

# COMPLIANCE CHRONICLE

REGULATIONS | POLICIES | STANDARDS | REQUIREMENTS | LAWS

**Navigating the ever-evolving landscape of compliance can be challenging and time consuming.**

**Warner Pacific is happy to share monthly updates to help your organization stay informed about new requirements and minimize compliance risks. Let us handle the complexities, so you can focus on what matters most – your business.**

## Medicare and Employer Health Plans: What Employers Need to Know About Who Pays First, Employee Protections, and Compliance Risks

**E**mployers with Medicare-eligible employees face strict federal rules governing how employer-sponsored health plans must coordinate with Medicare. These rules, known as the Medicare Secondary Payer (MSP) regulations, determine who pays first, regulate what employers may say or do, and impose significant penalties for non-compliance.

Failure to follow these requirements can expose employers to civil monetary penalties, excise taxes, repayment of claims, and enforcement action from CMS, the IRS, and the Department of Labor.

Given its significance, this edition of the Compliance Chronicle is devoted to providing a consolidated, compliance-focused overview for employer-sponsored plans, incorporating MSP rules, financial incentive prohibitions, Section 125 cafeteria plan considerations, and the critical distinction between employers under and over 20 employees.





## The 20-Employee Threshold: Why Size Changes the Rules

One of the most important MSP concepts is whether an employer is treated as small (fewer than 20 employees) or large (20 or more employees).

### How the 20-Employee Threshold Is Determined

*Employers must:*

- Use the previous calendar year as the measurement period
- Count employees on each working day
- Determine whether 20 or more employees were employed on at least 50% of working days

### Who Counts as an Employee

*Included:*

- Full-time employees (30+ hours/week)
- Part-time employees (each count as one employee, regardless of hours)
- Seasonal employees who worked during the measurement period
- Employees on leave (FMLA, disability, vacation) if still on payroll

*Excluded:*

- Independent contractors
- Self-employed individuals
- Retirees not actively working
- COBRA participants

If the threshold is met, the employer is treated as a large employer for MSP purposes for the entire year.

## Who Pays First? Medicare vs. Employer Coverage

### Employers With 20 or More Employees (Large Employers)

- The employer group health plan pays first
- Medicare pays second
- Medicare enrollment is not required while actively employed
- Coverage must be offered to Medicare-eligible employees on the same terms as younger employees

### Employers With Fewer Than 20 Employees (Small Employer)

- Medicare is primary for Medicare-eligible employees
- The employer plan pays secondary
- Group health plans may be written to condition or limit payment based on Medicare enrollment

This distinction affects both claims administration and what employers are permitted to communicate.

**The employer must remain neutral and cannot influence whether an employee enrolls in Medicare**

## Steering, Encouragement, and What Changes Based on Employer Size

### Large Employers (20+ Employees): Strict Non-Interference Rules Apply

Federal law strictly prohibits large employers from encouraging, pressuring, or incentivizing Medicare-eligible employees to drop employer coverage.

#### Large employers **may not**:

- Suggest Medicare is “better,” “cheaper,” or preferred
- Encourage Medicare enrollment
- Offer cash, premium reimbursements, bonuses, raises, or other incentives tied to Medicare
- Pay or reimburse Medicare Part B, Part D, or Medigap premiums
- Design benefits that disadvantage Medicare-eligible employees

### Small Employers (<20 Employees): Limited Encouragement Is Permitted

For employers with fewer than 20 employees, the MSP non-interference rules do not apply.

#### Small employers **may**:

- Explain that Medicare is the primary payer
- Encourage timely enrollment in Medicare Parts A and B
- Educate employees about coordination of benefits
- Require Medicare enrollment before the group plan pays secondary

#### Small employers **still may not**:

- Discriminate based on age or Medicare status
- Provide false or misleading information
- Coerce employees or retaliate based on coverage choices

Even subtle or well-intended messages can be treated as **illegal steering.**



Accurate non-coercive messaging is **critical.**

## Financial Incentives: A High-Risk Compliance Area

Federal regulations explicitly prohibit employers from offering financial or other incentives to Medicare-eligible employees to decline or terminate employer coverage when Medicare would otherwise be secondary.

*Examples of prohibited incentives include:*

- Targeted raises or bonuses given only to Medicare-eligible employees
- Cash payments tied to dropping the group plan
- Premium reimbursement arrangements outside permitted structures

### IRS Scrutiny and Red Flags

The IRS may treat improperly targeted incentives as:

- Taxable fringe benefits
- Evidence of attempts to bypass ACA affordability or COBRA rules

*Red flags include:*

- Raises or bonuses disproportionately given to employees age 65+
- Lack of written, age-neutral business justification
- Statements linking compensation to Medicare enrollment

To remain compliant, compensation decisions must be broad-based, documented, and tied to legitimate business purposes.

## Section 125 (Cafeteria Plan) Implications

### Is Medicare Enrollment a Qualifying Event?

Yes, but only if the employer’s Section 125 plan document allows it.

- Medicare entitlement is an optional permitted mid-year election change
- The plan document must explicitly include Medicare entitlement
- If not included, employees must wait until open enrollment

### Timing and Consistency Rules

- Employees typically have 30–31 days from Medicare enrollment to drop employer coverage
- The qualifying event is the actual Medicare enrollment date, not the 65th birthday
- Employers may require proof of enrollment
- Coverage cannot be dropped before Medicare enrollment

These rules apply regardless of employer size.

## Medicare Enrollment Considerations for Employees

### Employees at Large Employers

- May delay Medicare Part B without penalty while actively employed
- May delay Part D if employer coverage is creditable
- May enroll in Part A, but this will stop HSA contributions
- COBRA is not active employer coverage for Medicare purposes

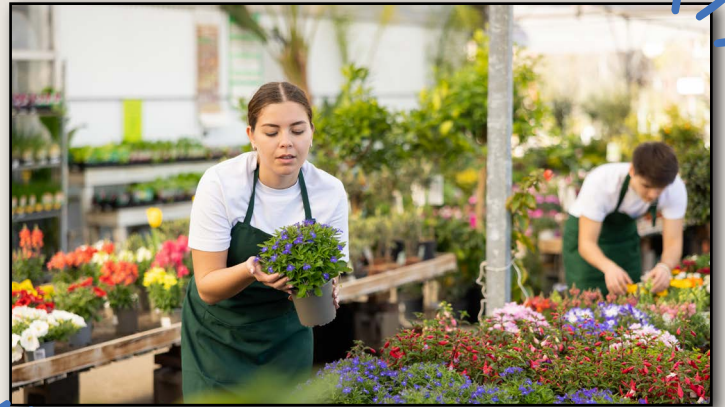
### Employees at Small Employers

- Should enroll in Medicare when first eligible
- Delaying Medicare may result in coverage gaps, denied claims, or penalties

## Penalties for Non-Compliance

### Violations of MSP rules may result in:

- Civil monetary penalties (commonly \$5,000 per affected individual)
- IRS excise taxes
- Repayment of claims improperly paid by the group plan
- Mandatory corrective action
- Increased audit and enforcement exposure



## REMEMBER:

TOPIC	<20 EMPLOYEES	20+ EMPLOYEES
Medicare primary?	✔ Yes	✘ No
Can employer encourage Medicare?	✔ Yes	✘ No
Non-interference rules apply?	✘ No	✔ Yes
Group plan required to pay primary?	✘ No	✔ Yes

**Check out all of our compliance and legislative resources [here](#).**