CMS Manual System	**Department of Health & Human Services (DHHS)**
Pub 100-05 Medicare Secondary Payer	**Centers for Medicare & Medicaid Services (CMS)**
Transmittal 118	**Date: April 28, 2016**
	Change Request 9576

SUBJECT: Individuals Not Subject to the Limitation on Medicare Secondary Payment (MSP)

I. SUMMARY OF CHANGES: Existing language in Pub. 100-05, chapter 2, subsection 10.2 appears to tie the exclusion of domestic partners from the working aged provision to the issue of same-sex marriage, which is not accurate. This Change Request corrects that oversight.

EFFECTIVE DATE: May 31, 2016
**Unless otherwise specified, the effective date is the date of service.*
IMPLEMENTATION DATE: May 31, 2016
Disclaimer for manual changes only: The revision date and transmittal number apply only to red italicized material. 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 is not updated)
R=REVISED, N=NEW, D=DELETED-*Only One Per Row.*

R/N/D	CHAPTER / SECTION / SUBSECTION / TITLE
R	2/10/10.2/Individuals Not Subject to the Limitation on Payment

III. FUNDING:
For Medicare Administrative Contractors (MACs):
The Medicare Administrative Contractor is hereby advised that this constitutes technical direction as defined in your contract. CMS does not construe this as a change to the MAC Statement of Work. The contractor is not obligated to incur costs in excess of the amounts allotted in your contract unless and until specifically authorized by the Contracting Officer. If the contractor considers anything provided, as described above, to be outside the current scope of work, the contractor shall withhold performance on the part(s) in question and immediately notify the Contracting Officer, in writing or by e-mail, and request formal directions regarding continued performance requirements.

IV. ATTACHMENTS:

Business Requirements
Manual Instruction

Attachment - Business Requirements

Pub. 100-05	Transmittal: 118	Date: April 28, 2016	Change Request: 9576

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I. GENERAL INFORMATION

A. Background: Change Request (CR) 8875 updated Pub. 100-05, Medicare Secondary Payer Manual, the Medicare Administrative Contractors (MACs), and 1-800-Medicare on the rules with respect to the term "spouse" under the MSP Working Aged provisions. Existing language in Pub.100-05, chapter 2, subsection 10.2 appears to tie the exclusion of domestic partners from the working aged provision to the issue of same-sex marriage, which is not accurate. This Change Request corrects that oversight.

B. Policy: Domestic partners may be the opposite sex or same sex. However, domestic partners are not married and thus have never been considered “spouses” for purposes of the working aged provision even if spousal coverage is given by the group health plan (GHP). Please note that although domestic partners are not spouses for purposes of the working aged provisions, where at any time, an employer, insurer, third party administrator, GHP, or other plan sponsor has a broader or more inclusive definition of spouse for the purposes of its GHP arrangement, it may (but is not required to) assume primary payment responsibility for the individual in question. If such an individual is identified as a spouse through the Medicare, Medicaid, and State Children's Health Insurance Program (SCHIP) Extension Act of 2007 (MMSEA) Section 111 reporting (which requires insurers to report health insurance coverage), Medicare will pay accordingly and pursue recovery, as applicable.

II. BUSINESS REQUIREMENTS TABLE

"Shall" denotes a mandatory requirement, and "should" denotes an optional requirement.

Number	Requirement	Responsibility								
		A/B MAC			DME MAC	Shared-System Maintainers				Other
		A	B	HHH		FISS	MCS	VMS	CWF	
9576.1	All MACs shall adhere to updated Pub. 100-05, chapter 2, subsection 10.2, bullet nine, to read as follows: Domestic partners who are given “spousal" coverage by the GHP (see chapter 1, section 10.1 of the Medicare Secondary Payer Manual).	X	X	X	X					1-800 Medicare, BCRC, CRC, MSPIC, MSPSC, RRB, RRB-SMAC

III. PROVIDER EDUCATION TABLE

Number	Requirement	Responsibility

		A/B MAC			DME MAC	CEDI
		A	B	HHH		
	None					

IV. SUPPORTING INFORMATION

Section A: Recommendations and supporting information associated with listed requirements: N/A

"Should" denotes a recommendation.

X-Ref Requirement Number	Recommendations or other supporting information:

Section B: All other recommendations and supporting information: N/A

V. CONTACTS

Pre-Implementation Contact(s): Brian Pabst, 410-786-2487 or Brian.Pabst@cms.hhs.gov , Richard Mazur, 410-786-1418 or Richard.Mazur2@cms.hhs.gov

Post-Implementation Contact(s): Contact your Contracting Officer's Representative (COR).

VI. FUNDING

Section A: For Medicare Administrative Contractors (MACs):
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ATTACHMENTS: 0

10.2 - Individuals Not Subject to the Limitation on Payment

(Rev. 118, Issued: 04-28-16, Effective: 05-31-16, Implementation: 05-31-16)

The Medicare secondary provision for working aged does not apply to:

- Individuals enrolled in Part B only;

- Individuals enrolled in Part A on the basis of a monthly premium.

- Anyone who is under age 65. (Medicare is secondary to large group health plans (LGHPs) that cover at least one employer of 100 or more employees for certain disabled individuals under age 65.);

- Individuals covered by a health plan other than a GHP as defined above, e.g., one that is purchased by the individual privately, and not as a member of a group, and for which payment is not made through an employer;

- Employees of employers of fewer than 20 employees who are covered by a single employer plan;

- Retired beneficiaries who are covered by GHPs as a result of past employment and who do not have GHP coverage as the result of their own or a spouse's current employment status;

- Individuals enrolled in single employer GHPs of employers with fewer than 20 employees; or

- Members of multi-employer plans whom the plan identified as employees of employers with fewer than 20 employees, provided the plan formally elected (see §10.4) to exempt the plan from making primary payment for employees and spouses of employees of specifically identified employers with fewer than 20 employees.

- Domestic partners who are given “spousal” coverage by the GHP (*see chapter 1, section 10.1 of the Medicare Secondary Payer Manual)*; and

- Former spouses who have Federal Employees Health Benefit (FEHB) coverage under the Spouse Equity Act.