



Medicare Secondary Payer (MSP) issues arise when a retiree who is Medicare-eligible returns to work. Medicare rules provide that for working aged individuals, the employer coverage is primary to Medicare. Consequently, employers are required to offer their Medicare eligible employees the same coverage as they offer to employees and employees' spouses under age 65. While the retiree/spouse is free to decline the coverage provided by the employer, the law prohibits the employer (and Kentucky Retirement Systems as an employer sponsored retirement/Group Healthcare plan) from offering the retiree/spouse coverage that supplements Medicare.

Kentucky Retirement Systems is prohibited from offering our Medicare-eligible plan to these individuals by Federal law. The MSP Act, codified at 42 U.S.C. § 1395 y(b) and Chapter 42 CFR, mandates that Medicare provided to active employees will pay health claims secondary to the employers GHP (Group Health Plan). In addition to the general rule, the MSP Act, at federal regulation 42 CFR §411.103 contains specific provisions that prevent employers, from offering alternative coverage or other financial incentives for the employee not to enroll in a GHP. Consequently, neither the Commonwealth of Kentucky nor Kentucky Retirement Systems may cover/offer the Medicare eligible plans to a Medicare eligible active employee eligible for a GHP.

As such, the Medicare eligible health insurance plans are unavailable to active employees who are otherwise eligible for coverage under the GHP. Note: Any spouse or dependent would be ineligible for coverage if the retiree is not covered by a KRS health insurance plan (pursuant to 105 KAR 1:410(Section 3)).

Finally, when Medicare is not aware of other primary insurance, Medicare may mistakenly pay as primary. If these improper payments are discovered thereafter, Medicare generally has a three (3) year window to reprocess the claims that they paid as primary and possibly collect from the health plan or the covered individual.