

When Medicare is the Secondary Payer

Things can get a little complicated when you have a patient who has Medicare but still has insurance from an employer. In most cases, if the patient is still employed, the employer's insurance is primary and the Medicare is secondary. If the Medicare-beneficiary spouse of this employee is covered on the same insurance, the spouse would also have Medicare as a secondary payer, whatever the spouse's employment status. (The exception to this is if the patient works for an employer with fewer than twenty employees. In that case Medicare would be the primary payer, and the employer's plan secondary.)

For patients who have Medicare because of a disability, the rules are slightly different. If the disabled person still has insurance from an employer or from a working spouse's employer, Medicare is secondary if the employer has at least 100 employees, but primary if it has fewer.

When Medicare is secondary, the primary insurer should always be billed first. The Social Security Act, "prohibits Medicare from making payment if the payment has been made or can reasonably be expected to be made by a third party payer....When Medicare is the secondary payer... the physician... must first submit the claim to the primary payer. The primary payer is required to process the claim and make primary payment on the claim in accordance with the coverage provisions of its contract. The primary payer may not decline to make primary payment on the grounds that its contract calls for Medicare to pay first."

If you have a contract with the primary payer that says you will accept the payer's insurance fee schedule amount as full payment, then you must accept this amount, even though it may be lower than the Medicare-allowed amount, and you are not permitted to bill Medicare for the amount you would have received from them if you had not had a contract with the primary insurer. You should, however, submit a zero-balance claim to Medicare with a copy of the primary insurance claim, so the patient's deductible can be credited if necessary. In fact, to be sure the patient's deductible is credited properly, you should also file a zero-balance claim when the insurer pays you up the Medicare amount.

If the amount that the primary payer allows for the service is higher than the Medicare-allowed amount, Medicare will pay the amount up to the higher fee (as long as the amount reimbursed by Medicare does not exceed the Medicare-allowed amount). For instance, if the employer insurance allows \$150 for a service, but only pays 80% of that amount, or \$120, even though the Medicare allowed amount for that service is only \$125, Medicare will pay \$30 so the physician will be fully reimbursed at the primary insurer's rate.

There is an exception to this. Nonparticipating Medicare providers who do not accept assignment and have their patients pay them up front (even though the provider must still file the necessary claims with Medicare), are bound by the "limiting charge" for the service they provided whether

Medicare is the primary or secondary payer. It doesn't matter if the primary payer has a higher fee rate. If, as the secondary payer, Medicare remits an amount that means the nonparticipating physician has received more than the limiting charge, the amount above the limiting charge must be refunded to the Medicare Carrier within 60 days of receipt with an explanation of why it is being returned.

To download a booklet, [Who Pays First?](http://www.medicare.gov/Publications/Pubs/pdf/02179.pdf), from the Department of Health and Human Services on Medicare payment issues from the beneficiary's point of view, go to <http://www.medicare.gov/Publications/Pubs/pdf/02179.pdf>.

If you have specific questions about this issue, call the APA's Practice Management HelpLine at 1-800-343-4671.