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# CMS Manual System

## Pub. 100-16 Medicare Managed Care

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Department of Health &  
Human Services (DHHS)  
Centers for Medicare &  
Medicaid Services (CMS)

Transmittal 103

Date: November 4, 2011

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**SUBJECT:** Medicare Managed Care Manual Chapter 10 - MA Organization Compliance with State Law and Preemption by Federal Law.

### I. SUMMARY OF CHANGES:

**NEW/REVISED MATERIAL - EFFECTIVE DATE\*:** November 4, 2011  
**IMPLEMENTATION DATE:** November 4, 2011

*Disclaimer for manual changes only: The revision date and transmittal number apply to the red italicized material only. Any other material was previously published and remains unchanged. However, if this revision contains a table of contents, you will receive the new/revised information only, and not the entire table of contents.*

### II. CHANGES IN MANUAL INSTRUCTIONS: (N/A if manual not updated.) (R = REVISED, N = NEW, D = DELETED) – (Only One Per Row.)

R/N/D	CHAPTER/SECTION/SUBSECTION/TITLE
R	10/30.1/General
R	10/40/Medicare Secondary Payer (MSP) Rules

**III. FUNDING:** No additional funding will be provided by CMS; contractor activities are to be carried out within their operating budgets.

### IV. ATTACHMENTS:

	Business Requirements
X	Manual Instruction
	Confidential Requirements
	One-Time Notification
	Recurring Update Notification

\*Unless otherwise specified, the effective date is the date of service.

# Medicare Managed Care Manual

## Chapter 10 - MA Organization Compliance with State Law and Preemption by Federal Law

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*(Rev.103, Issued: 11-04-11)*

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30.1 – *General*

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### **30.1 - General**

**(Rev.103, Issued: 11-04-11, Effective: 11-04-11, Implementation, 11-04-11)**

*The scope of Federal preemption is broad. MA standards set forth in 42 CFR 422 supersede any State laws, regulations, contract requirements, or other standards that would otherwise apply to MA plans, with the exception of licensing laws and regulations and laws and regulations relating to plan solvency. In other words, unless they pertain to licensure and/or solvency, State laws and regulations that regulate health plans do not apply to MA plans offered by MA organizations.*

*State laws and regulations that are **not** pre-empted because they relate to “State licensing” are limited to State requirements for becoming State licensed, and do not extend to any requirement that the State might impose on licensed health plans that, in the absence of Federal preemption, must be met as a condition for maintaining a State license. Examples of State licensing requirements include filing articles of incorporation with the appropriate State Agency, having a particular organizational structure or governance (e.g., in some states, being non-profit).*

*State licensing laws do not extend to rules that govern the activities of health plans on an ongoing basis even if compliance with such requirements is a condition for retaining a State license. In other words, States may not purport to exempt a law from preemption on the grounds that it is a licensure law by imposing requirements not generally associated with obtaining a license as a condition of retaining a license. For example, a State licensing law may not be written so as to set forth ongoing marketing, quality assurance, or network adequacy requirements for MA plans by making such requirements a condition of retaining a State license.*

### **40 - Medicare Secondary Payer (MSP) Rules**

**(Rev. 103, Issued: 11-04-11, Effective: 11-04-11, Implementation, 11-04-11)**

*A State cannot take away an MA organization’s right under Federal law and the MSP regulations to bill, or to authorize providers and suppliers to bill, for the services *for* which Medicare is not the primary payer. The MA organization may exercise the same rights to recover from a primary plan, entity, or individual that the Secretary exercises under the MSP regulations at 42 CFR Part 411, Subparts B through D. For more information on the MSP regulations, refer to section 130 of Chapter 4 of this manual.*

