



December 18, 2014

## **Medicare Secondary Payer (MSP) Working Aged Policy for Group Health Plans (GHP) -- Prohibition on Incentives**

*This document provides clarification regarding the interaction between Medicare Secondary Payer provisions and the former Service Contract Act (SCA) (now codified at 41 U.S.C. §§ 6701-6707), and the former Davis-Bacon Act (DBA) (codified in sections of Title 40 of the U.S.C.)*

The MSP provisions of the Social Security Act (SSA) and implementing regulations and policy (see 42 U.S.C. § 1395y(b)(3); C.F.R. § 411.103) prohibit employers or other entities (for example, insurers) from offering Medicare beneficiaries financial or other benefits as incentives not to enroll in, or terminate enrollment in, a Group Health Plan (GHP) that would otherwise be primary to Medicare. However, the Service Contract Act (SCA) (codified at 41 U.S.C. §§ 6701-6707), and the Davis-Bacon Act (DBA) (codified in sections of Title 40 of the U.S.C.) require employers to furnish fringe benefits to certain employees of federal service or construction contractors.

### **Medicare Policy:**

The Medicare Secondary Payer (MSP) provisions stipulate that Medicare is the secondary payer to certain types of insurance or health plans. This includes GHPs that are contributed to, sponsored by, or facilitated by a Medicare beneficiary's employer, where the Medicare beneficiary has current employment status. The MSP provisions prohibit employers and other entities (such as insurers) from encouraging or offering incentives to individuals who are eligible for, or already enrolled in, Medicare to elect enrollment in Medicare instead of enrolling in the GHP.

For example, where the employer's fringe benefit funds that could be used for GHP coverage go to the employee's 401k account instead, the employer is, in effect, offering an incentive to not enroll in the employer's GHP. Under these facts, the employees are receiving a benefit—a retirement fund contribution—as a result of declining GHP coverage that would otherwise be primary to Medicare. These incentives are prohibited by 42 U.S.C. § 1395y(b)(3).

**Effect on Medicare Beneficiaries:**

Employees with current employment status who are Medicare beneficiaries and are covered by the SCA and/or DBA may *not* decline GHP coverage that would otherwise be primary to Medicare offered by their employers in exchange for other fringe benefits, unless they have coverage that is *properly primary* through another source, such as a working spouse.

Where Medicare beneficiaries affected by this policy are able to decline such fringe benefits, beneficiaries are not required to enroll in the employer's GHP.

**Resources:**

Please check out the following websites if you would like more information on how the Medicare Secondary Payer program works and how we coordinate benefits.

- **How Medicare Coordinates with Other Coverage:** <http://www.medicare.gov/supplement-other-insurance/how-medicare-works-with-other-insurance/who-pays-first/which-insurance-pays.html>
- **Medicare and You:** <http://www.medicare.gov/Pubs/pdf/10050.pdf>
- **Who Pays First:** <http://www.medicare.gov/Pubs/pdf/02179.pdf>
- **Medicare's Coordination of Benefits Overview:** <http://go.cms.gov/cobro>