



Instructions — Completing the Medicare Secondary Payer Questionnaire

The information in these instructions should not be construed as legal advice or as a legal opinion on any specific facts or circumstances, and is not intended to replace the advice of your independent legal counsel.

Background

The *Medicare Secondary Payer Questionnaire* that accompanies the *Instructions* is intended to ensure your 2011 compliance with the Medicare Secondary Payer (MSP) rules, which are administered by the Centers for Medicare and Medicaid Services (CMS) for all group health plans (GHPs). It is your responsibility to inform Blue Cross Blue Shield of Delaware (BCBSD) of the required information.

To meet this responsibility, you must complete this questionnaire and return it to BCBSD with your new group packet. After you respond to the questions in *Sections A and B*, please review the certification and authorization statement in *Section C*, and be sure that the signer understands the responsibility of signing the questionnaire. **Please note that you must notify BCBSD if any answers (e.g., total number of employees) in *Sections A and B* change during 2012 from what you indicate on this questionnaire.**

Please return your completed questionnaire with your new group packet, or directly to BCBSD, Inc., Del-Code 1-7-01, PO Box 1991, Wilmington, DE, 19899-1991.

If you do not respond to this questionnaire, CMS will treat your GHP as if it is a large GHP with 100 or more employees, and the GHP will be the primary payer. If any of the questions are unclear, or you are uncertain how to respond, we recommend that you seek assistance from an accountant or legal counsel.

Definitions

Employer: An employer is a business that provides employees with jobs that pays them wages. An employer may be structured legally as a sole proprietor, a partnership, or a limited liability company or corporation.

Employee: An employee is an individual who:

- Worked on a full-time, part-time or seasonal basis and received a Form W-2; or
- Did not actually work for you but nonetheless received payments from an employer that is subject to FICA taxes (or would be subject to FICA taxes except the company is exempt from those taxes under the Internal Revenue Code [IRC]).

Examples of an individual ***not*** considered to be an employee are:

- Self-employed sole proprietor;
- Partner in a partnership;
- Retiree; or
- COBRA-qualified beneficiary.

Controlled Group: A controlled group is a group of two or more businesses that are under common control if the businesses have any of the following types of relationships:

- A parent-subsidiary relationship;
- A brother-sister relationship;
- A combination of a parent-subsidiary relationship and a brother-sister relationship; or
- If two or more employers comprise an “affiliated service group” as defined in section 414(m) of the IRC. The full definition of a “controlled group” can be found in section 52(a) and (b) of the IRC.

Employees of two or more businesses that are members of a controlled group are aggregated to determine the total number of employees in the controlled group and are treated as a single employer for purposes of the controlled group rules. *You must include in your employee count any employees of controlled group businesses, even if those employees do not participate in your GHP.*

Multiple employer or multi-employer GHP: A multiple employer or multi-employer is defined under the Code of Federal Regulations at 42 C.F.R. 411.101 and means a plan is sponsored jointly by two or more employers, or by employers and unions (sometimes under the Taft-Hartley law).

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Instructions for Section A

This section inquires about your business status for the prior year, as well as total employee counts. Please complete these questions using the information provided below.

An employer's total number of employees (i.e., employee count for the employer **and** controlled group members, **not** the number of employees enrolled in the employer's GHP), determines whether Medicare pays primary or secondary for Medicare beneficiaries enrolled in the employer's GHP. For single employers who do not sponsor or participate in a multiple employer or multi-employer GHP, MSP law specifies two different methods of counting employees:

- One determines if Medicare may pay primary for Medicare-eligible **"working aged"** enrolled in the employer's GHP (represented with *Question 2* on the questionnaire); and
- The other determines if Medicare may pay primary for **Medicare-eligible persons due to disability** enrolled in the employer's GHP (represented with *Question 3* on the questionnaire).

Question 2: This question is used to determine your employee count for Medicare-eligible "working aged" enrolled in your GHP. An employee, whether full-time, part-time or seasonal, is counted for *Question 2* if he/she worked 20 or more weeks during the calendar year. The 20 or more weeks do not need to be consecutive.

Question 3: This question is used to determine your employee count for Medicare-eligible "persons due to disability" enrolled in your GHP. An employee, whether full-time, part-time or seasonal, is counted for *Question 3* if he/she worked on 50 percent or more of the company's regular business days during the calendar year.

For more information on *Questions 2* and *3*, please review CMS's *Medicare Secondary Payer Manual: Chapter 1 — Background and Overview* and *Chapter 2 – MSP Provisions*, which are located respectively at www.cms.gov/manuals/downloads/msp105c01.pdf and www.cms.gov/manuals/downloads/msp105c02.pdf.

Please note: If your organization was a member of a controlled group, your employee count answers to *Questions 2* and *3* should be based on the **Controlled Group definition** and appropriate IRC aggregation rules referenced in that definition. Your organization should be prepared to validate the total employee counts for BCBSD and/or CMS.

Instructions for Section B

This section inquires about multiple employer or multi-employer GHPs. If you sponsor or participate in a multiple employer or multi-employer GHP, your answers to these questions are important because they determine whether Medicare pays primary or secondary for Medicare beneficiaries enrolled in the multiple employer or multi-employer GHP.

If an employer participates in a multiple employer or multi-employer GHP **and** at least one participating employer equals or exceeds the employee count threshold for the **"working aged"** (at least 20 employees), **then** the GHP will pay primary to Medicare for the "working aged" of the participating employers, regardless of the number of employees of the other participating employers, unless a participating employer has obtained a Small Employer Exception from CMS for the "working aged."

If an employer participates in a multiple employer or multi-employer GHP **and** at least one participating employer equals or exceeds the employee count threshold for the **Medicare-eligible persons due to disability** (at least 100 employees) **then** the GHP will pay primary to Medicare for the Medicare-eligible persons due to disability of the participating employers, regardless of the number of employees of the other participating employers. There is no Small Employer Exception for Medicare-eligible persons due to disability.

If you answer "Yes" to *Question 4* and you do not answer *Questions 6* and *7*, CMS will treat your GHP as if it is a large GHP with 100 or more employees. As a result, the GHP will be the primary payer for the "working aged" and for Medicare-eligible persons due to disability for all employers participating in the multiple employer or multi-employer GHP.

Small Employer Exception: The law provides that an employer participating in a multiple employer or multi-employer GHP may be granted an exception with respect to certain individuals entitled to Medicare due to age and who are covered as a named insured or spouse of an employer with less than 20 employees. To request Medicare approval of a Small Employer Exception, an employer participating in a multiple employer or multi-employer GHP must submit a written request, with all required supporting documents, to the CMS Coordination of Benefits Contractor. Any approval granted by CMS is prospective and will apply to specifically named and approved individuals.



Medicare Secondary Payer Questionnaire

Please provide the following information after reviewing the accompanying *Instructions*.

Employer Name	BCBSD Group Number
Federal Employer Identification Number (EIN)	

Section A. Your Business and Employee Count

1. Were you in business during calendar year 2010? YES NO

2. What is the total number of employees in your company and any controlled group members who worked *20 or more calendar weeks* (consecutive or non-consecutive) in the 2011 calendar year? _____ (# of employees)

3. What is the total number of employees in your company and any controlled group member who worked on *50 percent or more of your business days* in the 2011 calendar year? _____ (# of employees)

Section B. Multiple Employer and Multi-Employer Group Health Plans (GHPs)

4. Were you part of a multiple employer or multi-employer GHP in 2011? YES NO
 If "No," please skip questions 5–7 and go to *Section C* below.
 If "Yes," please provide the name of the multiple employer or multi-employer GHP: _____

5. If your company has fewer than 20 employees, have you applied for and received a small employer exception from CMS? YES NO
 If "Yes," please attach a list of individuals for whom a small employer exception was granted with their effective dates.

6. What is the total number of employees for the *largest employer in the multiple employer or multi-employer GHP* who worked *20 or more calendar weeks* (consecutive or non-consecutive) in the 2011 calendar year? _____ (# of employees)

7. What is the total number of employees for the *largest employer in the multiple employer or multi-employer GHP* who worked on *50 percent or more of your business days* in the 2011 calendar year? _____ (# of employees)

Section C. Certification by an Authorized Representative

I certify that I am a duly authorized representative of the above named employer with authority to make the representation included herein, on behalf of the company or other business or organization identified above, and that I or another representative of my employer will notify Blue Cross Blue Shield of Delaware (BCBSD), in writing, if any of the answers above change. I also certify that my answers above are correct and complete to the best of my knowledge, information and belief. I understand that failure to notify BCBSD of changes to any of the answers above and the provision of false, incomplete or inaccurate information may subject me and my employer to any liability or penalty that may be assessed by CMS or any other federal agency, including the Internal Revenue Service. In addition, I understand that this questionnaire and accompanying instructions contain information only and are not legal advice or a legal opinion on any specific facts or circumstances, nor intended to replace the advice of an independent legal counsel of my choice.

Signature	Date / /
Print Name	
Title	
Email Address	