

TEFRA MEDICARE SECONDARY PAYER

IMPORTANT:

YOUR ACTIONS CAN IMPACT YOUR GROUP RATES IN THE FUTURE

The following is an explanation of *TEFRA AND THE MEDICARE SECONDARY PAYER RULES*. **This is important to you if you have any employees or employee spouses age 65 or older on the AGC Health Plan.** Your AGC Health Plan must pay Medicare recipients as primary unless you take the action instructed in this explanation. In order to avoid potential impact to your group's medical rates, you must take action to have Medicare pay primary.

You must return a letter using the sample provided along with an attachment that lists all employees and/or dependent spouses age 65 or older. You must do this if you had less than 20 employees for each working day in each of 20 or more calendar weeks (not necessarily consecutive) in the current calendar year or the preceding calendar year. This count must include all full-time, part-time, employees on disability benefits (up to six months following termination of employment) and leased employees. Also, if applicable, you must include all employees of all affiliated businesses owned by a common entity.

Medicare Secondary Payer Rules

The Medicare Secondary Payer (MSP) rules determine whether Medicare is the primary or secondary payer when a group health plan or insurance carrier provides coverage to an individual who is also covered by Medicare on account of age, disability or end-stage renal disease (ESRD). In general, the MSP rules prohibit certain actions by a group health plan that would take into account a current employee's Medicare entitlement (actual coverage). These rules also prohibit the employer or the group health plan from offering financial or other incentives to an individual entitled to Medicare in order to have them opt out of employer provided group health coverage. The group health plan must provide to employees and spouses who are entitled to Medicare the same benefits, under the same conditions, as provided to employees and spouses who are not entitled to Medicare. There are special rules for small employers with respect to age-based and disability-based Medicare entitlement, but not for entitlement due to ESRD.

The MSP rules apply to employees in "current employment status" with the employer and to their spouses and family members and to certain self-employed individuals and other individuals who are associated with the employer in a business relationship and covered by the employer's group health plan. Employees who are not actively working are considered to be in "current employment status" if they have been receiving disability for no more than six months, or not actively at work but have reemployment rights and have not been terminated by the employer.

The MSP rules prohibit an employer or group health plan from taking into account Medicare entitlement on the basis of age or disability by any of the following actions:

- Failure to pay primary benefits;
- Offering coverage that is secondary to Medicare to individuals entitled to Medicare;
- Terminating coverage because an individual is entitled to Medicare, except as permitted by COBRA;
- In case of a large group health plan, denying or terminating coverage because an individual is entitled to Medicare on the basis of disability;
- Imposing limitations on benefits for a Medicare entitled employee that do not apply to other employees;
- Charging a Medicare entitled employee higher premiums;
- Requiring a Medicare entitled employee to wait longer for coverage to begin;
- Paying providers or suppliers less for services furnished to a Medicare entitled employee than for the same services furnished to an employee who is not entitled to Medicare;
- Inducing an employee who is entitled to Medicare to reject the employer plan through false or misleading statements or through financial incentives;
- Requesting that providers or suppliers bill Medicare first for services for an employee who is entitled to Medicare and covered under the group health plan;
- Refusing to enroll an individual for whom Medicare would be secondary when enrollment would be available to similarly situated individuals for whom Medicare would not be the secondary payer.

Generally, a group health plan can terminate the COBRA coverage of a qualified beneficiary before the end of their COBRA coverage period if that individual first becomes eligible for Medicare after electing COBRA coverage.

The MSP rules only apply to individuals currently enrolled in Medicare Part A or Medicare Part A and Part B. The MSP rules do not apply to individuals enrolled in Part B only, or to individuals enrolled in Part A on the basis of a monthly premium, or to anyone under the age of 65 (except for certain disability or ESRD situations), or to retirees who are covered under their employer's group health plan on account of past employment.

Applying the MSP Rules to Employers

AGE-BASED MEDICARE

Where Medicare entitlement is based on age, the MSP rules apply to employers that have 20 or more employees on each working day in 20 or more calendar weeks in either the current calendar year or preceding calendar year. The employer must count all employees, including part-time, temporary or casual employees. The employer must count an employee on a working day even if the employee did not work that day. Self-employed individuals are not counted as employees. If the number of employees satisfies the 20-employee test, the MSP rules apply even if fewer than 20 employees participate in the plan. The 20-employee test must be run at the time the individual receives services for which Medicare benefits are claimed.

DISABILITY BASED MEDICARE

Where Medicare entitlement is based on disability, the MSP rules apply to large group health plans. A large group health plan is a plan of an employer that normally employed at least 100 employees on a typical business day during the previous calendar year. This means that the employer must have 100 or more employees, whether full-time or part-time, on at least 50% of its regular business days during the previous calendar year. Employers in The AGC Health Plan are subject to the MSP rules if they have an employee or spouse on disability based Medicare, because there are employers in The AGC Health Plan that meet the 100 or more employee requirement. The small employer exemption described below does not apply.

RULES FOR COUNTING EMPLOYEES

For purposes of counting employees for both age based and disability based Medicare, it is important to note that, in addition to all full-time and part-time employees, the employer must include leased employees under IRC 414(n), employees of an affiliated service group under IRC 414(m), and all employees of a controlled group of corporations or businesses under IRC 52(a) or 52(b).

EXEMPTION FROM MSP FOR SMALL EMPLOYERS IN THE AGC HEALTH PLAN

Exemption from the MSP rules helps keep the health insurance rates for small employers down because Medicare is primary on health claims of the Medicare entitled employees and spouses.

The MSP rules provide that if an employer with less than 20 employees participates in a multiple employer group health plan such as the AGC Health Plan it is still subject to the age based Medicare MSP rules if one employer in the multiple employer group health plan has 20 or more employees. The AGC Health Plan is a multiple employer group health plan with employers with more than 20 employees

However, an employer in the AGC Health Plan with fewer than 20 employees still can be exempt from the MSP rules — but only if it takes affirmative action to be exempt.

To be exempt from the MSP rules the employer must send a letter to The AGC Health Plan stating the number of employees that the employer employs and certifying that the employer does not meet the 20-employee threshold. An attachment to the letter must identify those age based Medicare eligible individuals who are covered by the plan.

The AGC Health Plan will then notify Medicare that the employer is exempt and will send a letter to the affected employees notifying them and their covered spouses that The AGC Health Plan has exempted the employer from the MSP rules and that Medicare is their primary payer. A sample letter to The AGC Health Plan is provided for an employer's use. An employer also may be asked to submit such a letter at the time a claim is filed on behalf of an employee who is covered by both The AGC Health Plan and Medicare.

To be eligible for this exemption the employer must have fewer than 20 employees for each working day in 20 or more calendar weeks in both the current and preceding calendar years.

Employers should notify the Administrator, *THINC*, whenever their status changes under the MSP rules due to an employee or spouse becoming eligible for Medicare or if the employer has fewer than or more than 20 employees.

Employers should consult with their employment law or employee benefits counsel on compliance with TEFRA and the MSP Rules.

EMPLOYER MSP EXEMPTION LETTER – SAMPLE

[Employer letterhead]

[Date]

AGC Health Plan
c/o *thinc.* Service Center
700 N. Hayden Island Dr. #250
Portland, OR 97217

Re: Exemption from Medicare Secondary Payer Rules

To Whom It May Concern:

In accordance with an election being made by the AGC Health Plan to exempt us from the Medicare Secondary Payer rules, we hereby certify to The AGC Health Plan that we are a small employer as that term is defined in the Medicare statute. In support of this certification, we have reviewed our employment records and we can certify that the number of employees we currently employ is _____ and we did not have 20 or more employees for each working day in each of 20 or more calendar weeks in the current calendar year and the preceding calendar year. For this purpose we have included in our count of employees all full-time, part-time, employees on disability benefits (up to six months following termination of employment) and leased employees. Also, if applicable, we have included in our count all employees of affiliated service groups and controlled groups of businesses of which we are a member.

A list of our employees and/or their dependent spouses that are age 65 or older who are enrolled in Medicare Part A and covered by The AGC Health Plan is attached.

Sincerely,

[Name]

[Title]

[Company Name]

(see Attachment Sample on back)

EMPLOYER MSP EXEMPTION LETTER ATTACHMENT – SAMPLE

Working Medicare Employees Affected by Exemption from
Medicare Secondary Payer Rules

List all employees and/or dependent spouses age 65 or older who are enrolled in Medicare and are covered by The AGC Health Plan.

<u>Name</u>	<u>Date of Birth</u>	<u>SSN/HIC</u>
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