



MSP Reporting [Medicare Secondary Payer Reporting]

Teaching An Old Dog New Tricks



Old Dog:

MSP = Medicare Secondary Payer

“Medicare Secondary Payer” is the term used by Medicare when it is not responsible for paying a claim first. When Medicare began on July 1, 1966, it was the primary payer for all beneficiaries, except for those who received benefits from the Federal Black Lung Program or Workers’ Compensation and those who received all covered health care services through the Veterans Health Administration programs.

The sections of the Social Security Act known as the Medicare Secondary Payer (MSP) provisions were originally enacted in the early 1980s and have been amended several times over the lifespan of the law. The liability insurance (including self-insurance) and no-fault insurance MSP provisions were effective December 5, 1980. In 2003, The Medicare Act clarified the position that self-insured entities were also included in the MSP.



Old Dog:

Medicare Secondary Payer

Even as the Medicare law expanded the MSP definition, Medicare did not have an efficient mechanism to identify or evaluate instances where Medicare's liability should have been secondary to the "responsible" party (or its insurance), and could only recoup payment from insurance plans to the extent that payment had been made or could "reasonably be expected to be made promptly."

The Medicare Act of 2003 took no steps to actively pursue settling tortfeasors or Medicare-eligible Plaintiffs. Medicare lacked efficient mechanisms to identify or pursue cases where its liability should have been second to the responsible party or its insurance. Accordingly effectiveness of the MSP was hindered by lack of enforcement.



New Trick:

Section 111 of the Medicare, Medicaid, and SCHIP Extension Act (2007)

On December 29, 2007, the Medicare, Medicaid, and SCHIP Extension Act of 2007 ("MMSEA") was signed into law. MMSEA amended the MSP to impose new mandatory reporting duties on liability insurance plans, private self-insured entities, Group Health Plans, no fault insurance plans and Workers' Compensation plans.



New Trick:

Section 111 of the MMSEA requires certain entities to directly report potentially eligible claimant/plaintiffs to the Centers for Medicare and Medicaid Services (“CMS”). The new reporting requirements are imposed directly on self-insured entities and insurance carriers. Under the new Medicare legislation, insurance carriers and self-insured entities will be fined \$1,000 per day for failure to comply. Further, in paying a settlement or award to a Medicare-eligible claimant/plaintiff, the insurance carrier or self-insured entity will be responsible for “double damages” if the lien is not satisfied in a timely fashion.

MMSEA has a separate section pertaining to group health insurance which has different rules and implementation dates.



NEW TRICK

- ✓ **Mandatory Reporting**
- ✓ **Expansion of Mandatory Reporters**
 - Group Health Plans
- ✓ **Technology Platform for Reporting**
- ✓ **Leverage for Enforcement**
 - Fines and Penalties
- ✓ **Coordination of Benefits**
 - Preservation of Medicare Trust Fund



The Fundamental Purposes of MSP Reporting for Group Health Plans

To enable The Centers for Medicare and Medicaid Services (CMS) to determine whether Medicare is the secondary payer for individuals covered by a GHP.

To prevent overpayments of Medicare payments for Medicare beneficiaries when another Group Health Plan is the primary payer of the claim.



MSP KEY TERMS AND DEFINITIONS

GHP (Group Health Plan) - A **GHP** means a "plan (including a self-insured plan) of, or contributed to by, an employer (including a self-employed person) or employee organization to provide health care (directly or otherwise) to the employees, former employees, the employer, others associated or formerly associated with the employer in a business relationship or their families.

RRE (Responsible Reporting Entity) – An **RRE** is defined as an "entity serving as an insurer or third party administrator for a group health plan...and, in the case of a group health plan that is self-insured and self-administered, a plan administrator or fiduciary."



MSP KEY TERMS AND DEFINITIONS

COB (Coordination of Benefits) - Process to identify primary payers to Medicare for the health benefits available to a Medicare beneficiary and to coordinate the payment process.

COBC (Coordinator of Benefits Contractor) - The Coordination of Benefits (COB) Contractor consolidates the activities that support the collection, management, and reporting of other insurance coverage for Medicare beneficiaries. The purposes of the COB program are to identify the health benefits available to a Medicare beneficiary and to coordinate the payment process to prevent mistaken payment of Medicare benefits. The COB Contractor does not process claims, nor does it handle any mistaken payment recoveries or claims specific inquiries. The Medicare intermediaries and carriers are responsible for processing claims submitted for primary or secondary payment.



MSP KEY TERMS AND DEFINITIONS

Medicare - provides Health Insurance for:

People age 65 or older

People under age 65 with certain disabilities, and

People of all ages with End-Stage Renal Disease (permanent kidney failure requiring dialysis or a

kidney transplant

Four different coverage types:

- o Medicare Part A – Hospital insurance (premium free)

- o Medicare Part B – Supplemental medical insurance (additional premium)

- o Medicare Part C – Alternative health plans placed with an insurance company which can replace Part A and B (additional premium)

- o Medicare Part D – Drug coverage (additional premium)



MSP Report Information – Non-GHP

An "Applicable Plan" must report information to CMS regarding liability insurance (including self-insurance), no-fault insurance, and workers' compensation claims where the injured party is a Medicare Beneficiary. An Applicable Plan for purposes of the "following laws, plans, or other arrangements, including the fiduciary or administrator for such law, plan, or arrangement: (i) Liability insurance (including self insurance)[,] (ii) no-fault insurance[, and] (iii) Workers' compensation laws or plans."



MSP Report Information – Non-GHP

For purposes of the Non-GHP reporting requirements, *liability insurance* (including self-insurance) is coverage that indemnifies or pays on behalf of the policyholder against claims for negligence, inappropriate action, or inaction which results in injury or illness to an individual or damage to property. It includes, but is not limited to, the following:

- automobile liability insurance
- uninsured motorist insurance
- underinsured motorist insurance
- homeowners' liability insurance
- malpractice insurance



MSP Report Information – Non-GHP

Self-Insurance includes any situation in which an individual, or a private governmental entity, carries its own risk instead of taking out insurance with a carrier. This includes responsibility for deductible. *No fault insurance* includes any insurance that pays for medical expenses for injuries sustained on the property or premises of the insured, or in the use, occupancy, or operation of an automobile, regardless of who may have been responsible for causing the accident. Some types of limitability insurance include, but are not limited to the following:

- certain forms of automobile insurance
- certain homeowners' insurance
- commercial insurance plans
- medical payments coverage/personal injury protection/medical expense coverage



MSP Report Information – Non-GHP

Workers' Compensation includes any law or program administered by a governmental entity to provide compensation to workers for work-related injuries and/or illnesses. The term also includes similar compensation programs where the employer is self-insured or indirectly insured through an insurer.



MSP Report Information - GHP

An individual who may be Medicare eligible and currently employed, the spouse or other family member of a worker who is covered by the employed individual's Group Health Plan and who may be eligible for Medicare and for whom Medicare would be a secondary payer for these individuals.

Specifically:

Individuals over the age of 45 who are covered by a Group Health Plan, Multi-Employer or Multiple Employer plan as a result of their own, their spouse, or other family members' active employment.

Individuals covered by a Group Health Plan, Multi-Employer or Multiple Employer plan as a result of their own, their spouse, or other family members' active employment under the age of 45 known to be a Medicare recipient.



MSP Report Information - GHP

Individuals covered by a plan, regardless of the number of full and/or part-time employees, as a result of their own, their spouse, or other family members' active employment with permanent kidney failure (ESRD).

Individuals covered by a Large Group Health Plan (100+ employees) as a result of their own, their spouse, or other family members' active employment and who are receiving Medicare due to a disability.

Individuals receiving kidney dialysis treatment or kidney transplant (ESRD) regardless of their own or a family member's status. (COBRA)



MSP Report Information – GHP Data

Required Data Elements to Generate Creation of the MSP Reporting File:

Beneficiary SSN

Employee SSN

Relationship of Individual to Policy Holder (Employee)

Date of Birth

Gender

SPECIAL NOTE: *These above five items MUST be provided to enable the creation of the MSP Reporting file.*



MSP Report Information – GHP Data

What Must Be Reported?

- The following Required Data Elements:

HICN, if a Medicare Recipient

Beneficiary SSN

First 6 characters of the Beneficiary Last Name

First initial of the Beneficiary First Name

Date of Birth

Gender



MSP Report Information – GHP Data

What Must Be Reported?

Employee last name

Employee SSN

Employer size/employee count

Coverage tier/option

Employee status

Employer TIN



MSP Report Information- Employer Role

Accurate participant census and information

✓ **Current participant**

Employee

Spouse (if applicable)

Dependents (if applicable)

✓ **New Plan Year (Open Enrollment)**

Updates, additions, deletions, changes

✓ **During Plan Year – new participants**



MSP Resources

<http://www.cms.gov/MandatoryInsRep/>