

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Centers for Medicare & Medicaid Services



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MLN Matters® Number: MM8875

Related Change Request (CR) #: CR 8875

Related CR Release Date: October 10, 2014

Effective Date: January 1, 2015

Related CR Transmittal #: R106MSP

Implementation Date: January 1, 2015

Medicare Secondary Payer (MSP) Group Health Plan (GHP) Working Aged Policy -- Definition of "Spouse;" Same-Sex Marriages

Provider Types Affected

This MLN Matters® Article is intended for physicians, providers, and suppliers submitting claims to Medicare Administrative Contractors (MACs) for services provided to Medicare beneficiaries.

Provider Action Needed



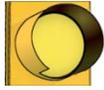
STOP - Impact to You

Section 3 of the Defense of Marriage Act (DOMA) provided for purposes of federal law, the term "spouse" could not include individuals in a same-sex marriage. Because the MSP Working Aged provisions only apply to subscribers and their spouses, the Working Aged provisions did not apply on the basis of spousal status to individuals in a same-sex marriage.

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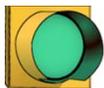
The United States Supreme Court has invalidated this DOMA provision. Thus, the Centers for Medicare & Medicaid Services (CMS) is no longer prohibited from applying the MSP Working Aged provision to individuals in a same-sex marriage.



CAUTION – What You Need to Know

Effective January 1, 2015, the rules below apply with respect to the term “spouse” under the MSP Working Aged provisions. This is true for both opposite-sex and same-sex marriages.

- If an individual is entitled to Medicare as a spouse based upon the Social Security Administration’s rules, that individual is a “spouse” for purposes of the MSP Working Aged provisions.
- If a marriage is valid in the jurisdiction in which it was performed including one of the 50 states, the District of Columbia, or a U.S. territory, or a foreign country, so long as that marriage would also be recognized by a U.S. jurisdiction, both parties to the marriage are “spouses” for purposes of the MSP Working Aged provisions.
- Where an employer, insurer, third party administrator, Group Health Plan (GHP), or other plan sponsor has a broader or more inclusive definition of spouse for purposes of its GHP arrangement, it may (but is not required to) assume primary payment responsibility for the “spouse” in question. If such an individual is reported as a “spouse” through the Medicare, Medicaid, and SCHIP Extension Act of 2007 (MMSEA) Section 111, Medicare will pay accordingly and pursue recovery, as applicable.



GO – What You Need to Do

Make sure your billing staffs are aware of these changes.

Background

Based on Change Request (CR) 8875, effective January 1, 2015, the definition of a spouse for purposes of the working aged provisions means "a person who is entitled to Medicare as a spouse based upon the Social Security Administration’s rules or a person whose marriage is valid in the jurisdiction in which it was performed including one of the 50 states, the District of Columbia, or a U.S. territory or a foreign country, so long as that marriage would also be recognized by a U.S. jurisdiction."

The expanded rules for the definition of “spouse,” including proper reporting pursuant to MMSEA Section 111, must be implemented with a start date for the coverage in question no later than January 1, 2015.

To the extent an employer, insurer, third party administrator, GHP or other plan sponsor insurer has chosen to or chooses to utilize the new definitions referenced above or a broader

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definition of “spouse” for MSP purposes prior to January 1, 2015, it may do so. However, MACs may not apply the revised definition for Medicare purposes for coverage dates prior to January 1, 2015. Nor may MACs accept a definition of spouse broader than that quoted above. In the event, Medicare does pay for coverage prior to January 1, 2015, it will pursue recovery, as applicable.

Additional Information

The official instruction, CR8875, issued to your MAC regarding this change, is available at <http://www.cms.gov/Regulations-and-Guidance/Guidance/Transmittals/Downloads/R106MSP.pdf> on the CMS website.

If you have any questions, please contact your MAC at their toll-free number. That number is available at <http://www.cms.gov/Outreach-and-Education/Medicare-Learning-Net-work-MLN/MLNMattersArticles/index.html> under - How Does It Work.

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