



**Health Solutions**  
 1205 Windham Parkway  
 Romeoville, IL 60446  
 800.807.0400

## Medicare Law Always Applies

### Medicare Law:

By law, employers are required to complete a questionnaire, the IRS/SSA/CMS Data Match, on the group health plan that Medicare-eligible workers and their spouses choose. The Data Match identifies situations where another payer is primary to Medicare.

### Working Aged (Medicare beneficiaries age 65 or older) and Employer Group Health Plan (GHP):

- *Individual is age 65 or older* – is covered by a GHP through current employment\* or spouse’s current employment **AND the employer has less than 20 employees:**  
**Medicare pays Primary**, GHP pays secondary
- *Individual is age 65 or older* – is covered by a GHP through current employment\* or spouse’s current employment **AND the employer has 20 or more employees (or at least one employer is a multi-employer group that employs 20 or more individuals):**  
**GHP pays Primary**, Medicare pays secondary

\* Current Employment is defined as those who receive W2 forms, excluding any independent contractors and religious who are covered under the health plan through their Order.

Primary Payer determination is made following Medicare rules, **as Medicare law always applies.**

The Trust follows the same format as the CMS Data Match questionnaire to assist in rendering the Primary vs. Secondary determination.

### Below illustrates how the 20/20 rule works

- Assume an employer employed 20 or more employees for all of 2019 and 2020.
- For the years 2021 and 2022, the employer always had 19 or less than 20 employees.
- For the first 6 months of 2023 the employer employed over 19 employees.

Medicare would be the secondary payer during all of the calendar year 2020 because there were 20 or more employees during the preceding year, 2019.

Medicare would be secondary for all of 2021 because there were more than 20 employees during all of 2020. Medicare would be the primary payer in 2022 because the employer had 19 or less employees during 2022, and 19 or less in the preceding year, 2021.

Medicare would be the primary payer for the first 20 weeks of 2023. Starting with week 21 of 2023, Medicare would become secondary and remain secondary for the remainder of 2023.

Since the employer employed 20 or more employees for more than 20 weeks in 2023, we also know that Medicare will be secondary for all of 2024.

Calendar Year	Number of Employees	Medicare Primary	Medicare Secondary
2020	20 or more for all of 2019 and 2020		X
2021	19 or less the entire year		X
2022	19 or less the entire year	X	
2023	20 or more through the first 6 months		X (commencing as of week 21)
2024			X