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# CMS Manual System

## Pub. 100-05 Medicare Secondary Payer

Department of Health & Human  
Services (DHHS)  
Centers for Medicare & Medicaid  
Services (CMS)

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Transmittal 19

Date: SEPTEMBER 24, 2004

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CHANGE REQUEST 3447

**SUBJECT: Clarification of MSP Rules in Relation to a Temporary Leave of Absence**

**I. SUMMARY OF CHANGES:** In some instances, Medicare contractors have mistakenly informed employers and health plans that Medicare is primary when an employee is on a leave of absence. Medicare Secondary Payer rules state that if an employee retains their employment status, that Medicare remains secondary. Therefore, we are adding a rule to section 50.

**NEW/REVISED MATERIAL - EFFECTIVE DATE: October 25, 2004**

**\*IMPLEMENTATION DATE: October 25, 2004**

**II. CHANGES IN MANUAL INSTRUCTIONS: (N/A if manual not updated.)**  
**(R = REVISED, N = NEW, D = DELETED) – (Only One Per Row.)**

R/N/D	CHAPTER/SECTION/SUBSECTION/TITLE
R	1/50Rules Defining Employees Covered by GHP's and LGHP's

**III. FUNDING: Medicare contractors shall implement these instructions within their current operating budgets.**

**IV. ATTACHMENTS:**

X	Business Requirements
X	Manual Instruction
	Confidential Requirements
	One-Time Notification
	Recurring Update Notification

**\*Unless otherwise specified, the effective date is the date of service.**

# Attachment - Business Requirements

Pub. 100-05	Transmittal: 19	Date: September 24, 2004	Change Request 3447
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**SUBJECT: Clarification of MSP Rules in Relation to a Temporary Leave of Absence**

## I. GENERAL INFORMATION

**A. Background:** Contractors have requested clarification of previous instructions regarding Medicare Secondary Payer (MSP) rules and their application when an employee takes a company-approved leave of absence. The employee still has employee status, and retains his/her health coverage through their employer.

**B. Policy:** MSP rules state that if an employee retains employment status, then Medicare remains secondary.

**C. Provider Education:** A Medlearn Matters provider education article related to this instruction will be available at [www.cms.hhs.gov/medlearn/matters](http://www.cms.hhs.gov/medlearn/matters) shortly after the CR is released. You will receive notification of the article release via the established "medlearn matters" listserv. Contractors shall post this article, or a direct link to this article, on their Web site and include information about it in a listserv message within 1 week of the availability of the provider education article. In addition, the provider education article must be included in your next regularly scheduled bulletin. Contractors are free to supplement Medlearn Matters articles with localized information that would benefit their provider community in billing and administering the Medicare program correctly.

## II. BUSINESS REQUIREMENTS

*"Shall" denotes a mandatory requirement*

*"Should" denotes an optional requirement*

Requirement Number	Requirements	Responsibility ("X" indicates the columns that apply)								
		F I	R H H I	C a r i e r	D M E R C	Shared System Maintainers				Other
						F I S S	M C S	V M S	C W F	
3447.1	Contractors shall instruct employers and GHP's if an employee is on a temporary leave of absence, that Medicare remains the secondary payer. This instruction is provided in Pub. 100-05, chapter 1, section 50.	X	X	X	X					

### III. SUPPORTING INFORMATION AND POSSIBLE DESIGN CONSIDERATIONS

#### A. Other Instructions: N/A

X-Ref Requirement #	Instructions

#### B. Design Considerations: N/A

X-Ref Requirement #	Recommendation for Medicare System Requirements

#### C. Interfaces: N/A

#### D. Contractor Financial Reporting /Workload Impact: N/A

#### E. Dependencies: N/A

#### F. Testing Considerations: N/A

### IV. SCHEDULE, CONTACTS, AND FUNDING

<b>Effective Date:</b> October 25, 2004 <b>Implementation Date:</b> October 25, 2004 <b>Pre-Implementation Contact(s):</b> Brian Johnson (410) 786-7601 <b>Post-Implementation Contact(s):</b> Brian Johnson (410) 786-7601	<b>Medicare Contractors shall implement these instructions within their current operating budgets.</b>
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## **50 – Rules Defining Employees Covered by GHP’s and LGHP’s**

*(Rev. 19, Issued: 09-24-04, Effective: 10-25-04, Implementation: 10-25-04)*

### **B – Retain Employment Rights**

Persons who retain employment rights include but are not limited to:

- Those who are furloughed, temporarily laid off, or who are on sick leave;
- Teachers and seasonal workers who normally do not work throughout the year;
- Those who have health coverage that extends beyond or between active employment periods (e.g., based on an “hours bank” arrangement). (Active union members in certain trades and industries (e.g., construction) often have “hours bank” coverage); and
- *Those who take an employer-approved temporary leave of absence for any reason. Temporary leaves of absence include, but are not limited to, periods when an individual qualifies for short-term or long-term medical disability.*