



MEDICARE SECONDARY PAYER (MSP) GROUP HEALTH PLAN (GHP) VALID DEFENSE INSTRUCTIONS

*Your Guide to Submitting a Valid
Documented Defense*

Select Applicable Defense Below

- Coverage Status
- Non-Covered Services
- Duplicate Primary Payment
- Capitation
- Timely Filing
- Employer Size (Working Aged)
- Employer Size (Disabled)
- Long Term Disability



MSPRC

Coverage based on Employment Status

Explanation of Defense:

If a beneficiary did not have group health plan coverage (due to coverage ending, retirement, termination, etc.) during the timeframe of the date of service(s) listed on the demand, an employer can provide documentation confirming the beneficiary's end of coverage as a valid documented defense.

Documentation needed:

To constitute a valid documented defense, the following information must be submitted on employer's letterhead:

- *Identification of the individual through whom the beneficiary had coverage; and*
- *Certification of the date of retirement, coverage, or termination of that individual.*

Reminder: An insurer, third party administrator, or other entity may not provide this information on behalf of the employer.



Non-Covered Services

Explanation of Defense:

There are services that a group health plan may not cover as part of their plan. When these services are listed in the demand, a group health plan can provide certain documentation as proof that these services are not covered by the plan.

Documentation Needed:

Proper documentation includes submission of an Explanation of Benefits (EOB), Spreadsheet, or screen prints of EOB(s) with the insurer/TPA letterhead or logo sent to the MSPRC as a defense for claims not covered under the Group Health Plans' policy indicating:

- the date of service,
- total amount of the claim
- allowed amount
- co pays
- deductibles
- reason why the service was not covered

If all of the above information is provided, it will be considered as a Valid Documented Defense.

REMINDER: The EOB, spreadsheet and screen prints must be submitted with the insurer/TPA letterhead or logo. (If the item does not have the letterhead or logo, include a statement on insurer/TPA letterhead certifying that the documents are that of the insurer/TPA.)



Duplicate Primary Payment

Explanation of Defense:

when Medicare and a group health plan both make primary payment for the same date of service(s) listed on a demand, the group health plan can provide proof of their primary payment as a defense.

Documentation Needed:

Proper documentation includes submission of an Explanation of Benefits (EOB), Spreadsheet, or screen prints of EOB(s) sent to the MSPRC as a defense for claims previously paid as primary payer to the provider or to the beneficiary by the insurer/TPA must indicating:

- the date of service,
- total amount of the claim (billed amount)
- allowed amount
- adjustment amounts (i.e. co pays, deductibles, usual and customary, etc.)
- the amount previously paid to the provider or beneficiary
- the date processed / payment was made
- to whom the payment was made

If all of the above information is provided, it will be considered as a Valid Documented Defense.

•**REMINDER:** The EOB, spreadsheet and screen prints must be submitted with the insurer/TPA letterhead or logo. (If the item does not have the letterhead or logo, include a statement on letterhead certifying that the documents are that of the insurer/TPA.)

•**REMINDER:** The insurer/TPA may not make primary payment to the provider/supplier/beneficiary after receiving a demand letter in lieu of paying the demand.



Capitation

Explanation of Defense:

If an employer group health plan's full primary payment responsibility was resolved by a capitation payment to the provider, physician or supplier, the following documentation is needed for a valid documented:

Documentation Needed:

- Information to identify the claim(s) to which the defense applies;
- Explanation of benefits, spreadsheet, or computer print-out that establishes non-payment due to capitation

If all of the above information is provided, it will be considered as a Valid Documented Defense.



Timely Filing

Explanation of Defense:

The Balanced Budget Act of 1997 eliminated timely filing defenses for “at least” three (3) years from the date of the service. For services on or after August 5, 1997, there is no timely filing defense if Medicare’s original demand letter is dated within three (3) years of the date of the service. This rule applies even if the plan’s timely filing period is less than three (3) years. Where the demand is not issued within 3 years of the date of service, a timely filing defense is possible but is not automatic.

Documentation Needed:

Proper documentation of a timely filing defense would consist of all of the following:

- **Copy of plan documents that establish the timely filing period with the applicable provisions annotated**
- **A written statement that claims records of all responsible entities**
 - a) exist for the time period when the services were provided,
 - b) were searched,
 - c) and no record of the services being provided to the beneficiary was found
- **Medicare’s original demand letter must be treated as a request for appeal of that denial. Also, if the right to seek a waiver of the plan’s requirements exists, Medicare’s original demand letter must be treated as a request for waiver.**

If all the above information is provided, this will be considered as a Valid Documented Defense.



Employer Size (Working Aged)

Explanation of Defense:

When a beneficiary with group health plan coverage is entitled to Medicare due to age (65 years old or older), Medicare is primary to that group health plan if the employer that sponsors or contributes to that group health plan has fewer than 20 full and/or part-time employees for 20 non-consecutive weeks for the preceding year.

If the group health plan is a multi-employer plan, all participating employers that sponsor or contribute to that Group health plan must have fewer than 20 full and/or part-time employees for 20 non- Consecutive weeks for the preceding year.

Documentation Needed:

To constitute a valid documented defense, proof of employer size must be asserted as follows

On Employer Letterhead:

1. you employed fewer than 20 employees for 20 non-consecutive weeks for each year and the preceding year that the beneficiary received services.
2. you did not participate in a multiple employer group health plan.

If you did participate in a multiple employer group health plan, MSPRC requires a statement from the group health plan that:

- each participating group employed fewer than 20 employees for 20 non-consecutive weeks for each year and the preceding year that the beneficiary received services



Employer Size (Disabled)

Explanation of Defense:

When a beneficiary with group health plan coverage is entitled to Medicare due to disability, Medicare is primary to that group health plan if the employer that sponsors or contributes to that group health plan has fewer than 100 full and/or part-time employees for 50 percent or more of its business days for the preceding year.

If the group health plan is a multi-employer plan, all participating employers that sponsor or contribute to that group health plan must have fewer than 100 full and/or part-time employees for 50 percent or more of its business days for the preceding year.

Documentation Needed:

To constitute a valid documented defense, proof of employer size must be asserted as follows:

On Employer Letterhead:

1. you employed fewer than 100 employees for 50 percent of the year for each year and the preceding year that the beneficiary received services.
2. you did not participate in a multiple employer group health plan.

If you did participate in a multiple employer group health plan, MSPRC requires a statement from the group health plan that:

- each participating group employed fewer than 100 employees for 50 percent of the year for each year and the preceding year that the beneficiary received services.



Long Term Disability

Explanation of Defense:

If the employer asserts that Medicare is primary because the beneficiary is on Long Term Disability and is no longer considered an active employer, the following information must be asserted on employer letterhead:

Documentation Needed:

- The beginning and end date of the Long Term Disability
- That the employee is not actively working and has been receiving disability benefits for
over six months

Please Note: the first six months of employer disability benefits are subject to FICA taxes, after six months Medicare becomes primary.

Thank you for reviewing our presentation entitled:

Valid Defense Instructions