

March 10, 1987

SUBJECT: INSURANCE

CIRCULAR LETTER NO. 3 (1987)

March 10, 1987

TO: ALL INSURERS LICENSED TO WRITE ACCIDENT & HEALTH INSURANCE IN NEW YORK STATE, INCLUDING ARTICLE 43 CORPORATIONS, AND CORPORATIONS WITH CERTIFICATES OF AUTHORITY UNDER ARTICLE 44 OF THE PUBLIC HEALTH LAW

RE: MEDICARE AS SECONDARY PAYOR

Enclosed are copies of a letter to me from John C. Berry of the United States Health Care Financing Administration and an accompanying explanatory memorandum on the provisions of various Federal Statutes and Regulations which serve to make the Medicare program secondary to other sources of payment. It is expected that all entities subject to the jurisdiction of this Department will become familiar with and comply with the provisions of these Federal laws. Any contractual modifications required to comply with these federal laws should be expeditiously submitted to this Department for review and approval.

Very truly yours,

[SIGNATURE]

JAMES P. CORCORAN

Superintendent of Insurance

Encl.

Refer to: BPO-P33

Mr. James P. Corcoran  
Superintendent of Insurance  
New York Department of Insurance  
160 West Broadway  
New York, New York 10013

Dear Mr. Corcoran:

We are writing regarding the provisions of the Social Security Act which make Medicare a secondary payer to other insurers. While we have generally been pleased with the support shown by most of the insurance industry as we have implemented these rules, we are concerned about those insurers who are still not coordinating benefits properly with the Medicare program. Since there have been a number of recent changes affecting the Medicare Secondary Payer (MSP) provisions, we are taking this opportunity to provide each State Insurance Commissioner with some important

information on this program. We would also like to enlist your support in assuring that private insurers pay primary benefits in those situations where Federal law requires that Medicare is the secondary payer.

Notwithstanding those exclusions which have been part of the Medicare program since its inception (Workers' Compensation, Black Lung, Veterans Administration), Medicare's role as a secondary payer of health insurance benefits is a relatively new one. In 1980 Congress mandated that Medicare pay only secondary benefits where payment for services is available under automobile medical or no fault insurance or any liability insurance. Since that time, additional MSP provisions have been added. Medicare is now secondary to employer group health plans (EGHPs) of "working aged" beneficiaries age 65 and older and is the secondary payer for beneficiaries age 65 and older who have working spouses of any age with EGHP coverage. The working aged and "spousal" provisions previously applied only to beneficiaries age 65-69, but were extended to cover those over age 69 under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) effective May 1, 1986. Medicare is also the secondary payer for a period of up to 12 months for those beneficiaries entitled to benefits solely on the basis of end stage renal disease (ESRD) who also have EGHP coverage. Effective January 1, 1987, Medicare will be the secondary payer for disabled beneficiaries who elect to be covered by an EGHP of certain large employers. The "disabled" amendments are contained in Section 9319 of the Omnibus Budget Reconciliation Act of 1986.

We have enclosed a document entitled "Medicare As A Secondary Payer" which explains each of the MSP provisions and includes a chart which summarizes the

#### Medicare As A Secondary Payer

Until 1980, when Congress mandated that Medicare pay only secondary benefits in certain situations, the program had generally assumed a position of primary payer responsibility for its beneficiaries. Since that time there have been other changes in the Medicare Law which have added new circumstances under which Medicare is a secondary payer. A chart of Medicare secondary payer (MSP) legislative and regulatory references follows the text below. MSP is essentially the same concept known in the private insurance industry as coordination of benefits and refers to those situations where Medicare does not have primary responsibility for paying the medical expenses of a Medicare beneficiary. The main purpose of this document is to clarify those circumstances under which Medicare is a secondary payer.

MSP is not a completely new concept, since some other programs have been primary to Medicare since its inception. Services for which benefits are payable under workers' compensation plans, the Federal Black Lung Program or authorized by the Veterans Administration have always been excluded from payment under Medicare. The Medicare program can, however, pay secondary benefits in certain situations where these programs do not pay for services in full. Since our main purpose here is to summarize the more recent changes to the law which make Medicare a secondary payer, these exclusions will not be discussed further, but are included in the chart of legislative and regulatory references.

Basically, there are four areas addressed by recent legislation making Medicare the secondary payer:

- (1) Where services are reimbursable under automobile medical, no fault or any liability insurance.
- (2) Where a Medicare beneficiary age 65 or older has employer group health plan (EGHP) coverage through his own employment or the employment of a spouse (of any age).
- (3) Where a beneficiary is entitled to Medicare solely on the basis of end stage renal disease (ESRD), Medicare is secondary to an EGHP for a period of up to 12 months after the individual has been determined eligible for ESRD benefits.
- (4) Where a disabled beneficiary (except ESRD beneficiary) elects to be covered by an EGHP as a current employee of

certain large employers or family member of such employee.

Where an employer group plan pays benefits as primary payer, but does not pay in full for the services, secondary Medicare benefits based on Medicare reimbursement levels may be paid to supplement the amount paid by the employer plan. Also, if an employer plan denies payment for particular services because they are not covered by the plan, primary Medicare benefits may be paid for them subject to Medicare program coverage requirements. Claims for Medicare primary benefits will be denied, however, when an employer plan denies payment based solely on an assertion that such plan pays only secondary benefits for services covered by Medicare. This action is specified in 42 CFR 405.341(C)(1) of the Federal regulations which states that Medicare will not pay primary benefits for otherwise covered services even though the employer plan states that its benefits are secondary to Medicare's or otherwise excludes or limits its payments to Medicare beneficiaries.

The legislative history of the working aged provisions includes three separate statutes. The Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) required Medicare to be secondary payer for workers age 65-69 and their spouses age 65-69, who are covered by their employer's group health plan. Under the Deficit Reduction Act of 1984 (DEFRA) the working aged provisions were expanded to spouses age 65-69 of employees under age 69 who must be offered dependent group health coverage. The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) amendments removed the age 69 limit for employees and spouses; it became effective May 1, 1986.

In addition to amending the Social Security Act, the acts dealing with the working aged provisions amended the Age Discrimination in Employment Act (ADEA). Questions regarding ADEA compliance should be directed to:

Executive Secretariat  
 Equal Employment Opportunity Commission  
 2401 E Street, N.W., Room 214  
 Washington, D.C. 20506  
 Telephone: (202) 634-6592 or (202) 634-6690.

**LIMITATIONS ON PAYMENT FOR SERVICES TO INDIVIDUALS ENTITLED TO BENEFITS SOLELY ON THE BASIS OF END STAGE RENAL DISEASE WHO ARE COVERED BY EMPLOYER GROUP HEALTH, PLANS**

Medicare benefits are secondary to benefits payable under an employer group health plan in the case of individuals who are entitled to benefits solely on the basis of End Stage Renal Disease (ESRD) during a period of up to 12 consecutive months. The 12-month period begins with the earlier of:

- (1) The month in which a regular course of renal dialysis is initiated or,
- (2) In the case of an individual who receives a kidney transplant, the first month in which the individual becomes entitled to Medicare.

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**MEDICARE SECONDARY PAYER LEGISLATIVE/  
 REGULATORY REFERENCE**

Provision	Legislative Authority
Auto Medical, No-Fault or any Liability Insurance	§ 953 of ORA 1980  § 1862(b)(1) of

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MEDICARE SECONDARY PAYER LEGISLATIVE/  
REGULATORY REFERENCE

Provision	Legislative Authority
	Social Security Act
Subrogation	§ 2344 of DEFRA 1984
	§ 1862(b)(3) of Social Security Act
Working Aged	
Workers Compensation	§ 1814(c),
Black Lung, Veteran's	§ 1835(d),
Administration (VA)	§ 1862(b)(1) of
Benefits	Social Security Act
Disabled	§ 9319 of OBRA 1986
	§ 1862(b)(4)(A)(i) of Social Security Act

\* TEFRA: effective 1/1/83 for workers  
(age 65-69) and their spouses (age 65-69).

DEFRA: effective 1/1/85 for spouses  
(age 65-69) who have health insurance  
through employment of younger (under  
65) spouse.

COBRA: effective 5/1/86 for workers and  
spouses over age 69.

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MEDICARE SECONDARY PAYER LEGISLATIVE/REGULATORY REFERENCE

Legislative Requirements	Regulatory Citations	Effective Date
- Payment is to be denied when payment can reasonably	42 CFR 405.322-325	12/5/80

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## MEDICARE SECONDARY PAYER LEGISLATIVE/REGULATORY REFERENCE

Legislative Requirements	Regulatory Citations	Effective Date
be expected from an automobile or liability insurance plan.		
- Applies to liability, automobile no-fault, automobile medical (personal injury protection), insurance.		
- Includes self-insured plans.		
- Secretary may waive recovery action if not warranted.		
- Clarifies the Federal Government's subrogation rights to recover Medicare benefits directly from any payer who is primary to Medicare or from any entity that has been paid by the primary payer.	7/18/84	
- Allows Medicare to collect in place of the beneficiary or to file an independent claim.		
. Employer Responsibilities		*
- Applies to employers with 20 or more employees.		
- Requires employers to offer aged employees and aged dependents of employees (of any age) health coverage equivalent to that offered to their younger employees.		

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## MEDICARE SECONDARY PAYER LEGISLATIVE/REGULATORY REFERENCE

Legislative Requirements	Regulatory Citations	Effective Date
- Employer may not offer Medicare supplemental packages.		
- Prohibits payment for services authorized or provided by a Federal agency.	42 CFR 405.311a 42 CFR 405.316-321	1966
- Prohibits payment for items or services paid by a governmental agency.		
- Prohibits payment for items or services to the extent payment has been made under a workers' compensation law or plan.		
- Individual is responsible for filing the workers' compensation claims.		
- Applies to disabled beneficiaries (except ESRD beneficiaries) who elect to be covered by an employer group health plan as a current employee or family member of such employee.	1/1/87	
- Applies to employers with 100 or more employees.		
- Medicare is secondary payer when employee accepts group coverage.		
* TEFRA: effective 1/1/83 for workers (age 65-69) and their spouses (age 65-69). DEFRA: effective 1/1/85 for spouses (age 65-69) who have health insurance through employment		

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## MEDICARE SECONDARY PAYER LEGISLATIVE/REGULATORY REFERENCE

Legislative Requirements	Regulatory Citations	Effective Date
of younger (under 65) spouse.		
COBRA: effective 5/1/86 for workers and spouses over age 69.		

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## HEALTH CARE FINANCING ADMINISTRATION

## MEDICARE SECONDARY PAYER

## REGIONAL OFFICE CONTACT PERSONS

REGION	STATES SERVED	NAME/TITLE	TELEPHONE NO.
Boston	CT, MA, ME,	Norma Burke, ARA for Program Operations	(617) 223-6871
	NH, RI, VT	Justin Dowling, MSP Coordinator	(617) 223-7746
New York	NY, NJ,	Theodore Shulman, ARA for Program Operations	(212) 264-8517
	PR, VI	Debra Smith, MSP Coordinator	(212) 264-2595
Philadelphia	DC, DE, MD, PA, VA, WV	Hampton D. Jesse, Jr., ARA for Program Operations	(215) 596-6828
		Mark Vogel, MSP Coordinator	(215) 596-6839
Atlanta	AI, FL, GA,	Richard L. Morris, ARA for Program Operations	(404) 221-2163
	KY, MS, NC, SC, TN	Glenn Smith, MSP Coordinator	(404) 221-0141
Chicago	IL, IN, MI,	Judith D. Stec, ARA for Program Operations	(312) 353-9840
	MN, OH, WI	Toni Bradley, MSP Coordinator	(312) 353-4937
Dallas	AR, LA, NM,	James R. Merryman, ARA for Program Operations	(214) 767-6418
	OK, TX	Judy Brown, MSP Coordinator	(214) 767-6441

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 HEALTH CARE FINANCING ADMINISTRATION  
 MEDICARE SECONDARY PAYER  
 REGIONAL OFFICE CONTACT PERSONS

REGION	STATES SERVED	NAME/TITLE	TELEPHONE NO.
Kansas City	IA, KS,	Dean R. Mordy, ARA for Program Operations	(816) 374-3539
	MO, NE	Bill Fischer, MSP Coordinator	(816) 374-5033
Denver	CO, MT, ND,	Darrel Muhr, ARA for Program Operations	(303) 844-6149
	SD, UT, WY	Chuck Hynden, MSP Coordinator	(303) 844-6137
San Francisco	AZ, CA,	John L. O'Hara, ARA for Program Operations	(415) 556-2645
	HW, NV	Agnes Summers, MSP Coordinator	(415) 556-6566
Seattle	AK, ID,	Norman V. Meyer, ARA for Program Operations	(206) 442-0438
	OR, WA	Don Ille, MSP Coordinator	(206) 442-0449

ARA - Associate Regional Administrator