

June 3, 2014

## **ALERT**

### **Medicare Secondary Payer (MSP)** **Working Aged Policy for Group Health Plans (GHP) --** **Definition of “Spouse”; Same-Sex Marriages**

*This ALERT provides MSP policy for purposes of determining the proper primary payer and provides instructions related to the mandatory reporting provisions for GHP in Section 111 of the Medicare, Medicaid & SCHIP Extension Act of 2007 (42 USC § 1395y(b)(7)).*

Section 3 of the Defense of Marriage Act (DOMA) provided that for purposes of federal law, the term “spouse” could not include individuals in a same-sex marriage. Because the MSP Working Aged provisions only apply to subscribers and their spouses, the Working Aged provisions did not apply on the basis of spousal status to individuals in a same-sex marriage. The United States Supreme Court has now invalidated this DOMA provision. Consequently, CMS is no longer prohibited from applying the MSP Working Aged provision to individuals in a same-sex marriage.

#### **Policy:**

The Department of Health & Human Services has adopted a policy treating same-sex marriages on the same terms as opposite-sex marriages to the greatest extent reasonably possible. Any same-sex marriage legally entered into in a U.S. jurisdiction that recognizes the marriage - including one of the 50 states, the District of Columbia, or a U.S. territory -- or a foreign country, so long as that marriage would also be recognized by a U.S. jurisdiction, will be recognized. Consistent with this policy and the purpose of the MSP provisions, effective January 1, 2015, the rules below apply with respect to the term “spouse” under the MSP Working Aged provisions. This is true for both opposite-sex and same-sex marriages as described herein.

- If an individual is entitled to Medicare as a spouse based upon the Social Security Administration’s rules, that individual is a “spouse” for purposes of the MSP Working Aged provisions.
- If a marriage is valid in the jurisdiction in which it was performed as described herein, both parties to the marriage are “spouses” for purposes of the MSP Working Aged provisions.

- Where an employer, insurer, third party administrator, GHP, or other plan sponsor has a broader or more inclusive definition of spouse for purposes of its GHP arrangement, it may (but is not required to) assume primary payment responsibility for the “spouse” in question. If such an individual is reported as a “spouse” pursuant to MMSEA Section 111, Medicare will pay accordingly and pursue recovery, as applicable.

**Impact of effective date:**

The expanded rules for the definition of “spouse”, including proper reporting pursuant to MMSEA Section 111, must be implemented with a start date for the coverage in question no later than January 1, 2015.

To the extent an employer, insurer, third party administrator, GHP or other plan sponsor insurer has chosen to or chooses to utilize the new definitions referenced above or a broader definition of “spouse” for MSP purposes prior to January 1, 2015, it may do so.

This ALERT will be incorporated in to CMS MSP manual (Pub. 100-05) as well as the MMSEA Section 111 GHP User Guide.