

MSP Employer Size Guidelines for GHP Arrangements - Part 1 Introduction

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CMS
CENTERS FOR MEDICARE & MEDICAID SERVICES

COB&R
Coordination of
Benefits and Recovery

MMSEA Section 111 Group Health Plan

Medicare Secondary Payer Employer Size Guidelines - Part 1

Version 6.8, 07/03/2023
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<https://go.cms.gov/mirghp>.

Slide notes

Welcome to the Medicare Secondary Payer (MSP) Employer Size Guidelines for Group Health Plan (GHP) Arrangements - Part 1.

Slide 2 - of 31 - Disclaimer

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 and Medicaid Services (CMS) instructions for the MMSEA Section 111 implementation. All affected entities are responsible for following the instructions found at the following link:

<https://go.cms.gov/mirghp>.

Slide notes

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 Services (CMS) instructions for the MMSEA Section 111 implementation.

All affected entities are responsible for following the applicable statutes, regulations, and CMS instructions in regards to MSP employer size guidelines for Group Health Plan arrangements found in 42 U.S.C. 1395y(b), 42 C.F.R. 411.101 and 411.170, and at the following link: <http://www.cms.gov/>.

Slide 3 of 31 - Course Overview

Course Overview

- Employer size as it relates to MSP requirements for
 - Working Aged
 - Disability
 - ESRD
- Employer size examples
- Multi-employer/multiple employer defined
 - When a single employer falls under these rules
- Small Employer Exception Overview
- Employer Size Calculation - See Part 2

**Slide notes**

This course provided information on how employer size relates to the Medicare Secondary Payer (MSP) requirements for Working Aged, Disability, and End Stage Renal Disease (ESRD) and provided examples on how to correctly determine employer size.

It defined a multi-employer/multiple employer plan and explained when a single employer falls under the multi-employer/multiple employer rules for MSP. It provided a high-level overview on the Small Employer Exception.

For a discussion of the Responsible Reporting Entities (RREs) responsibilities for calculating and submitting employer size updates and examples of how to report employer size changes, refer to Part 2 of this course.

Slide 4 of 31 - Employer Size Guidelines

Employer Size Guidelines

MSP Provision	
Working Aged & Disability	Based on employer size (i.e., number of employees, not the number of covered individuals)
ESRD	Not based on any employer size restrictions

Slide notes

The MSP requirements for Working Aged and Disability require information on employer size to determine the correct primary payer.

Employer size is based on the number of employees, not the number of individuals covered under the Group Health Plan (GHP). The MSP requirements for ESRD are not based on any employer size restrictions.

Slide 5 of 31 - ESRD**ESRD**

Medicare is secondary payer for 30-month coordination period

- Regardless of employer size
- Regardless of whether GHP covers a single employer or is a multi-employer/multiple employer plan
- Regardless of the basis of coverage in the GHP

For additional information regarding ESRD see:

- <https://www.cms.gov/ESRDGeneralInformation>

Slide notes

For ESRD, Medicare is the secondary payer for a 30-month coordination period, regardless of the employer size, regardless of whether the GHP covers a single employer or is a multi-employer/multiple employer plan and regardless of the basis of coverage in the GHP.

Additional information regarding ESRD MSP may be found at the following link:

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

Slide 6 of 31 - Employer Size Guidelines

Employer Size Guidelines Working Aged and Disability

- Employer size is based on size of entire company or corporation, not just the subsidiary
- Use total number of employees in an organizational structure (i.e., parent companies, subsidiaries, and sibling companies)
- Subsidiaries of foreign companies must count the number of employees of the organization worldwide

Slide notes

For Working Aged and Disability MSP, employer size must be based on the size of the entire company or corporation, not just the subsidiary. When calculating the number of employees, GHPs should use the total number of employees in an organizational structure (i.e., parent companies, subsidiaries, and sibling companies). Subsidiaries of foreign companies must count the number of employees of the organization worldwide.

Slide 7 of 31 - Determining Employer Size Example

Determining Employer Size Example

- Single foreign employer with a U.S. subsidiary
 - Subsidiary company has 12 employees
 - Parent company in Sweden has 18,000 employees
- Employee count must include number of employees worldwide
 - Number of employees for this employer is 18,012

Slide notes

Assume a Swedish employer has a subsidiary company in the United States. The subsidiary company has 12 employees. The parent company is physically located in Sweden and has 18,000 employees in Sweden.

Employee count must include the number of employees worldwide. Therefore, the number of employees for this employer for Medicare Secondary Payer purposes is 18,012.

Slide 8 of 31 - Multi-Employer/Multiple Employer GHP

Multi-Employer/Multiple Employer GHP

Any trust, plan, association or any other arrangement that is sponsored jointly by two or more employers (sometimes called a multiple employer plan) or by employers and unions (as under the Taft-Hartley law), where they

- Contribute, sponsor, directly provide health benefits or
- Facilitate directly or indirectly the acquisition of health insurance by an employer member

If such facilitation exists, the employer is a participant in a multi-employer/multiple employer GHP even if it has a separate contract with an insurer

Slide notes

Special rules apply when the GHP is a multi-employer/multiple employer plan. A multi-employer/multiple employer plan is defined as any trust, plan, association, or any other arrangement that is sponsored jointly by two or more employers or by employers and unions (as under the Taft-Hartley law), where they contribute, sponsor, directly provide health benefits, or facilitate, directly or indirectly the acquisition of health insurance by an employer member.

If such facilitation exists, the employer is a participant in a multi-employer/multiple employer GHP, even if it has a separate contract with an insurer.

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Employer Size Guidelines Working Aged

Employer Size and Working Aged Quick Reference			
Condition	Employer	Primary Payer	Secondary Payer
Working Aged (65+) and covered by Employer GHP	<ul style="list-style-type: none"> Single employer has 20 or more employees; and Single employer is the sponsor or contributor to the GHP 	GHP	Medicare
	<ul style="list-style-type: none"> Two or more employers are sponsors or contributors to a multi-employer/multiple employer plan; and At least one employer has 20 or more employees 	GHP	Medicare

Slide notes

Medicare is the secondary payer to GHPs for the working aged where either a single employer of 20 or more full and/or part-time employees is the sponsor of the GHP or contributor to the GHP, or two or more employers are sponsors or contributors to a multi-employer/multiple employer plan, and a least one of the employers has 20 or more full and/or part-time employees.

Slide 10 of 31 - Employer Size Guidelines

Employer Size Guidelines Working Aged

Employer Size and Working Aged Quick Reference			
Condition	Employer	Primary Payer	Secondary Payer
Working Aged (65+) and covered by Employer GHP	<ul style="list-style-type: none"> Has fewer than 20 employees; and Sponsors/contributes to a single-employer GHP 	Medicare	GHP
	<ul style="list-style-type: none"> Has fewer than 20 employees; and Participates in a multi-employer/multiple employer plan (i.e., covers at least one employer that employs 20 or more employees) 	GHP	Medicare

Slide notes

If an employer, having fewer than 20 full and/or part-time employees, sponsors or contributes to a single-employer GHP, the MSP rules applicable to individuals entitled to Medicare on the basis of age do not apply to such individuals. Medicare is the primary payer.

Nonetheless, if an employer that has fewer than 20 full and/or part-time employees participates in a multi-employer or multiple employer GHP and at least one participating employer has at least 20 full and/or part-time employees, these MSP rules apply to all individuals entitled to Medicare on the basis of age, including those associated with the employer having fewer than 20 employees. Medicare is the secondary payer.

Slide 11 of 31 - Working Aged Rules

Working Aged Rules - Small Employer Exception (SEE)

- When an employer participates in a multi-employer/multiple employer plan and at least one participating employer has at least 20 employees, Working Aged Rules apply to all individuals entitled to Medicare on the basis of age
- Law provides that a GHP (or its authorized insurer) may be granted a SEE to the Working Aged provisions for specifically identified employees and specifically identified spouses
 - Entitled to Medicare on the basis of age who are covered by an employer with fewer than 20 employees

Slide notes

When an employer participates in a multi-employer/multiple employer plan and at least one participating employer has at least 20 full and/or part-time employees, the Working Aged MSP rules apply to all individuals entitled to Medicare on the basis of age, including those associated with the employer having fewer than 20 employees.

However, the law provides that a multi-employer GHP (or its authorized insurer) may be granted a Small Employer Exception (SEE) to the Working Aged provisions for specifically identified employees and specifically identified spouses entitled to Medicare on the basis of age and who are covered as a named insured or spouse (covered individual) of an employer with fewer than 20 full and/or part-time employees.

For more information on the SEE please view the Small Employer Exception CBT.

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Working Aged Rules - Small Employer Exception (SEE)

- Request for Small Employer Exception
 - Must be made in writing to the BCRC
 - Must be prospective in nature
 - Not effective until granted by the BCRC
- Once a Small Employer Exception has been granted
 - Notice must be given to affected employers and plans
 - The BCRC must be notified if the exception no longer applies to any given individual
 - Medicare will be the primary payer of health benefits for those specifically identified individuals qualifying under the Working Aged requirement for those employers of fewer than 20
- Only applies to the MSP Working Aged Provision

Slide notes

The request for this exception must be made in writing to the Benefits Coordination & Recovery Center (BCRC). The request must be prospective in nature, i.e., it cannot be retroactive. The SEE is not effective until it is granted by the BCRC.

If granted, notice must be given to affected employers and plans. The GHP or its authorized insurer must also notify the BCRC whenever the exception no longer applies to any identified individual.

Once approved, Medicare will be the primary payer of health benefits for those specifically identified individuals qualifying under the Working Aged requirement for those employers of fewer than 20.

Please note: The SEE applies only to the MSP Working Aged provision.

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Working Aged Rules - Small Employer Exception (SEE)

- Information on how to request a Small Employer Exception can be found at:
<https://www.cms.gov/Medicare/Coordination-of-Benefits-and-Recovery/EmployerServices/Small-Employer-Exception.html>
- Provisions for the Small Employer Exception of the MSP statute can be found at: 42 U.S.C. 1395y (b) (1) (A) (iii) and 42 CFR 411.172 (b)

Slide notes

Information on how to request a Small Employer Exception can be found at the following link:
<http://www.cms.gov/Medicare/Coordination-of-Benefits-and-Recovery/EmployerServices/Small-Employer-Exception.html>.

Provisions for the Small Employer Exception of the MSP statute can be found at: 42 U.S.C. 1395y (b) (1) (A) (iii) and 42 CFR 411.172 (b).

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Working Aged Rules - 20 or More-Employee Threshold

- Full-time and part-time employees must be included
- 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
- Requirement is based on number of employees, not number of people covered under the plan
- Employers who did not meet the requirement during the previous calendar year may meet it at some point during the new calendar year
 - At that point Medicare would become the secondary payer for the remainder of that year and through the next year

Slide notes

For the purposes of determining the 20 or more-employee threshold under the Working Aged rules, full-time and part-time employees must be included.

The 20 or more-employee 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.

The requirement is based on the number of employees, not the number of people covered under the plan.

Employers who did not meet the requirement during the previous calendar year may meet it at some point during the new calendar year, and at that point Medicare would become the secondary payer for the remainder of that year and through the next year.

For the purposes of determining the 20 or more-employee threshold under the Working Aged rules, full-time and part-time employees must be included.

The 20 or more-employee 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.

The requirement is based on the number of employees, not the number of people covered under the plan.

Employers who did not meet the requirement during the previous calendar year may meet it at some point during the new calendar year,

and at that point Medicare would become the secondary payer for the remainder of that year and through the next year.

Slide 15 of 31 - Working Aged Rules

Working Aged Rules - 20 or More-Employee Threshold

- 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
- An individual is considered to be on the employment rolls even if the employee does not work on a particular day
- Self-employed individuals participating in a GHP are not counted

Slide notes

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.

An individual is considered to be on the employment rolls even if the employee does not work on a particular day.

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.

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Working Aged Rules

20 or More-Employee Threshold Example

Calendar Year	Number of Employees	Medicare Primary	Medicare Secondary
2006	20 or more for entire year	Unknown - Dependent on 2005 employee count	Unknown - Dependent on 2005 employee count
2007	Fewer than 20 the entire year		X
2008	Fewer than 20 the entire year	X	
2009	20 or more through first 19 weeks		X Commencing as of week 20
2010			X

Slide notes

Assume an employer employed 20 or more employees for all of 2006. For the years 2007 and 2008, the employer always had fewer than 20 employees. For the first 19 weeks of 2009, the employer employed 20 or more employees.

Medicare would be the secondary payer to GHP coverage during all of the calendar year 2007 because there were 20 or more employees during the preceding year, 2006.

Medicare would be primary to GHP coverage in 2008 because the employer had fewer than 20 employees during 2008 and fewer than 20 in the preceding calendar year of 2007.

Medicare would be the primary payer for the first 19 calendar weeks of 2009. Starting week 20 of 2009, Medicare would become secondary and remain secondary for the remainder of 2009.

Since the employer employed 20 or more employees for more than 20 calendar weeks in 2009, Medicare will also be secondary for all of 2010.

For this example, we chose not to list an employee count for the year 2005. Therefore, it is unknown if Medicare was primary or secondary for the first 19 weeks of 2006.

Slide 17 of 31 - Working Aged Rules

Working Aged Rules

20 or More-Employee Threshold Example

Calendar Year	Number of Employees	Medicare Primary	Medicare Secondary
2006	20 or more for entire year	Unknown - Dependent on 2005 employee count	Unknown - Dependent on 2005 employee count
2007	20 or more for entire year		X
2008	20 or more for entire year		X
2009	Fewer than 20 through first 6 months		X
2010		X (As of 1/1/2010)	

• 20 or more calendar weeks do NOT have to be consecutive

Slide notes

On the flip side, assume an employer employed 20 or more employees for all of 2006. For the years 2007 and 2008, the employer always had 20 or more employees.

Medicare would be the secondary payer during all of calendar years 2007 and 2008 because there were 20 or more employees during the preceding years, 2006 and 2007 respectively.

For the first 6 months of 2009, the employer employed fewer than 20 employees. Since there is no “20 week rule” for employers that get smaller, Medicare will not become the primary payer over GHP coverage until January 1, 2010.

Medicare will remain primary payer in 2010 until the employer employs 20 or more employees for 20 or more calendar weeks in the current year. Remember, the 20 or more calendar weeks do NOT have to be consecutive.

Medicare will become secondary payer as soon as the 20 or more employee, for 20 or more weeks threshold is met.

For this example, we chose not to list an employee count for the year 2005. Therefore, it is unknown if Medicare is primary or secondary for the first 19 weeks of 2006.

Slide 18 of 31 - Single Employer

Single Employer Multi-Employer/Multiple Employer Rules for Working Aged

- Employer participates in multi-employer or multiple employer plan in which at least one employer employs at least 20 employees
- When such participation occurs, Medicare is secondary under the Working Aged provisions for all employees and their spouses in the plan that are entitled to Medicare on the basis of age
- Employees of corporations that are members of the same group of corporations are considered to be employed by a single employer
- Employees of trades or businesses are treated as if they are employed by a single employer, whether or not the trades or businesses are incorporated

Slide notes

When an employer participates in a multi-employer or multiple employer GHP and at least one participating employer has at least 20 full and/or part-time employees, the Working Aged MSP rules apply to all employees and their spouses in the plan that are entitled to Medicare on the basis of age, including those associated with the employer having fewer than 20 employees.

Employees of corporations that are members of the same group of corporations are also considered to be employed by a single employer.

Employees of trades or businesses are treated as if they are employed by a single employer, whether or not the trades or businesses are incorporated.

Slide 19 of 31 - Working Aged Rules

Working Aged Rules

Multi-Employer/Multiple Employer Rules Example

- Multi-Employer/Multiple Employer Plan
 - Pipefitters Local 777 has 15 members who are covered by Pipefitters Insurance

6 members work for Alpha Inc. that employs 75
7 members work for Beta Inc. that employs 120
2 members work for Gamma Inc. that employs 12

- Medicare is secondary for all Medicare-enrolled employees (and their spouses) because there is at least one employer with at least 20 employees

Slide notes

Pipefitters Local number 777 has 15 members. The union members have Pipefitters Insurance as their GHP. Six of the 15 work for Alpha Incorporated. Alpha has a total of 75 employees.

Seven of the union members work for Beta Incorporated that has a total of 120 employees. Two union members work for Gamma Incorporated. Gamma has only 12 full and/or part-time employees. Since all of the requirements are met,

Medicare is the secondary payer for all Medicare-enrolled employees and the spouses of the employees of Alpha Inc., Beta Inc., and Gamma Inc. because there is at least one company who employs more than 20 employees.

Medicare is the secondary payer for the two union members (and their spouses) that work for Gamma Inc. because their employer participates in a multi-employer/multiple employer plan in which at least one employer has 20 or more employees.

Slide 20 of 31 - Employer Size Guidelines for Disability

Employer Size Guidelines for Disability

Employer Size and Disability Quick Reference			
Condition	Employer	Primary Payer	Secondary Payer
Disabled Employee or Family Member Covered by LGHP	Single Employer with 100 or more employees	LGHP	Medicare
	Employer with fewer than 100 employees, and NOT part of a multi-employer/multiple employer plan where any employer has 100 or more employees	Medicare	LGHP

Slide notes

Medicare is secondary payer for claims for beneficiaries under age 65 who have Medicare because of a disability and who are covered under a Large Group Health Plan (LGHP) through their current employment or through the current employment of any family member by a single employer with 100 or more employees.

If the LGHP employer employs fewer than 100 employees and the LGHP employer is NOT part of a multi-employer or multiple-employer plan where any employer has 100 or more employees, Medicare is the primary payer of benefits.

Slide 21 of 31 - Disability Rules

Disability Rules

100 or More Employee Threshold

- Include full-time and part-time employees
- Requirement is met if the single employer, NOT belonging to a multi-employer/multiple employer plan, employed 100 or more employees on 50% or more of its business days in the previous calendar year
- An employer is considered to have 100 or more employees on a particular day if the employer has at least 100 full and/or part-time employees on its employment rolls that day
- An individual is considered to be on the employment rolls even if the employee does not work on a particular day
- Self-employed individuals participating in a GHP are not counted

Slide notes

For the purposes of determining the 100 or more-employee threshold under the Disability rules, both full-time and part-time employees must be counted toward the 100 or more-employee threshold.

For a single employer NOT belonging to a multi-employer/multiple employer plan, the 100 or more employee requirement is met if the employer employed 100 or more employees on 50% or more of its business days in the previous calendar year.

An employer is considered to have 100 or more employees on a particular day if the employer has at least 100 full and/or part-time employees on its employment rolls that day.

An individual is considered to be on the employment rolls even if the employee does not work on a particular day.

Self-employed individuals participating in a GHP are not counted as employees for purposes of determining if the 100 or more-employee requirement is met.

Slide 22 of 31 - Disability Rules

Disability Rules

100 or More Employee Threshold Example

Calendar Year	Number of Employees	Medicare Primary	Medicare Secondary
2006	100 or more for entire year	Dependent on 2005 employee count	Dependent on 2005 employee count
2007	100 or more for entire year		X (100 or more in 2006)
2008	Fewer than 100 for 75% of its business days		X (100 or more in 2007)
2009	100 or more for 50% or more of its business days	X (<100 in 2008)	
2010			X (100 or more in 2009)

Slide notes

Assume a single employer, NOT belonging to a multi-employer/multiple employer plan, employed 100 or more employees in both 2006 and 2007.

In 2008, the employer had fewer than 100 employees for 75% of its business days, and in 2009, employment increased to 100 or more employees for 50% or more of its business days.

Medicare would be the secondary payer to GHP coverage in 2007 because the employer had 100 or more employees during 2006.

Medicare would be secondary to the GHP coverage during 2008 because in 2007 the employer met or exceeded 100 employees for the entire year.

Medicare would be primary payer for all of 2009 because the employer employed fewer than 100 employees for 50% or more of its business days in 2008.

Medicare will be secondary for all of 2010 because the employer again had 100 or more employees on 50% or more of its business days in 2009.

Please note that the MSP status for 2006 is dependent upon the number of employees employed in the year 2005, which is why 2006 is not mentioned in this example.

Slide 23 of 31 - Disability Rules

Disability Rules

Calculating Number of Employees Per Business Days

- Example: total number of business days is 260; 50% of business days is 130

Period of Time in 2006	# of Days in Period	# of Employees for Period	% of Days Met with 100 or More Employees	Actual # of Days with 100 or more Employees
01/01/2006 - 03/03/2006	45 Days	70	None	None
03/06/2006 - 06/30/2006	85 Days	100	33%	85
07/06/2006 - 12/31/2006	130 Days	90	None	None

Slide notes

This example demonstrates how to calculate the number of employees per business days. Assume that the total number of regular business days in a year for this company is 260.

Therefore, 50% of the regular business days would equal 130. In 2006, the employer had 45 regular business days with 70 employees on its rolls; 85 days with 100 employees; and 130 days with 90 employees.

As the chart demonstrates, the employer had 100 employees on only 33% of its regular business days. Since the number of days the employer had 100 or more employees is less than the required 50% of its regular business days,

Medicare is primary for all enrolled employees and family members entitled to Medicare because of disability for the entire year of 2007.

Slide 24 of 31 - Disability Rules

Disability Rules

Calculating Number of Employees Per Business Days

- Example: total number of business days is 260; 50% of business days is 130

Period of Time in 2008	# of Days in Period	# of Employees for Period	% of Days Met with 100 or More Employees	Actual # of Days with 100 or more Employees
01/01/2008 - 04/30/2008	86 Days	68	None	None
05/01/2008 - 10/23/2008	130 Days	100	50%	130
10/24/2008 - 12/31/2008	44 Days	98	None	None

Slide notes

This is another example demonstrating how to calculate the number of employees per business days. In this example, also assume that the total number of regular business days for this employer is 260, which means that 50% of 260 days is 130 days.

In 2008, this employer had 68 employees on his rolls for 86 days, 100 employees for 130 days and 98 employees for 44 days.

The one period where the employer had 100 employees for 130 days met the requirement for MSP Disability, since the 130 days equates to 50% of the company’s regular business days for the year.

Medicare is secondary for all employees and their family members who are entitled to Medicare because of disability for the year 2009.

Slide 25 of 31 - Multi-Employer/Multiple Employer GHP

Multi-Employer/Multiple Employer GHP

Any trust, plan, association or any other arrangement that is sponsored jointly by two or more employers (sometimes called a multiple employer plan) or by employers and unions (as under the Taft-Hartley law), where they

- Contribute, sponsor, directly provide health benefits or
- Facilitate directly or indirectly the acquisition of health insurance by an employer member

If such facilitation exists, the employer is a participant in a multi-employer/multiple employer GHP even if it has a separate contract with an insurer

Slide notes

Multi-Employer/Multiple Employer GHP. Previous slides discussed special rules that apply to Working Aged MSP when a multi-employer/multiple employer plan is involved. Special rules apply to Disability MSP as well.

The definition of a multi-employer/multiple employer plan under Disability MSP is the same, but the small employer exception provision does not apply to Disability MSP.

As stated previously, a multi-employer/multiple employer plan is defined as any trust, plan, association or any other arrangement that is sponsored jointly by two or more employers or by employers and unions (as under the Taft-Hartley law), where they contribute, sponsor, directly provide health benefits, or facilitate directly or indirectly the acquisition of health insurance by an employer member.

If such facilitation exists, the employer is a participant in a Multi-Employer/Multiple Employer GHP even if it has a separate contract with an insurer.

Previous slides discussed special rules that apply to Working Aged MSP when a multi-employer/multiple employer plan is involved. Special rules apply to Disability MSP as well.

The definition of a multi-employer/multiple employer plan under Disability MSP is the same, but the small employer exception provision does not apply to Disability MSP.

As stated previously, a multi-employer/multiple employer plan is defined as any trust, plan, association or any other arrangement that is sponsored jointly by two or more employers or by employers and unions (as under the Taft-Hartley law), where they contribute, sponsor, directly provide health benefits, or facilitate directly or indirectly the acquisition of health insurance by an employer member.

If such facilitation exists, the employer is a participant in a Multi-Employer/Multiple Employer GHP even if it has a separate contract with an insurer.

Slide 26 of 31 - Single Employer

Single Employer Multi-Employer/Multiple Employer Rules for Disability MSP

- Employer participates in multi-employer or multiple employer plan in which at least one employer employs at least 100 employees
- When such participation occurs, Medicare is secondary under the Disability provisions for all individuals in the plan that are entitled to Medicare
- Employees of corporations that are members of the same group of corporations are considered to be employed by a single employer
- Employees of trades or businesses are treated as if they are employed by a single employer, whether or not the trades or businesses are incorporated
- There is no Small Employer Exception (SEE) under the Disability provisions of MSP

Slide notes

When an employer participates in a multi-employer or multiple employer GHP and at least one participating employer has at least 100 full and/or part-time employees, the Disability MSP rules apply to all individuals in the plan that are entitled to Medicare, including those associated with the employer having fewer than 100 employees.

Employees of corporations that are members of the same group of corporations are also considered to be employed by a single employer.

Employees of trades or businesses are treated as if they are employed by a single employer, whether or not the trades or businesses are incorporated.

And finally, there is no Small Employer Exception under the Disability provisions of MSP.

Slide 27 of 31 - Disability Rules Multi-Employer/Multiple Employer Example

Disability Rules Multi-Employer/Multiple Employer Example

Upper Midwest Restaurant Owners Association 100 Restaurants in a Multi-Employer GHP	
Number of Restaurants	Number of Employees*
8	100 or more
50	50-99
40	20-49
2	1-19

* Number of Employees on 50% or more of business days in the previous calendar year

* Medicare is secondary for every Medicare beneficiary in the plan

Slide notes

Assume that the Upper Midwest Restaurant Owners Association is comprised of 100 restaurants that participate in a multi-employer/multiple employer GHP. Eight of the restaurants have 100 or more employees.

Fifty restaurants have between 50 and 99 employees, 40 restaurants have between 20 and 49 employees and two of the restaurants have fewer than 20 employees.

Since at least one of the restaurants in the multi-employer/multiple employer GHP employs more than 100 employees,

Medicare is the secondary payer under the Disability guidelines for the employees and family members of all the restaurants, even the two that have fewer than 20 employees.

Slide 28 of 31 - Employer Size Guidelines for Disability

Employer Size Guidelines for Disability

- Fewer than 100 employees and GHP only insures a single employer and the GHP is not considered a multi-employer/multiple employer plan as defined previously
 - Medicare is primary
- Fewer than 100 employees, but GHP is a multi-employer/multiple employer plan with one employer of 100 or more employees
 - Medicare is secondary for all Medicare-enrolled employees and their family members
 - No exceptions are made for small employers

Slide notes

To summarize, if the Group Health Plan covers a single employer and the employer employs fewer than 100 employees and the Group Health Plan is not considered a multi-employer or multiple employer plan as defined previously, Medicare is the primary payer.

The special rule under Disability MSP regarding multi-employer/multiple employer plans is that Medicare is the secondary payer of benefits for all Medicare-enrolled employees and their family members of an employer that employs fewer than 100 employees if the GHP is a multi-employer/multiple employer plan where at least one employer employs 100 or more employees.

Unlike Working Aged MSP, there are no provisions in the law for small employer exceptions under the Disability guidelines.

Slide 29 of 31 - Course Overview

Course Summary



- Employer size as it relates to MSP requirements for
 - Working Aged
 - Disability
 - ESRD
- Employer size examples
- Multi-employer/multiple employer defined
 - When a single employer falls under these rules
- Small Employer Exception Overview
- Employer Size Calculation - See Part 2

**Slide notes**

This course provided information on how employer size relates to the Medicare Secondary Payer (MSP) requirements for Working Aged, Disability, and End Stage Renal Disease (ESRD) and provided examples on how to correctly determine employer size.

It defined a multi-employer/multiple employer plan and explained when a single employer falls under the multi-employer/multiple employer rules for MSP. It provided a high-level overview on the Small Employer Exception.

For a discussion of the Responsible Reporting Entities (RREs) responsibilities for calculating and submitting employer size updates and examples of how to report employer size changes, refer to Part 2 of this course.



Slide 30 of 31 - Conclusion

You have completed the MSP Employer Size Guidelines for Group Health Plan Arrangements Part 1 course. Additional information on the calculation of employer size can be found at the following link:
<https://www.cms.gov/>.


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If you have any questions or feedback on this material, please go to the following URL:
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Slide notes

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