

§411.172 Medicare benefits secondary to group health plan benefits.

(a) *Conditions that the individual must meet.* Medicare Part A and Part B benefits are secondary to benefits payable by a GHP for services furnished during any month in which the individual—

- (1) Is aged;
- (2) Is entitled to Medicare Part A benefits under §406.10 of this chapter; and
- (3) Meets one of the following conditions:
 - (i) Is covered under a GHP of an employer that has at least 20 employees (including a multi-employer plan in which at least one of the participating employers meets that condition), and coverage under the plan is by virtue of the individual's current employment status.
 - (ii) Is the aged spouse (including a divorced or common-law spouse) of an individual (of any age) who is covered under a GHP described in paragraph (a)(3)(i) of this section by virtue of the individual's current employment status.

(b) *Special rule for multi-employer plans.* The requirements and limitations of paragraph (a) of this section and of (a)(2)(iii) of §411.170 do not apply with respect to individuals enrolled in a multi-employer plan if—

- (1) The individuals are covered by virtue of current employment status with an employer that has fewer than 20 employees; and
- (2) The plan requests an exception and identifies the individuals for whom it requests the exception as meeting the conditions specified in paragraph (b)(1) of this section.

(c) *Refusal to accept group health plan coverage.* An employee or spouse may refuse the health plan offered by the employer. If the employee or spouse refuses the plan—

- (1) Medicare is primary payer for that individual; and
- (2) The plan may not offer that individual coverage complementary to Medicare.

(d) *Reemployed retiree or annuitant.* A reemployed retiree or annuitant who is covered by a GHP and who performs sufficient services to qualify for coverage on that basis (that is, other employees in the same category are pro-

vided health benefits) is considered covered "by reason of current employment status" even if:

- (1) The employer provides the same GHP coverage to retirees; or
 - (2) The premiums for the plan are paid from a retirement or pension fund.
- (e) *Secondary payments.* Medicare pays secondary benefits, within the limitations specified in §§411.32 and 411.33, to supplement the primary benefits paid by the group health plan if that plan pays only a portion of the charge for the services.

(f) *Disabled aged individuals who are considered employed.* (1) For services furnished on or after November 12, 1985, and before July 17, 1987, a disabled, nonworking individual age 65 or older was considered employed if he or she—

- (i) Was receiving, from an employer, disability payments that were subject to tax under the Federal Insurance Contributions Act (FICA); and
- (ii) For the month before the month of attainment of age 65, was not entitled to disability benefits under title II of the Act and 20 CFR 404.315 of the SSA regulations.

(2) For services furnished on or after July 17, 1987, an individual is considered employed if he or she receives, from an employer, disability benefits that are subject to tax under FICA, even if he or she was entitled to Social Security disability benefits before attaining age 65.

(g) *Individuals entitled to Medicare on the basis of age who are also eligible for or entitled to Medicare on the basis of ESRD.* If an aged individual is, or could upon filing an application become, entitled to Medicare on the basis of ESRD, the coordination of benefits rules of subpart F of this part apply.

[54 FR 41734, Oct. 11, 1989, as amended at 55 FR 1820, Jan. 19, 1990. Redesignated and amended at 60 FR 45362, 45370, Aug. 31, 1995; 60 FR 53877, Oct. 18, 1995]

§411.175 Basis for Medicare primary payments.

(a) *General rule.* CMS makes Medicare primary payments for covered services that are—

- (1) Furnished to Medicare beneficiaries who have declined to enroll in the GHP;