

## **Changes to the Medicare Secondary Payer Disability Provision as a Result of the Omnibus Budget Reconciliation Act (OBRA) of 1993:**

On August 10, 1993, OBRA '93 (Omnibus Budget Reconciliation Act) was signed into law making substantial changes to the MSP disability provisions. Effective 8-10-93, the concept of "active individual" is abolished for those individuals entitled to Medicare under the Disability provisions.

MSP status for a disabled Medicare beneficiary is determined by the existence of a Large Group Health Plan (LGHP) coverage based on the individual's or a family member's "current employment status". A LGHP is indicative of an employer who employs 100 or more individuals.

A Large Group Health Plan is any health plan of, or contributed to by, an employer or employee organization. An employee organization includes self-insured plans, employee pay-all plans, unions, and trade or professional organizations. The plan provides health care to employees, former employees, the employer, business associates of the employer, or their families. The health plan covers the employees of at least one employer that has 100 or more employees.

A LGHP must not treat Medicare beneficiaries differently from the other employees enrolled in the health plan. For example, a Large Group Health Plan must not terminate coverage on the basis of entitlement to Medicare, or charge a higher premium than it charges to other employees in the plan.

Employers must offer disabled Medicare beneficiaries the opportunity to reject the Large Group Health Plan's coverage. If the disabled Medicare beneficiary rejects the LGHP coverage, Medicare becomes the primary payer. The employer cannot offer the beneficiary a supplemental (medigap) insurance, except for items and services totally non-covered by Medicare, such as prescription drugs and eyeglasses. The disabled Medicare beneficiary who rejects the employer plan may purchase a Medicare supplemental policy from a source other than the employer. The employer may not purchase or subsidize an individual supplemental policy for the employee or family member.

**An individual has "current employment status" with an employer if the individual is working as an employee, is the employer (including self-employed persons), or is associated with the employer in a business relationship.**

**For those individuals who do not have LGHP coverage as a result of their own or a family member's current employment status, Medicare will be the primary payer.**

### **Statutory Effective Date:**

August 10, 1993 or after, is the statutory effective date when Medicare becomes the primary payer for disabled individuals who do not have LGHP coverage as a result of their own, or a family member's current employment status. This applies to those individuals who were not actively working, but were previously determined to be an "active individual" because the individual's relationship with the plan sponsor, or contributor, was that of an employee and employer.

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**Because of this law, employers cannot continue to provide primary coverage for their disabled employees. The employer is required to choose one date when Medicare would become the primary payer for all the affected disabled employees and their dependents.**

**Medicare Part B Enrollment:**

Enrollment in Medicare Part B for beneficiaries affected by the changes to the MSP disability provisions will be in accordance with the equitable relief provisions of the Medicare law. Beneficiaries will be granted a special enrollment period during which enrollment in Part B may occur. Beneficiaries may enroll in any of the seven months immediately following the month of notice from the employer that the LGHP is no longer primary payer, or in any of the seven months immediately following the last month for which the LGHP is the primary payer. The entitlement to Part B may, under the equitable relief procedures, be established as of the first day of the month of filing for Part B, or retroactive back to August 1993.

It is important that the employer notify the beneficiary in writing of the date when the LGHP will begin to pay secondary to Medicare and advise the beneficiary to enroll in Medicare Part B as soon as possible. The notice should also include all months of LGHP coverage. The beneficiary should be advised to take both the employer notice and the carrier notice to his/her local Social Security Administration (SSA) field office when enrolling in Medicare Part B so the SSA knows the beneficiary is entitled to a special enrollment period under the equitable relief provisions of the law.