, Policy Number) is not found, an MSP occurrence will be generated if applicable. A SEE Response of 'SN' (SEE Not Applicable) will be returned to the submitter indicating that the SEE HICN was not found. This will give the submitter an opportunity to

advise the multi-employer plan that CMS has no record of an approved SEE. The plan may then, if it wishes to do so, request a SEE.

Please refer to www.cms.hhs.gov/EmployerServices/05_smallemployerexception.asp for more information on applying for a SEE.