

all those enrolled under the arrangement.

The term includes self-insured plans, plans of governmental entities (Federal, State and local), and employee organization plans; that is, union plans, employee health and welfare funds or other employee organization plans. The term also includes employee-pay-all plans, which are plans under the auspices of one or more employers or employee organizations but which receive no financial contributions from them. The term does not include a plan that is unavailable to employees; for example, a plan only for self-employed persons.

*IRC* stands for Internal Revenue Code.

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*Large group health plan (LGHP)* means a GHP that covers employees of either—

(1) A single employer or employee organization that employed at least 100 full-time or part-time employees on 50 percent or more of its regular business days during the previous calendar year; or

(2) Two or more employers, or employee organizations, at least one of which employed at least 100 full-time or part-time employees on 50 percent or more of its regular business days during the previous calendar year.

*MSP* stands for Medicare secondary payer.

*Multi-employer plan* means a plan that is sponsored jointly by two or more employers (sometimes called a multiple-employer plan) or by employers and unions (sometimes under the Taft-Hartley law).

*Self-employed person* encompasses consultants, owners of businesses, and directors of corporations, and members of the clergy and religious orders who are paid for their services by a religious body or other entity.

*Similarly situated individual* means—

(1) In the case of employees, other employees enrolled or seeking to enroll in the plan; and

(2) In the case of other categories of individuals, other persons in any of those categories who are enrolled or seeking to enroll in the plan.

#### §411.102 Basic prohibitions and requirements.

(a) *ESRD*. (1) A group health plan of any size—(i) May not take into account the ESRD-based Medicare eligibility or entitlement of any individual who is covered or seeks to be covered under the plan; and

(ii) May not differentiate in the benefits it provides between individuals with ESRD and other individuals covered under the plan, on the basis of the existence of ESRD, or the need for dialysis, or in any other manner.

(2) The prohibitions of paragraph (a) of this section do not prohibit a plan from paying benefits secondary to Medicare after the first 18 months of ESRD-based eligibility or entitlement.

(b) *Age*. A GHP of an employer or employee organization of at least 20 employees—

(1) May not take into account the age-based Medicare entitlement of an individual or spouse age 65 or older who is covered (or seeks to be covered) under the plan by virtue of current employment status; and

(2) Must provide, to employees age 65 or older and to spouses age 65 or older of employees of any age, the same benefits under the same conditions as it provides to employees and spouses under age 65.

(c) *Disability*. A GHP of an employer or employee organization of at least 100 employees may not take into account the disability-based Medicare entitlement of any individual who is covered (or seeks to be covered) under the plan by virtue of current employment status.

#### §411.103 Prohibition against financial and other incentives.

(a) *General rule*. An employer or other entity (for example, an insurer) is prohibited from offering Medicare beneficiaries financial or other benefits as incentives not to enroll in, or to terminate enrollment in, a GHP that is, or would be, primary to Medicare. This prohibition precludes offering to Medicare beneficiaries an alternative to the employer primary plan (for example, coverage of prescription drugs) unless the beneficiary has primary coverage other than Medicare. An example