

Welcome to the Medicare Secondary Payer Working Aged course.

Disclaimer

While all information in this document is believed to be correct at the time of writing, this Computer Based Training (CBT) is for educational purposes only and does not constitute official Centers for Medicare & Medicaid Service (CMS) instructions. All affected entities are responsible for following the applicable laws and regulations; as well as the instructions found at the following link: <http://www.cms.gov/>.

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Course Overview

- MSP Guidelines for Working Aged
- Small Employer Exception for Working Aged
- Working Aged MSP Examples
- Employer Guidelines for Working Aged MSP
- GHP Guidelines for Working Aged MSP



This course will provide an overview of the MSP provisions of the Social Security Act for beneficiaries entitled to Medicare based on age, provide guidelines for the small employer exception, provide examples showing when Medicare would be the secondary payer, and provide employer and Group Health Plan (GHP) guidelines for Working Aged MSP.

MSP Guidelines for the Working Aged

- Medicare is the secondary payer under the Working Aged provisions of MSP if all of the following are true:
 - Beneficiary is age 65 or older and on Medicare due to age
 - Insured person under the GHP is the beneficiary or the spouse of the beneficiary
 - GHP coverage is based upon the current employment status of the insured person
 - Employer employs 20 or more employees, or the GHP is part of a multiple employer or multi-employer plan in which at least one employer of 20 or more employees participates



The MSP provisions of the Social Security Act require GHPs to make payments before Medicare under certain circumstances. Medicare is the secondary payer under the Working Aged provisions of MSP if all of the following conditions are met. First, the beneficiary must be age 65 or older and on Medicare because of age. Second, the insured person under the GHP must be either the beneficiary or the spouse of the beneficiary. Third, the GHP coverage must be based upon the current employment status of the insured person. Fourth, the employer providing the GHP coverage must have 20 or more employees, or if the GHP is part of a multiple employer or multi-employer plan, at least one of the employers in the multiple employer or multi-employer plan employs 20 or more people.

Next, we will provide greater detail on each of the four requirements.

MSP Guidelines for the Working Aged

- Beneficiary is age 65 or older and on Medicare because of age
 - Medicare entitlement commences the first day of the month age 65 is attained (assumes timely application for Medicare)



The first requirement we will examine is that the beneficiary be age 65 or older and on Medicare because of age. This requirement needs little explanation other than Medicare entitlement commences the first day of the month the individual turns age 65, assuming timely application for Medicare was made.

MSP Guidelines for the Working Aged

- The insured person under the GHP is the beneficiary or the spouse of the beneficiary

Beneficiary

Spouse of
beneficiary

- A domestic partner is not considered a spouse under Federal law for purposes of the Working Aged provision

The second requirement is that the insured person under the GHP be either the beneficiary or the spouse of the beneficiary. Under Federal law, a domestic partner is not considered a spouse for Federal purposes, including the Working Aged provision.

MSP Guidelines for the Working Aged

- GHP coverage is based upon current employment status of the insured person
- An individual has current employment status if:
 - The individual is actively working as an employee, is the employer (including a self-employed person), or is associated with the employer in a business relationship; or
 - The aged individual is
 - Not actively working
 - On short-term/long-term disability/sick leave from employer
 - Still carried on the employer's employment rolls; and
 - Has employment-based GHP coverage that is not COBRA continuation coverage



In order for Medicare to be the secondary payer under the Working Aged provisions, the insured person under the GHP must have current employment status with the employer that offers the GHP.

An individual has current employment status if the individual is actively working as an employee, is the employer (including a self-employed person), or is associated with the employer in a business relationship; or the aged individual is not actively working and is on short-term or long-term disability or sick leave from an employer and is still carried on the employer's employment rolls; and the individual has employment-based GHP coverage that is not Consolidated Omnibus Budget Reconciliation Act (COBRA) continuation coverage.

MSP Guidelines for the Working Aged

- Employer employs 20 or more employees with a single employer GHP
 - Full-time and part-time employees counted toward 20 employee threshold
 - Self-employed individuals participating in a GHP are not counted as employees for purposes of determining if the 20 or more employee requirement is met
 - 20 or more requirement is met if the employer employed 20 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding year (the 20 weeks do not have to be consecutive)
 - An employer is considered to have 20 or more employees for each working day of a particular week if the employer has at least 20 full and/or part-time employees on its employment rolls each working day of that week



The final requirement, regarding the number of employees, is dependent upon whether the GHP covers only one employer or if it is a multi-employer/multiple employer plan. We will first discuss the GHP that covers only one employer.

Medicare is the secondary payer of benefits if the employer employs 20 or more employees. Both full-time and part-time employees are counted toward the 20 employee threshold. Self-employed individuals participating in a GHP are not counted as employees for purposes of determining if the 20 or more employee requirement is met. The 20 employee or more requirement is met if the employer employed 20 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding year. Note that the 20 weeks do not have to be consecutive. An employer is considered to have 20 or more employees for each working day of a particular week if the employer has at least 20 full and/or part-time employees on its employment rolls each working day of that week.

Employer Size Guidelines for Working Aged

	Calendar Year	Number of Employees	Medicare Primary	Medicare Secondary
→	2006	Over 19 for all of 2005 and 2006		X
→	2007	Fewer than 20 the entire year		X
→	2008	Fewer than 20 the entire year	X	
→	2009	Over 19 through first 6 months		X Commencing as of week 21
→	2010			X


We will illustrate how the 20 or more employee rule works. Assume an employer employed over 19 employees for all of 2005 and 2006. For the years 2007 and 2008, the employer always had fewer than 20 employees. For the first 6 months of 2009, the employer employed over 19 employees.

Medicare would be the secondary payer during all of the calendar year 2006 because there were 20 or more employees during the preceding year, 2005. Medicare would be secondary for all of 2007 because there were more than 20 employees during all of 2006. Medicare would be the primary payer in 2008 because the employer had fewer than 20 employees during 2008, and fewer than 20 in the preceding year, 2007. Medicare would be the primary payer for the first 20 weeks of 2009. Starting with week 21 of 2009, Medicare would become secondary and remain secondary for the remainder of 2009. Since the employer employed more than 19 employees for more than 20 weeks in 2009, we also know that Medicare will be secondary for all of 2010.

Employer Size Guidelines for Working Aged

- GHP is part of a multiple employer or multi-employer plan in which at least one employer of 20 or more employees participates

Example



Great Lakes Marina Association GHP has 20 marinas participating in plan		
Number of Marinas	Number of Employees	Medicare Status
1	40	Secondary
15	10-19	Secondary
4	Fewer than 10	Secondary

- Medicare is the secondary payer for all marinas, even those that employ fewer than 20 employees.

Now that we have discussed the GHP that covers one employer, we turn our attention to the multiple employer and multi-employer GHP.

The Working Aged provisions are such that if an employer's GHP is a multiple employer or multi-employer plan, and one or more of the employers covered by the plan employs 20 or more employees, then Medicare is the secondary payer for all employers in the plan, regardless of the number of employees a particular employer may have.

As an example, assume the Great Lakes Marina Association has 20 marinas that participate in a multi-employer GHP. Since one of the marinas in the multi-employer GHP employs more than 20 employees, Medicare is the secondary payer under the Working Aged guidelines for all the marinas, even those that have fewer than 20 employees.

Employer Size Guidelines for Working Aged

• Small Employer Exception

- Multiple employer or multi-employer GHP may request an exception to the Working Aged provisions for specifically identified employees (and their spouses) of specifically identified employers with fewer than 20 employees
- Request for exception must be made to the BCRC
- Request must be prospective in nature and is not effective until granted by the BCRC



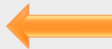


The Working Aged provisions of Medicare Secondary Payer contain a Small Employer Exception (SEE) rule. A GHP that is a multiple employer or multi-employer plan may request that the Working Aged guidelines not be applied to specifically identified employees and their spouses of a specifically identified employer that the GHP identifies as having fewer than 20 employees. The request for exception must be made in writing to the Coordination & Recovery Center (BCRC). The request must be prospective in nature, i.e., it cannot be retroactive. The Small Employer Exception is not effective until it is granted by the BCRC.

Employer Size Guidelines for Working Aged

• Small Employer Exception

Example

<div>Can request a SEE</div> <div></div> <div></div>	Great Lakes Marina Association GHP has 20 marinas participating in plan			
	Number of Marinas	Number of Employees	Medicare Status	
	1	40	Secondary	
	15	10-19	Secondary	
	4	Fewer than 10	Secondary	

- Small Employer Exception could be requested by the GHP for specifically identified employees and their spouses of any or all of the specifically identified marinas, except for the one that has 40 employees

In the example outlined earlier, the GHP could request a Small Employer Exception for any or all of the specifically identified employees and the spouses of the specifically identified employees of the specifically identified marinas, where the number of employees is fewer than 20. Medicare must be the secondary payer for the employees and the spouses of the employees of the larger marina.

Working Aged MSP – Example 1

	Beneficiary	Spouse
✓ Age	70	None
✓ Employer	Mayo Clinic Actively Working	None
✓ Insurance	Medicare & CIGNA through Mayo Clinic	None
✓ Primary	CIGNA	

A number of examples have been prepared that illustrate how the Working Aged provisions of Medicare Secondary Payer work.

In this first example, a 70-year old Medicare-enrolled beneficiary is actively working for the Mayo Clinic. The beneficiary has Medicare and CIGNA insurance as a result of her employment. The beneficiary has no spouse.

CIGNA insurance would be the primary payer of benefits. The four criteria under the Working Aged guidelines have all been met. The beneficiary is age 65 or older and on Medicare because of age. The beneficiary is the insured person under the GHP and the coverage is due to the current employment status of the beneficiary. Mayo Clinic meets the employer size requirement of 20 or more employees. CIGNA will remain the primary payer of benefits for as long as the beneficiary remains employed and covered by the clinic's group health plan.

Working Aged MSP – Example 2

	Beneficiary	Spouse
✓ Age	72	64
✓ Employer	Sears (Retired)	Las Vegas Public Schools (Retired)
✓ Insurance	Medicare, Aetna through Sears, & Nevada Teachers Association HMO through spouse	Nevada Teachers Association HMO
✓ Primary	Medicare	

In this example, a 72-year old Sears retiree has three insurance plans. He has Medicare, he has Aetna as a retiree of Sears, and he is covered by the Nevada Teachers Association HMO through his retired wife.

The primary insurer is Medicare. The beneficiary is older than 65 and is on Medicare because of age. Neither the Aetna coverage nor the Nevada State Teachers Association HMO coverage is due to reason of current employment status. Medicare must be primary because both the beneficiary and his spouse are retired.

Working Aged MSP – Example 3

	Beneficiary	Spouse
✓ Age	71	63
✓ Employer	Ford Motors (Retired)	Sprint (Actively Working)
✓ Insurance	Medicare, Great West through Ford, & WellPoint through spouse	WellPoint
✓ Primary	WellPoint	
✓ Secondary	Medicare	

In example three, the beneficiary is 71 years old and on Medicare. He has Great West insurance from Ford as a retired Ford Motors auto worker. His spouse is age 63 and she works for Sprint. She covers the beneficiary with her WellPoint insurance. The beneficiary has coverage under three policies: Medicare, Great West, and WellPoint.

Medicare Secondary Payer guidelines require that WellPoint pay before Medicare. The beneficiary is over age 65 and on Medicare because of age. The WellPoint coverage is due to the active employment status of his spouse, and Sprint has more than 19 employees. Great West does not pay before Medicare because the beneficiary does not have current employment status with Ford. WellPoint is primary and Medicare is secondary.





Working Aged MSP – Example 4

	Beneficiary	Spouse
✓ Age	66	None
✓ Employer	Wal-mart (Actively Working)	None
✓ Insurance	Medicare & HealthPartners as retiree through city fire department	None
✓ Primary	Medicare	

In this example, the beneficiary is a 66-year old retired fireman who currently works full time as a security guard at Wal-mart. He does not have GHP coverage through Wal-mart. The beneficiary has Medicare and HealthPartners as a retiree through the city fire department.

Medicare is the primary payer in this example. The beneficiary is age 66 and is on Medicare because of age. He is the insured person under the HealthPartners plan, and although he does work full time, the HealthPartners coverage is not due to current employment status. The beneficiary has the HealthPartners coverage as a retiree, not as an employee. If the beneficiary had coverage as a result of his employment at Wal-mart, that coverage would be primary to Medicare.

Working Aged MSP – Example 5

	Beneficiary	Spouse
 Age	65	61
 Employer	Microsoft (Actively Working)	UCLA (Actively Working)
 Insurance	Medicare, United Healthcare through Microsoft, & PacifiCare through spouse	PacifiCare
 Primary	United Healthcare & PacifiCare	
Secondary	Medicare	

In this final example, the beneficiary is 65 years old and works as an accountant for Microsoft. His spouse is age 61 and is a professor at UCLA. The beneficiary is covered by United Healthcare through Microsoft, PacifiCare through his spouse's employment, and Medicare. Both United Healthcare and PacifiCare are primary to Medicare. The beneficiary is age 65 or older and is on Medicare because of age, the employer plans are through the beneficiary or spouse, both employer plans are due to current employment status, and Microsoft and UCLA employ 20 or more employees.

Employer Guidelines for Working Aged MSP

- An employer of an actively working Medicare beneficiary or his/her spouse may not 
 - Refuse coverage to the Medicare beneficiary, or
 - Offer different coverage to the Medicare beneficiary, nor
 - Restrict coverage to the Medicare beneficiary

- An actively working Medicare beneficiary or his/her spouse is free to reject GHP coverage that is offered
 - If the coverage is rejected 
 - Employer cannot offer any coverage that is secondary to Medicare to the Medicare beneficiary
 - Employer cannot sponsor, contribute to or have any involvement with an individual Medigap or Medicare supplement policy for the Medicare beneficiary

Employers must adhere to the following general guidelines regarding Working Aged GHP coverage that is primary to Medicare.

An employer of an actively working Medicare beneficiary or his/her spouse may not refuse to cover, offer different coverage, nor restrict coverage to a Medicare beneficiary because an actively working employee or his/her spouse is on Medicare.

An actively working Medicare beneficiary or his/her spouse does have the right to decline GHP coverage that would otherwise be primary to Medicare. However, if the GHP coverage is declined, the employer is prohibited from offering coverage that is secondary to Medicare or sponsoring, contributing to or having any involvement with an individual Medigap policy or Medicare supplement policy for that Medicare beneficiary.

GHP Guidelines for Working Aged MSP

- A Group Health Plan may not take into account that an actively working employee or a member of his/her family is entitled to Medicare
- When Medicare is secondary, Group Health Plans may not:
 - Offer coverage that pays after Medicare
 - Pay the provider a lesser amount
 - Impose limitations on benefits
 - Apply a higher deductible, coinsurance amount or charge a higher premium
 - Require a person on Medicare to wait longer for coverage to begin
 - Terminate coverage because a person became entitled to Medicare, except as provided under COBRA
 - Provide misleading or incomplete information that could induce a Medicare beneficiary to reject coverage under the employer plan



When administering GHP benefits to an employer, the GHP cannot take into account the fact that an actively working individual or his/her spouse is entitled to Medicare.

When Medicare is the secondary payer under the Working Aged guidelines, the GHP may not offer coverage that pays after Medicare. The GHP may not pay the provider of service a lesser amount, impose limitations on benefits, apply a higher deductible or coinsurance amount, or charge a higher premium because the patient has Medicare. A GHP may not require a person to wait longer for the GHP coverage to begin because they have Medicare. The GHP may not terminate coverage because a person became entitled to Medicare, except as provided in the COBRA law. Finally, the GHP is prohibited from providing misleading or incomplete information that might induce a Medicare beneficiary to reject coverage under the employer plan.

Working Aged MSP – Example 6

- Acme Industries offers
 - GHP coverage for its active employees through Beta Insurance
 - Medicare Advantage Plan for its working aged employees and their spouses called Acme MA
- An aged, actively working Medicare beneficiary or his/her aged spouse may
 - Have coverage through both, with Beta Insurance primary
 - Have coverage through Beta Insurance only
 - May not have coverage only through Acme MA

We want to share additional examples where certain actions taken by an employer or insurer would be contrary to the Working Aged provisions of Medicare Secondary Payer.


In this example, the employer is Acme Industries. Acme Industries offers Group Health Plan coverage for its active employees through Beta Insurance. Acme Industries also offers a Medicare Advantage Plan that they sponsor for their working aged employees and their spouses. The Acme Medicare Advantage Plan is called Acme MA.

An aged actively working Medicare beneficiary or his/her spouse may be covered by both Beta Insurance and Acme MA. If the Medicare beneficiary has coverage through both, Beta Insurance must pay its benefits primary to Acme MA.

An actively working Medicare beneficiary or his/her spouse may be covered by Beta Insurance only.

An actively working Medicare beneficiary or his/her spouse may not have coverage only through Acme MA. This would amount to the beneficiary or spouse refusing GHP coverage (Beta Insurance) and yet still having the employer sponsor a plan that supplements Medicare.

Working Aged MSP – Example 7




	Beneficiary	Spouse
Age	65	61
Employer	None - Retired	Acme Technology
Insurance	Beta Insurance Or \$500 incentive for refusing Beta Insurance	Beta Insurance
		Cannot accept \$500 incentive in lieu of Beta Insurance

John, a Medicare beneficiary, is age 65 and retired. John's spouse, age 61, is employed by Acme Technology, a software firm that employs 150 people. Acme Technology offers GHP coverage through Beta Insurance. Acme Technology has an employee benefit policy that states, if spousal or other dependent Group Health Plan coverage is refused because the spouse or dependent has other health coverage, a \$500 incentive payment will be made to the employee.

John's spouse cannot refuse Beta Insurance and accept the \$500 incentive payment. Although John has other coverage, i.e., Medicare, if the incentive payment were accepted, it would constitute the employer "taking into account" the fact that a working aged individual has Medicare. Action of this nature is prohibited under the Working Aged provision of Medicare Secondary Payer.

Working Aged MSP – Example 8



	Beneficiary	Spouse
Age	66	None
Employer	Self - Consultant	None
Insurance	Beta Insurance through Acme Technology	None
Primary	Beta Insurance	
Secondary	Medicare	

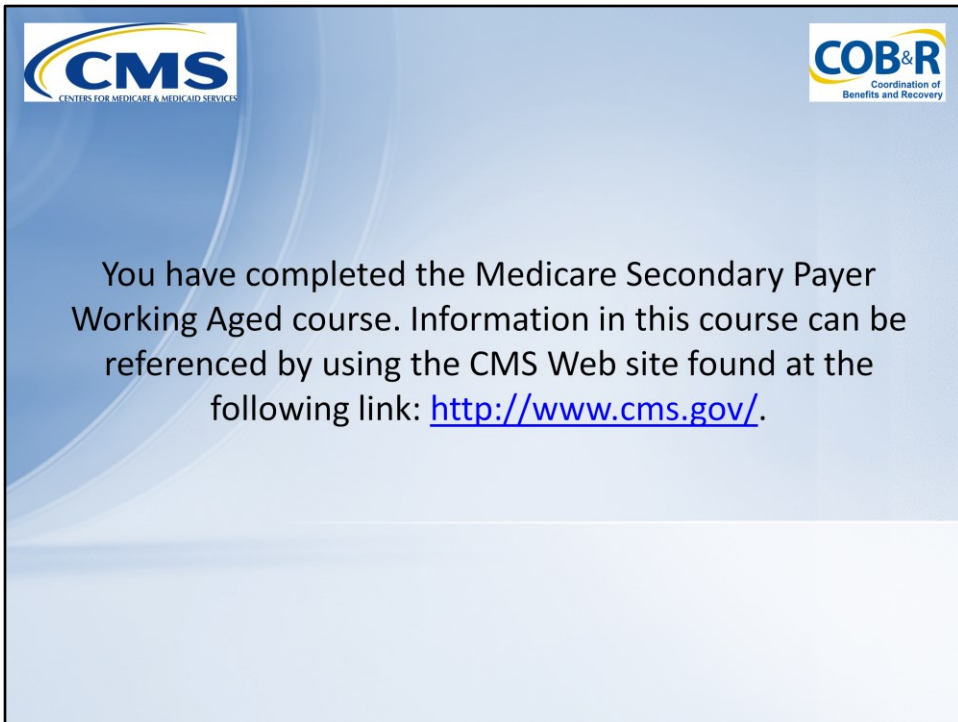
Acme Technology has a consulting agreement with John Smith who is age 66 and a Medicare beneficiary. Because the consulting work Mr. Smith does for Acme is so valuable, Acme Technology, as part of the consulting agreement, allows Mr. Smith to be covered on their Group Health Plan through Beta Insurance. Beta Insurance must be primary to Medicare because even though Mr. Smith is not an employee of Acme Technology, he is associated with them in a business relationship, and thus, has current employment with them.

Key Concepts



- Medicare is the secondary payer when:
 - Beneficiary is age 65 or older and on Medicare because of age;
 - Insured person under the GHP is the beneficiary or spouse;
 - Insured person under the GHP has current employment status with the employer;
 - Current employment status includes individuals associated with the employer in a business relationship; and,
 - Employer employs 20 or more employees, or the GHP is part of a multiple employer or multi-employer plan that has at least one employer with 20 or more employees

We have just covered a great deal of information regarding the Working Aged Medicare Secondary Payer guidelines. To recap, Medicare is the secondary payer under the Working Aged provision when: the beneficiary is age 65 or older and his/her Medicare entitlement is due to age; the insured person under the GHP is the beneficiary or the spouse of the beneficiary; the insured person under the GHP has current employment status with the employer or is associated with the employer in a business relationship that offers the GHP; and the employer that offers the GHP employs 20 or more employees, or the GHP is part of a multiple employer or multi-employer plan that has at least one employer with 20 or more employees.



You have completed the Medicare Secondary Payer Working Aged course. Information in this course can be referenced by using the CMS Web site found at the following link: <http://www.cms.gov/>.



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please go the following URL:
<https://www.surveymonkey.com/s/MSPTrainingSurvey>.

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