



# Medicare Secondary Payer

A Review of the Working Aged with an EGHP Provision – May 2022





# Today's Presenters

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# Objective

- Familiarize providers with Working Aged MSP provision so they can
  - Be compliant with MSP responsibilities
  - Improve cash flow/decrease staff time
  - Facilitate MSP screening process by more easily concluding which plan is primary and resolving conflicts
  - Facilitate billing process by submitting claims to appropriate primary payer the first time, preventing claim rejections and submitting fewer adjustments

# Agenda

- 2022 MSP webinar series and additional events
- MSP and Your MSP-related responsibilities
- MSP Provision Review – Working Aged
- Working Aged – submitting claims
- Scenarios and Polling Questions
- MSP Resources (and MSP Resources Handout)
- Questions and Answers

# 2022 MSP Webinar Series



# MSP Webinar Series

- 17 different MSP webinars
- Wednesdays except 5/5/2022 (Thursday)
  - March 2022
    - 3/9 = Fundamentals
    - 3/23 = Resources
  - April 2022
    - 4/6 = Identifying Primary Payers
    - 4/20 = Setting Up and Correcting CWF Records
    - 4/27 = MSP Rejections on Primary Claims



# MSP Webinar Series

- May 2022
  - **5/4** = Working Aged with EGHP Provision
  - **5/5** = Disabled with LGHP Provision (Thursday)
  - **5/18** = ESRD with EGHP Provision
- June 2022
  - **6/1** = No-fault, Medical-payment and Liability Provisions
  - **6/15** = Submitting Claims When Primary Payer Makes Payment (MSP Billing)
  - **6/22** = MSP Billing Examples

# MSP Webinar Series

- July 2022
  - **7/6** = Submitting Claims When Primary Payer Does Not Make Payment (Conditional Billing)
  - **7/20** = Conditional Billing Examples
  - **7/27** = MSP Claims That RTP
- August 2022
  - **8/3** = Conditional Claims That RTP
  - **8/10** = Adjustments Involving MSP
  - **8/17** = MSP Payment and Beneficiary Responsibility

# Additional 2022 MSP Events

- Virtual conferences include MSP as topic
  - Typically held twice a year
- Let's Chat About MSP Part A webinars
  - For all Part A providers including HHHs and FQHCs/RHCs
  - Ask MSP-related questions (no PHI)
  - Event posted to our website but no presentation
  - Monthly, Thursdays except 11/29/2022 (Tuesday)
    - 1/27, 2/24, 3/31, 4/28, 5/26, 6/30, 7/28, 8/25, 9/29, 10/27, 11/29, and 12/15

# MSP and Your MSP-Related Responsibilities



# What is MSP?

- Beneficiary has coverage primary to Medicare
  - Based on federal laws known as **MSP provisions**
    - Help determine proper order of payers
    - Make certain payers primary to Medicare
    - Each has **criteria/conditions** that must be met
      - If all **are met**, services are subject to that provision making that other insurer primary and **Medicare secondary**
      - If one or more **are not met**, services are not subject to that provision; **Medicare is primary** unless criteria/conditions of another are met

# Providers' MSP-Related Responsibilities

- Per your Medicare provider agreement
  - Determine if Medicare is primary for beneficiary's services
    - Identify payers primary to Medicare
      - Check Medicare's records (CWF) for **MSP records** and
      - Conduct **MSP screening process**
        - » Collect information from beneficiary/representative by asking questions
  - Submit claims to primary payer(s) before Medicare
  - Submit MSP claims when required

# MSP Records in CWF – Available Information

- If MSP record(s) present, information includes
  - **MSP VC** and **primary payer code** for each MSP provision
  - MSP effective date
  - MSP termination date, if applicable
  - Subscriber's name
  - Policy number
  - Patient's relationship to insured
  - Insurer's information

# MSP Records – Value Code and Primary Payer Code Chart

MSP VC	MSP Provision	Primary Payer Code
12	Working aged, age 65 and over, EGHP, 20 or more employees	A
13	ESRD with EGHP in coordination period	B
14	No-Fault Insurance (automobile and other types)	D
15	WC or WC Set-Aside	E or W
16	Public Health Services; research grants	F
41	Federal Black Lung Program	H
43	Disabled, under age 65, LGHP, 100 or more employees	G
47	Liability Insurance	L



# Conduct MSP Screening Process

- Collect MSP information from beneficiary or representative
  - Ask questions about their MSP status
    - Use CMS' model questionnaire or your own compliant form
      - [CMS IOM Publication 100-05, Medicare Secondary Payer Manual, Chapter 3, Section 20.2.1](#)
      - Three parts with questions to be asked in sequence
        - » Part I – Black Lung, WC, No-Fault (automobile and other types) and Liability
        - » **Part II – Medicare entitlement and employer GHPs**
        - » Part III – ESRD Medicare entitlement, if applicable (including dual entitlement)
  - Collect more information for billing (e.g., retirement dates)

# CMS' Model MSP Questionnaire – Part II

## 1. Are you entitled to Medicare based on age, disability or ESRD?

- If entitlement is based solely on ESRD, skip Part II; complete Part III
- Stop after completing Part II if you are entitled to Medicare based on age or disability

# CMS' Model MSP Questionnaire – Part II

## **2. Do you have GHP coverage based on your own current employment, or the current employment of either your spouse or another family member?**

- If yes, the employer GHP may be primary to Medicare; continue below
- If no, stop here as Medicare is primary

# CMS' Model MSP Questionnaire – Part II

## **3. How many employees, including yourself or spouse, work for the employer from whom you have GHP coverage? 1-19, 20-99, 100 or more**

- If you are aged and there are 20 or more employees, your GHP is primary
- If you are disabled and your employer, spouse, or family member employer, has 100 or more employees, your GHP is primary

# CMS' Model MSP Questionnaire – Part II

## 4. The following employer GHP information is required to submit claims appropriately

- Name and address of the employer (your own or your spouse's/family member's) through which you receive GHP coverage
- Name and address of GHP
- Policy number (sometimes referred to as health insurance benefit package number)
- Group number

# CMS' Model MSP Questionnaire – Part II

- Date the GHP coverage began
- Name of policyholder (if coverage is through your spouse/other family member)
- Relationship to patient (if other than self)

# Determine Proper Order of Payers

- Compare MSP record information to information you collected during MSP screening process
- Use your knowledge of MSP Provisions
  - In general, other coverage is primary when beneficiary
    - Has coverage that meets MSP Provision criteria and it is available
  - In general, Medicare is primary when beneficiary
    - Has no other coverage
    - Has other coverage but it doesn't meet MSP Provision criteria or it meets MSP Provision criteria but it is no longer available

# Submit Claims According to Determination You Make

- If another payer is primary
  - Submit claim to that payer first
  - Submit claim to Medicare second with correct billing codes
- If more than one payer is primary
  - Submit claims to those payers first, in proper order, and Medicare third, etc. with correct billing codes
- If Medicare is primary
  - Submit primary claim with any explanatory billing codes



# Contact BCRC With Information You Collect During MSP Screening Process

- During your MSP screening process, you may learn of information Medicare is not aware of
  - If so, obtain documentation and contact BCRC to request a
    - New MSP record be set up if no such record exists
    - Correction to open MSP record (correct MSP or other information)
    - Change open MSP record to primary for reasons other than
      - Beneficiary/spouse retired or
      - Services are not related to open accident MSP record

# Documentation From Employer or Insurer

- Providers can fax or mail documentation from employer or insurer to BCRC
  - Documentation must be on that company's letterhead
  - Do not wait for beneficiary to contact BCRC
- Documentation assists BCRC in
  - Setting up MSP records
  - Correcting or changing open MSP records

# Retirement Dates

- CMS' model MSP questionnaire does not have retirement date fields but CMS requires you to
  - Collect accurate **retirement dates**
  - Report such dates on your Medicare claims
    - Follow policy for when beneficiary/spouse cannot recall date(s)
      - [CMS IOM Publication 100-05, Medicare Secondary Payer Manual, Chapter 3](#), Section 20.1, #4
- We send such dates to BCRC and process claim
  - BCRC investigates and changes MSP VC 12 record

# MSP Provision Review – Working Aged

# Working Aged MSP Provision

- Medicare is secondary for Medicare beneficiaries age 65 or older who are covered under a GHP by virtue of their own (or spouse's) current employment status with an employer
  - Applies to GHPs of employers and employee organizations, including multi- and multiple-employer plans which have at least one participating employer that employs 20 or more employees
    - [CMS IOM Publication 100-05, Medicare Secondary Payer Manual, Chapter 1](#), Section 10.1 and [Chapter 2](#), Section 10

# Working Aged – Criteria

- EGHP is primary to Medicare if all five criteria are met:
  1. Beneficiary is age 65 or over
  2. Beneficiary is enrolled in Medicare Part A
  3. Beneficiary or spouse (of any age) is currently employed
  4. Beneficiary is enrolled in EGHP through employer
  5. Employer employs 20 or more employees

# Criteria 1: Beneficiary is Age 65 or Older

- Beneficiary must be age 65 or older
  - Entitled to Medicare based on age 65
  - Entitled to Medicare based on disability but is currently (as of claim's DOS) age 65 or older
  - Verify DOB; verify age using applicable eligibility tools
- Beneficiary is not subject to this MSP provision
  - If he/she is not age 65 or older

# Criteria 2: Beneficiary is Enrolled in Medicare Part A

- Beneficiary must be enrolled in Medicare Part A
  - Conduct Medicare Part A eligibility verification whether you are rendering services payable under Part A or Part B
  - Use appropriate tools
    - Medicare card shows Part A effective date
    - Medicare's records show Part A effective date
- Beneficiary is not subject to this MSP provision
  - If he/she is not enrolled in Medicare Part A



# Beneficiary is Not Enrolled in Medicare Part A But is Enrolled in Medicare Part B

- Medicare is primary to EGHP for all services if
  - Beneficiary is not entitled to/enrolled in Part A
    - Medicare Part A rejects IP claims for “no entitlement”
      - Submit IP claims to EGHP
      - Submission to Medicare is not required
    - Medicare Part B processes OP claims as primary
      - Submit OP claims to Medicare first and EGHP second

# Criteria 3: Beneficiary or Spouse is Currently Employed

- Beneficiary or spouse (any age) must be currently employed (have current employment status)
  - Conduct screening process/administer MSP questionnaire
    - Is beneficiary and/or spouse (if applicable) currently employed?
    - If YES, does employer provide GHP?
    - If YES, what is employer size?
- Beneficiary is not subject to this MSP provision
  - If he/she and/or spouse is not currently employed/does not have current employment status
  - If definition of spouse is not met

# MSP Fact

- If an individual is **retired**, then he/she does not have current employment status for the purposes of the Working Aged MSP provision. Medicare would be primary to any GHP coverage he/she may have through his/her former employer.

# Current Employment Status – Defined

- Rules Defining Employees Covered by GHPs
  - [CMS IOM Publication 100-05, Medicare Secondary Payer Manual, Chapter 1](#), Section 50
- Individual has current employment status if he/she
  - Is actively working as an employee, is the employer (including a self-employed person), or is associated with an employer in a business relationship; or
  - Is not actively working and receiving disability benefits from an employer for up to six months (subject to FICA taxes); or

# Current Employment Status – Defined

- **Is not actively working** and meets all conditions
  - Retains employment rights in the industry;
  - Has not had employment terminated by employer (if it provides coverage) or has not had membership in employee organization terminated (if it provides coverage);
  - Is not receiving disability benefits from employer for more than six months;
  - Is not receiving Social Security disability benefits; and
  - Has employment-based GHP coverage that is not COBRA continuation coverage

# Current Employment Status – Specific Groups

- CMS provides information on specific groups
  - [CMS IOM Publication 100-05, Medicare Secondary Payer Manual, Chapter 1](#), Section 50.1
    - Members of religious orders
    - Insurance agents
    - Senior Federal judges
    - Volunteers
    - Directors of corporations
    - Individuals receiving delayed compensation payments
    - Leased employees
    - Reemployed retirees and annuitants
    - Coverage for self-employed individuals

# Spouse – Defined for Purpose of MSP Working Aged Provision

- Since 1/1/2015, CMS applies this provision to those in same-sex or an opposite-sex marriage
  - For “spouse” in same-sex and opposite-sex marriages
    - Individual is “spouse” if entitled to Medicare as spouse per SSA rules
    - Both parties are “spouses” if marriage is valid in jurisdiction in which it was performed, as long as marriage would be recognized by a U.S. jurisdiction
    - Where plan or plan sponsor has broader/more inclusive definition of “spouse”, it may assume primary payment responsibility for spouse

# Criteria 4: Beneficiary Has GHP Through Employer

- Beneficiary must have GHP through own employer or spouse's employer
  - Conduct screening process/administer MSP questionnaire
    - Is beneficiary and/or spouse (if applicable) currently employed?
    - If YES, does employer provide GHP?
    - If YES, what is employer size? EGHP = health plan for or contributed to by employer of 20 or more employees
- Beneficiary is not subject to this MSP provision
  - If plan is not through employer or does not meet GHP definition



# GHP – Defined

- Definitions (of various terms)
  - [CMS IOM Publication 100-05, Medicare Secondary Payer Manual, Chapter 1](#), Section 20
- GHP
  - Any arrangement of, or contributed to by, one or more employers or employee organizations to provide health benefits or medical care directly or indirectly to current or former employees, the employer, others associated or formerly associated with the employer in a business relationship, or their families

# GHP – Defined

- Term includes
  - Self-insured plans
  - Plans of governmental entities
  - Employee organization plans such as union plans and employee health and welfare funds
  - Employee pay-all plans
  - Individual policies purchased by or through an employee organization, employer or former employer of individual or family member of individual

# GHP – Defined

- Term does not include
  - Individual policies not purchased by or through an employee organization, employer or former employer of the individual or family member of the individual, such as a direct-pay plan
  - COBRA continuation coverage (for this provision)
  - Coverage under TRICARE
  - A plan that does not have any employees or former employees as enrollees (e.g., a plan for self-employed person only)

# GHP – Defined

- Multi- or multiple-employer GHP
  - Multi-employer GHP – jointly sponsored by employers and unions
  - Multiple-employer GHP – sponsored by more than one employer

# What Should Occur When Employee is About to Turn Age 65?

- Employee is about to turn 65 and get Medicare
  - Is currently employed for employer that meets Working Aged provision criteria and plans to continue working
- Employer offers employee option of
  - Remaining in EGHP which would then be primary
  - Opting out of EGHP which would make Medicare primary
    - Employer cannot provide supplemental plan for Medicare covered services
    - Beneficiary can purchase a direct-pay supplemental plan

# Criteria 5: Employer Employs 20 or More Employees

- Employer through whom beneficiary has a GHP employs 20 or more employees
  - Conduct screening process/administer MSP questionnaire
    - Is beneficiary and/or spouse (if applicable) currently employed?
    - If YES, does beneficiary have GHP through employer
    - If YES, what is employer size? EGHP = health plan for or contributed to by employer of 20 or more employees
- Beneficiary is not subject to this MSP provision
  - If employer size requirement is not met

# 20 or More Employee Threshold

- Employer determines size
  - 20 or more employee count is met if
    - Employer employs 20 or more full and/or part-time employees for each working day in each of 20 or more calendar weeks in current or preceding calendar year

# Single Employer – 20 or More Employee Threshold

- 20 or more employee count is met if
  - A **single** employer has 20 or more full- and/or part-time employees for each working day in each of 20 or more calendar weeks in current or preceding calendar year



# Employer Size Change From Under 20 to 20 or More Employees

- **Single** employer with less than 20 employees
  - Must offer its employees and spouses age 65 or over primary GHP starting with when employer has had 20 or more employees on each working day of 20 calendar weeks of current year
    - Primary GHP offered from then through rest of that year and following year **even if employee count drops below 20**
      - [CMS IOM Publication 100-05, Medicare Secondary Payer Manual, Chapter 2](#), Section 10.3

# Multi-Employer or Multiple-Employer – 20 or More Employee Threshold

- **Is met** if all employers or at least one employer employs 20 or more full- and/or part-time employees for each working day in each of 20 or more calendar weeks in current or preceding calendar year
  - EGHP is primary for age 65 or older working beneficiary/spouse
    - EGHP can request [small employer exception](#) through BCRC

# Multi-Employer or Multiple-Employer – 20 or More Employee Threshold

- **Is not met** if none of the employers employ 20 or more full- and/or part-time employees for each working day in each of 20 or more calendar weeks in current or preceding calendar year
  - Medicare is primary for age 65 or older working beneficiary/spouse in EGHP

# Multi-Employer or Multiple-Employer Situations

- For age 65 or older working beneficiary/spouse
  - EGHP is primary if
    - All employers employ 20 or more employees
    - At least one employer employs 20 or more employees
      - EGHP may request a [small employer exception](#)
  - Medicare is primary if
    - All employers employ less than 20 employees
    - EGHP, that is part of multi- or multiple- employer situation in which at least one employer employs 20 or more employees is approved for a [small employer exception](#)

# Medicare is Primary for Age 65 or Over Beneficiary When...

- Beneficiary is not enrolled in Medicare Part A
- Beneficiary or spouse
  - Is not currently employed and does not have EGHP or has a retirement plan or COBRA
  - Is currently employed but does not have EGHP
  - Rejected EGHP; purchased direct-pay plan
  - Employed by single employer with less than 20 employees
  - Has multi- or multiple-employer GHP but employer has less than 20 employees and a [small employer exception](#)

# Working Aged – Submitting Claims

# Submitting Claims For Age 65 or Older Beneficiaries – EGHP is Primary

- If **all** Working Aged MSP provision criteria **are met**
  - Submit claim to EGHP as primary and Medicare as secondary
    - MSP VC 12
      - Refer to [our website](#) articles
        - » [Prepare and Submit an MSP Claim](#)
        - » [Prepare and Submit an MSP Conditional Claim](#)

# Submitting Claims For Age 65 or Older Beneficiaries – EGHP is Primary

- For MSP or conditional claim to process, a **matching** MSP record must be in CWF
  - MSP record has same information as is on claim
    - If no matching MSP record in CWF, **contact BCRC prior to submitting claim**
      - If you submit claim before such record is in CWF, it suspends for up to 100 days while we contact BCRC
        - » Refer to [our website](#) articles [Set Up a Beneficiary's MSP Record](#) and [Correct a Beneficiary's MSP Record](#)



# Submitting Claims For Age 65 or Older Beneficiaries – Medicare is Primary

- **If one or more Working Aged MSP provision criteria are not met**
  - Submit claim to Medicare as primary with explanatory coding indicating reason (various CCs and/or OCs)
    - Retirement OCs (18 and 19)
      - Will change open MSP VC 12 records
    - CCs 09, 10, 28
      - Will not change open MSP VC 12 records
        - » Refer to [our website](#) articles [Prevent an MSP Rejection on a Medicare Primary Claim](#) and [Collect and Report Retirement Dates on Medicare Claims](#)

# Submitting Claims For Age 65 or Older Beneficiaries – Medicare is Primary

- Contact BCRC to change MSP records to Medicare primary even when reporting on claims
  - CC 09 = Neither the beneficiary nor spouse is employed
  - CC 10 = Beneficiary and/or spouse is employed but does not have EGHP
  - CC 28 = Beneficiary and/or spouse is employed, has EGHP but it is secondary to Medicare because employer has less than 20 employees
    - Refer to [our website](#) article [Correct a Beneficiary's MSP Record](#)

# Examples of GHP Records That Need to be Changed Via BCRC

- Examples include but are not limited to
  - GHP terminated for reason other than retirement
  - Beneficiary is not enrolled in an employer GHP
  - Beneficiary, spouse or family member is not currently employed
  - Employer size change; GHP remains primary until a certain amount of time has passed after size change

# Scenarios and Polling Questions

# Scenario and Polling Question #1

- Beneficiary
  - Is age 66, has Medicare Part A but not Part B, is currently employed and has EGHP through that employer
    - Employer is a single employer that employs 29 employees
- Which plan is primary for beneficiary?
  - Medicare
  - EGHP

# Scenario and Polling Question #2

- Beneficiary
  - Is age 71, has Medicare Parts A and B, is not currently employed and has EGHP through daughter's current employer
    - Employer is a single employer that employs 143 employees
- Which plan is primary for beneficiary?
  - Medicare
  - EGHP

# Scenario and Polling Question #3

- Beneficiary
  - Is age 69, has Medicare Parts A and B, is currently employed and has EGHP through that employer
    - Employer is a single employer that employs 15 employees
- Which plan is primary for beneficiary?
  - Medicare
  - EGHP

# Scenario and Polling Question #4

- Beneficiary
  - Is age 72, has Medicare Parts A and B, is currently employed and has EGHP through that employer
    - Employer is a single employer that employs 25 employees
- Which plan is primary for beneficiary?
  - Medicare
  - EGHP



# Scenario and Polling Question #5

- Beneficiary
  - Is age 68, has Medicare Parts A and B, is not currently employed and has EGHP through spouse
    - Spouse is currently employed
    - Employer is a single employer that employs 37 employees
- Which plan is primary for beneficiary?
  - Medicare
  - EGHP

# What You Should Do Now

- Review MSP Resources slides and handout
- Share information with staff
- Continue to learn more about MSP
- Develop and implement policies that ensure your provider's MSP responsibilities are met
- Be familiar with MSP resources
- Continue to attend educational sessions

# MSP Resources



# CMS' MSP Resources

- Internet-Only Manuals (IOMs)
  - 100-05, Medicare Secondary Payer Manual, Chapter 1, Sections
    - 10.1, Working Aged
    - 20, Definitions
    - 50, Rules Defining Employees Covered by GHPs and LGHPs
    - 50.1, Clarification of Current Employment Status for Specific Groups

# CMS' MSP Resources

- Internet-Only Manuals (IOMs)
  - 100-05, Medicare Secondary Payer Manual, Chapter 2, Sections
    - 10, Medicare Secondary Payer Provisions for Working Aged Individuals
    - 10.3, The 20-or-More Employees Requirement
  - 100-05, Medicare Secondary Payer Manual, Chapter 3, Sections
    - 20, Obtain Information From Patient or Representative at Admission or Start of Care
    - 20.1, General Policy

# Employee – Defined

- Definitions (of various terms)
  - [CMS IOM Publication 100-05, Medicare Secondary Payer Manual, Chapter 1, Section 20](#)
- Employee
  - An individual who is working for an employer or who, although not actually working for an employer, is receiving from an employer payments subject to Federal Insurance Contributions Act (FICA) taxes or would be subject to FICA taxes except that employer is exempt from those taxes under Internal Revenue Code (IRC)

# Employer – Defined

- **Employer**

- Employer means, in addition to individuals (including self-employed persons) and organizations engaged in a trade or business, other entities exempt from income tax such as religious, charitable, and educational institutions
  - Included are governments of United States, individual states, Puerto Rico, Virgin Islands, Guam, American Samoa, Northern Mariana Islands, District of Columbia and foreign governments

# Working Aged Spouse – Defined

- CR8875, “Medicare Secondary Payer (MSP) Group Health Plan (GHP) Working Aged Policy - - Definition of “Spouse”; Same-Sex Marriages”



# Thank You!

- Follow-up email
  - Attendees will be provided a Medicare University Course Code
- Questions?

