

Appendix G Reporting Employer Size

Reporting Employer Size

This appendix is intended as an overview of the MSP regulations related to employer size and how they affect Section 111 reporting. However, RREs must refer to 42 C.F.R. Part 411.101 and 42 C.F.R. Part 411.170 for details on the calculation of employer size. Additional information can be found in Chapter 1 of the CMS MSP Manual at <https://www.cms.gov/manuals/downloads/msp105c01.pdf>. All Medicare manuals can be found at <https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Internet-Only-Manuals-IOMs.html>. The MSP Manual is shown as publication 100-05 on that page. Also refer to Section 7.2.4 and the Small Employer Exception page on the CMS Website at <https://www.cms.gov/Medicare/Coordination-of-Benefits-and-Recovery/EmployerServices/Small-Employer-Exception.html> for an explanation of a related Small Employer Exception (SEE).

MSP regulations for beneficiaries entitled to Medicare due to age or disability require information on employer size to determine the correct primary payer. Employer size is not a factor if the beneficiary is entitled to Medicare due to ESRD. Employer size is based on the number of employees during specified time periods, not the number of individuals covered under the GHP. When calculating the number of employees, RREs should use the total number of employees in an organizational structure (parent, subsidiaries, and siblings) rather than just the number of employees in the particular subsidiary being reported on. Subsidiaries of foreign companies must count the number of employees in the organization worldwide. If the employer is part of a multi-employer/multiple employer plan, this field should reflect the size of the **largest** employer in the plan.

Employer size is reported using the Employer Size indicator in Field 16 on the MSP Input File Detail Record. The Employer Size indicator values reflect categories that are based on MSP regulations related to the number of employees **during a specific time period** which affect whether Medicare is the secondary payer in conjunction with the reason an individual is entitled to Medicare (age and disability). A value of '0' is used to report an employer size of 1 to 19 employees, '1' is used for 20 to 99 employees and '2' for 100 or more employees.

RREs must follow the MSP regulations when determining employer size. It is not just a count of employees as of the current reporting date. The employer size reported for GHP coverage on an MSP Input Detail Record is associated with the coverage dates being reported, not the actual date you are submitting your files. If you are reporting a coverage period starting in 2019, you need to look at the number of employees during 2018 and then keep track of changes throughout 2019. The employer size is reported according to the dates of coverage for the individuals and what the employer size indicator is calculated to be during those dates of coverage.

Reporting a change in employer size is not as simple as just reporting the effective date of when the actual number of employees changed. It is to be reported with effective dates according to MSP regulations regarding when the change affects whether Medicare could be primary or secondary as explained below.

Working Aged Provisions

Medicare benefits are secondary to benefits payable under GHPs for individuals age 65 or over who have GHP coverage as a result of their own current employment status with an employer

that has 20 or more employees; or the current employment status of a spouse of any age with such an employer. These individuals are known as the “working aged.” Medicare is the secondary payer to GHPs for the working aged where either: a single employer of 20 or more full and/or part-time employees is the sponsor of the GHP or contributor to the GHP, or two or more employers are sponsors or contributors to a multi-employer/multiple employer plan, and a least one of the employers has 20 or more full and/or part-time employees.

The 20 or more employee requirement is met if the employer employed 20 or more full and/or part-time employees for each working day in each of 20 or more calendar weeks in the current or preceding year. **So, when the number of employees first equals 20 or more, a change to employer size is not immediately submitted. The change in employer size is not reported until the date the employer has had 20 or more employees for 20 or more weeks in a calendar year. The effective date of the employer size change would be the first day of the 20th week that the employer has had 20 or more employees in a calendar year. Note that the 20 weeks do not have to be consecutive. A change that involves employer size increasing to 20 or more employees is likely to occur mid-year or later.** The requirement is based on the number of employees, not the number of people covered under the plan. Employers who did not meet the requirement during the previous calendar year may meet it at some point during the new calendar year, and at that point Medicare would become the secondary payer for **the remainder of that year and through the next year even if the number of employees subsequently drops below 20.**

When employer size shrinks to less than 20 employees, the earliest Medicare could become primary is January 1 of the following year. There is no “20 week rule” for employers that get smaller. There is not a scenario where an RRE would submit a change to lower employer size with an effective date of anything other than January 1st.

Working Aged - Example 1:

Assume an employer employed 20 or more employees for all of 2006. For the years 2007 and 2008, the employer always had fewer than 20 employees. For the first 6 months of 2009, the employer employed 20 or more employees.

Medicare would be the secondary payer to GHP coverage during all of calendar year 2007 because there were 20 or more employees during the preceding year, 2006. Medicare would be primary to GHP coverage in 2008 because the employer had fewer than 20 employees during 2008 and fewer than 20 in the preceding year of 2007. Medicare would be the primary payer for the first 19 weeks of 2009 based on the number of employees during 2008. Starting week 20 of 2009, Medicare would become secondary and remain secondary for the remainder of 2009. Since the employer employed 20 or more employees for more than 20 weeks in 2009, Medicare will also be secondary for all of 2010.

For this example, we chose not to list an employee count for the year 2005. Therefore, it is unknown if Medicare was primary or secondary for the first 19 weeks of 2006.

Working Aged – Example 2:

On the flip side, assume an employer employed 20 or more employees for all of 2006. For the years 2007 and 2008, the employer always had 20 or more employees. Medicare would be the secondary payer during all of calendar years 2007 and 2008 because there were 20 or more employees during the preceding years, 2006 and 2007 respectively.

For the first 6 months of 2009, the employer employed less than 20 employees. Since there is no “20 week rule” for employers that get smaller, Medicare will not become the primary payer over

GHP coverage until January 1, 2010. Medicare will remain primary payer in 2010 until the employer employs more than 20 employees for more than 20 calendar weeks in the current year. Remember, the 20 weeks do not have to be consecutive. Medicare will become secondary payer as soon as the 20-employee, for 20 weeks threshold is met.

For this example, we chose not to list an employee count for the year 2005. Therefore, it is unknown if Medicare is primary or secondary for the first 19 weeks of 2006.

Working Aged – Example 3:

Assume an employer has 20 employees for all of 2008 and for 21 weeks at the start of 2009. That means Medicare will be secondary to GHP coverage in all of 2009 and all of 2010. If the employer went down to 15 employees for the 31 remaining weeks of 2009 and all of 2010, nothing changes. Medicare is still secondary to GHP coverage for all of 2009 and 2010. However, starting on January 1, 2011, Medicare would be primary for at least the first 19 weeks of 2011 since the employer did not have 20 or more employees for 20 or more weeks in 2010.

Disability Provisions

Medicare is the secondary payer for claims for beneficiaries under age 65 who have Medicare because of a disability and who are covered under a Large Group Health Plan (LGHP) through their current employment or through the current employment of any family member. An LGHP is a GHP that covers employees of either: a single employer or employee organization that employed at least 100 full-time or part-time employees on 50 percent or more of its regular business days during the previous calendar year; or two or more employers or employee organizations where at least one employed at least 100 full-time or part-time employees on 50 percent or more of its regular business days during the previous calendar year. Medicare is the secondary payer of benefits if a single employer employs 100 or more employees or if the GHP is a multi-employer/multiple employer plan that covers one employer that employs 100 or more full and/or part-time employees.

The 100 employee or more requirement is met if the employer employed 100 or more employees on 50% or more of its business days in the previous calendar year. **Therefore, the employer size changes related to 100 or more employees can only occur effective Jan 1st and depends on the number of employees throughout the previous calendar year.**

Disability - Example 4:

Assume an employer employed 100 or more employees in both 2006 and 2007. In 2008, the employer had fewer than 100 employees for 75% of its business days and in 2009, employment increased to over 100 employees for more than 50% of its business days. Medicare would be the secondary payer to GHP coverage in 2007 because the employer had 100 or more employees during 2006. Medicare would be secondary to the GHP coverage during 2008 because in 2007 the employer met or exceeded 100 employees for the entire year. Medicare would be primary payer for all of 2009 because the employer employed fewer than 100 employees for more than 50% of its business days in 2008. Medicare will be secondary for all of 2010 because the employer again had 100 or more employees on more than 50% of its business days in 2009. Please note that the MSP status for 2006 is dependent upon the number of employees employed in year 2005, which is why the MSP status of 2006 is not mentioned in this example.

Setting the Employer Size Indicator

It is recommended that RREs obtain employer size information from employers on **at least a yearly basis**. This information must include enough detail for the RRE to make the employer size determination according to the MSP regulations (20 or more employees for 20 weeks or more in the current or previous calendar year and 100 or more employees for 50% or more of the employer's business days in the previous calendar year). So, an RRE needs to retain employee counts or changes to those counts by employer, by business day, by calendar week, and by calendar year in its internal systems database. Then the employer size indicator must be calculated and stored by specific date ranges that apply to GHP coverage dates. When GHP coverage is reported, the employer size indicator associated with the specific GHP coverage dates must be reported on the record. If the employer size indicator has different values during the span of the GHP coverage dates to be reported, multiple MSP Input File records must be submitted to reflect that.

On January 1st, the Employer Size indicator could be determined by the following series of checks:

- If the employer had 100 or more employees during the prior calendar year for 50% or more of the employer's business days, then set the indicator to '2'.
- Otherwise, if the employer had between 20 and 99 employees for 20 or more weeks in the prior calendar year, then set the indicator to '1'.
- Otherwise, if the employer did not have 20 or more employees for at least 20 weeks in the prior calendar year, then set the indicator to '0'.

If the indicator is different than what was previously reported, then submit the appropriate update and add transactions to reflect the change in size as will be described below. Remember that the Employer Size indicator for a multi-employer/multiple employer plan is based on the largest employer in the plan.

In addition, RREs must inform employers that they are responsible for notifying the RRE of any changes that occur during the course of a calendar year that could impact the employer size determination related to the 20 employee or more requirement described previously. In other words, the employer must notify the RRE when they have increased to a size of 20 or more employees for 20 or more weeks during the current calendar year so that the RRE can submit the appropriate changes for GHP coverage dates affected by the change in a timely manner for Section 111 reporting.

Again note:

- an **increase** in size to 20 or more employees is effective as soon as the employer reached 20 employees for at least 20 weeks during the current calendar year.
- a **decrease** in size to less than 20 employees could only be effective as of January 1st.
- an **increase** in size from less than 100 employees to 100 or more employees can only be effective as of January 1st.
- a **decrease** in size from 100 or more employees to less than 100 employees can only be effective as of January 1st.

If an RRE is unable to obtain the employer size related to a GHP in order to report in time, the Employer Size should be defaulted to a value of '2' (100 or more employees) and then later corrected with Update records as needed when an accurate size can be calculated. The importance of employer cooperation with data collection by RREs for Section 111 is

documented in the “Alert to Employers” that can be found as a download on the Mandatory Insurer Reporting for Group Health Plans (GHP) page of <https://go.cms.gov/mirghp>. It is in each employer’s best interest to provide accurate employer size to Insurer and TPA RREs in a timely manner to comply with MSP regulations, reduce coordination of benefits costs and reduce the number of possible recovery actions that could be made against them.

Reporting Changes in Employer Size

Employer size changes must be reported in a manner slightly different than most other changes that are reported. For example, when an employee retires, the termination date on the update transaction submitted reflects the actual day the employee retired. When employer size changes occur, the termination date generally will be later than the date the actual employer size change occurred. The termination date is later because of the way the Medicare regulations work. When employer size changes, RRE’s will need to determine if the change in size impacts the order in which benefits should be paid. If Medicare is becoming primary or secondary under either the Working Aged or Disability provisions, update transactions for all affected Active Covered Individuals must be submitted which reflect the date when the 20 employee or more for 20 or more weeks requirement or the 100 employee or more for 50% or more of the business days in the previous calendar year (Jan 1st) requirement is actually reached. First, the date of the employer size indicator change is determined and then that is applied to any GHP coverage records open at that time.

If the employer size indicator changes from less than 20 employees to 20 or greater or the employer size indicator changes from less than 100 employees to 100 or greater, any previously reported records **accepted with a ‘01’ disposition code** must have an update transaction submitted to terminate the existing record and an add transaction must be submitted to reflect the new employer size indicator. The effective date of the GHP coverage on the Add record is set to the date the employer size indicator changed. If employer size indicator changes from 20 employees or greater to less than 20 or employer size decreases from 100 employees or greater to less than 100, any previously reported records **previously accepted with a ‘01’ disp code** must have an update transaction submitted to terminate the existing record and an add transaction must be submitted to reflect the new employer size indicator. The effective date used in the add transaction is not the date the employer size change actually occurred but rather it must be equal to the date Medicare becomes secondary under the Working Aged or Disability provisions if employer size is increasing, or the date Medicare becomes primary under the Working Aged or Disability provisions if employer size is decreasing. The Termination Date used will always be the day before the Effective Date as calculated for the change in the employer size indicator.

When RREs are creating their initial files for Section 111 reporting, they must report coverage retroactively back to January 1, 2009. If there are changes to employer size indicator from this date to the current reporting timeframe, an RRE may need to send multiple Add records with associated Effective and Termination Dates on the initial file for one individual to reflect different categories of employer size during the coverage period if applicable. In addition, the first time you report on an Active Covered Individual you may have to report multiple records of GHP coverage if there are multiple associated employer size indicators for the coverage period being reported.

Other notes:

Throughout this explanation of reporting employer size and the examples provided, we have stressed that the RRE needs only submit Update records reflecting the last day of a particular employer size indicator in the termination date for records previously accepted with a '01' disposition code. In most cases, when an RRE submits a record reflecting coverage for a Medicare beneficiary entitled to Medicare due to age with an Employer Size of '0', the record will be returned with an 'SP' disposition code and the SPES error code since Medicare is primary, not secondary, and the BCRC did not create an MSP occurrence. Likewise, if the Medicare beneficiary is entitled due to disability and the Employer Size reported is '0' or '1', a disposition code of 'SP' and the error code of SPES will be returned. If the Employer Size indicator value increases, RREs are required to send Add records for these individuals again even though they were previously sent and rejected. The new Add records should reflect the new Employer Size indicator and the Effective Date should be reported as the later of the change to the Employer Size indicator or the individual's GHP effective date. The reason for a Medicare beneficiary's entitlement may change so it is recommended that at the point of an employer size indicator change, the RRE resubmit previously rejected Add records for all Active Covered Individuals that are Medicare beneficiaries for reconsideration of MSP.

In general, Effective Dates (Field 10) reported on all Add records should reflect the **later** of the effective date of the Active Covered Individual's GHP coverage and the effective date of the employer size indicator.

As stated elsewhere in this guide, RREs are only required to report Active Covered Individuals that are Medicare beneficiaries on the MSP Input File. RREs may either use the definition of Active Covered Individuals and the associated age thresholds to report; or query Active Covered Individuals first and only report those that are found to be Medicare beneficiaries.

Reporting an Employer Size Change – Example 5:

An employer had 40 employees for all of 2009. The RRE submitted Add records for the employees and dependents that were Active Covered Individuals and Medicare beneficiaries and 5 of these records received a '01' disposition code meaning that the BCRC created MSP occurrences for them to indicate that Medicare was the secondary payer. All of these individuals were entitled to Medicare due to age (worked aged).

During 2009, this employer employed 20 or more employees for the entire year. Based upon the fact that the employer employed 20 or more employees for all of 2009, we know that the GHP will be the primary payer of benefits under the Working Aged provision for GHP coverage in all of 2010. On these original Add records, the employer size was submitted with a value equal to '1' meaning 20 to 99 employees.

On 1/31/2010, the employer terminated 25 employees, making their total number of employees 15. If these terminations ended the GHP coverage for any of the individuals for whom records were previously submitted and accepted with a '01' disposition code, the RRE must submit Update records for them on their next quarterly update MSP Input File with the corresponding Termination Date. The update transaction should include the following data elements: the Transaction Type = 2 (Update), the Employer Size = 1 (the value entered on original submission), the Termination Date = 01/31/2010, the last day of GHP coverage prior to the termination. All other fields should match the values that were sent on the original Add record. No further reporting will be required on these individuals since they are now not considered Active Covered Individuals unless their status changes at a later date.

Since the GHP remains the primary payer under the Working Aged provision for the remainder of calendar year 2010, the employer size indicator remains the same and an update transaction should not be submitted for the remaining Active Covered Individuals until the employer size indicator is re-evaluated as of 1/1/2011. At this point, the RRE will determine how many employees were employed for at least 20 weeks during the calendar year and submit any required update transactions to reflect changes made to the employer size indicator.

On 1/1/2011, the RRE determined that the number of employees for this employer remained under 20 for the remainder of 2010. Since the employer did not employ 20 or more employees for 20 or more weeks in 2010 (the prior calendar year) or yet in 2011 (the current calendar year), Medicare is primary to the GHP under the Working Aged provision starting 1/1/2011. Therefore, the effective date of the change in employer size is 1/1/2011 (**not** 1/31/2010). The employer size indicator changes to '0' as of 1/1/2011. The RRE should submit update transactions for any of the Active Covered Individuals for whom GHP coverage continues and whose records were previously submitted and accepted with a '01' disposition code on their next quarterly update MSP Input File.

The update transaction should include the following data elements:

- Transaction Type = '2' (update)
- Employer Size = '1' (the value entered on original Add record)
- Termination Date = 12/31/2010 (the last day that the GHP was the primary payer or the last day the employer size indicator was calculated to be 20-99 employees)
- All other fields should match the values that were sent on the original Add record.

The RRE should also submit add transactions for these same individuals and any new Active Covered Individuals to report the change in the employer size indicator effective 1/1/2011. The add transaction should include the following data elements:

- Transaction Type = '0' (add)
- Employer Size = '0' (the new value - employer with 1-19 employees), the Effective Date = 1/1/2011 (the date the new employer size indicator change became effective)
- All other fields should be submitted with the RRE's most current information.

Most of these Add records are likely to be returned with an 'SP' disposition code and error of 'SPES' if the beneficiaries are entitled to Medicare due to age or disability due to the new employer size of less than 20 employees. However, it is advisable to submit these records just in case the reason for entitlement for any of these individuals has changed.

Reporting an Employer Size Change – Example 6:

In early 2010, an RRE submitted Add records for all of the Active Covered Individuals who were Medicare beneficiaries covered by a certain employer GHP, which were accepted by the BCRC and returned with a '01' disposition code. The employer had 80 employees for all of 2009 so when the Add records were submitted, the Employer Size field was submitted with a value of '1' on each record meaning 20 to 99 employees.

The GHP for the employer was not a multi-employer or multiple employer plan, thus the GHP was the primary payer of benefits under the Working Aged provisions and Medicare was the primary payer of benefits under the Disability provisions of MSP. On 1/1/2011, the RRE determined that the number of employees for this employer remained 80 for all of 2010. Since Medicare remains the primary payer of benefits under the Disability provisions of MSP and the GHP remains the primary payer under the Working Aged provisions, no change is made to the

employer size indicator as of 1/1/2011 and therefore no update transactions are required to previously posted records.

On November 1, 2011, the employer purchased another company that had 30 employees. With the purchase, the total number of employees at the company is 110. The new employees were not eligible for GHP coverage. On 1/1/2012, the RRE calculated the number of employees for the previous calendar year and determined that although the company now has 100 or more employees, Medicare remains the primary payer of benefits under the Disability provisions of MSP because the employer did not have 100 or more employees on 50% or more of its regular business days during the preceding calendar year, 2011. No change is made to the employer size indicator as of 1/1/2012 and no update transactions are required to previously posted records.

During calendar year 2012, no change was made to employer size. On 1/1/2013, the RRE calculated the number of employees for the previous calendar year (2012) and determined that the employer had 100 or more employees for all of 2012. The effective date of the change to the employer size indicator is 1/1/2013 per MSP regulations, not 11/1/2011 when the new employees were actually added to the company. Therefore, for the records previously submitted and accepted with a '01' disposition code which reflect continuing coverage under the GHP, the RRE must send both an update transaction and an add transaction to report the change in the Employer Size field on their next Quarterly Update MSP Input File. The update transaction would have a Termination Date of 12/31/2012, the last day Medicare would be primary under the Disability provisions which is the last day the employer size indicator was '1'. The add transaction would reflect an Effective Date of 01/01/2013 and the Employer Size value submitted would be '2' meaning 100 or more employees. As of 01/01/2013, Medicare would be the secondary payer under the Working Aged and Disability provisions of MSP. Both the update and add transactions should be submitted on the first Quarterly Update MSP Input File in 2013.

The Update record for each affected record will include the following data elements:

- Transaction Type = '2' (update)
- Employer Size = '1' (the value entered on original submission)
- Termination Date = 12/31/2012 (the last day Medicare is primary under Disability MSP)
- All other fields should match the values that were sent on the original record.

The Add record will include the following data elements:

- Transaction Type = '0' (add)
- Employer Size = '2' (the new value - used for an employer with 100 or more employees)
- Effective Date = 01/01/2013 (the first day the GHP is primary under the Disability provisions of MSP. This is the day after the termination date of the Update record and reflects when the employer size indicator changed to '2'.)
- All other fields should be submitted with the RRE's most current information.

Reporting an Employer Size Change – Example 7:

Suppose an RRE previously submitted Add records for 40 Active Covered Individuals who are Medicare beneficiaries for a particular GHP. On the original Add records, the Employer Size was entered with a value of '1' reflecting 20 to 99 employees. 39 of the original Add records were accepted with a '01' disposition code because these were beneficiaries entitled to Medicare due to age. However, the Add record for Jane Smith was rejected with an 'SP' disposition code and SPES error because Jane Smith was entitled to Medicare due to Disability and the Employer Size reported is less than 100.

During 2009, this employer hired an additional 100 employees who were employed for more than 50% of its business days in 2009. Based upon the fact that the employer employed 100 or more employees for 50% or more of its regular business days in 2009, we know that the GHP will now be the primary payer of benefits for Ms. Smith under the Disability provision for her GHP coverage during all of 2010. The employer size indicator changes from '1' to '2' as of 1/1/2010.

On the file submission for the First Quarter of 2010, the RRE should submit an Update record for each of the 39 records previously accepted with a '01' disposition code that is still open (hasn't already been updated with a Termination Date). An Update record is not required for Ms. Smith because the original Add record that was submitted for her was not accepted with a '01' disposition code.

The Update records should include the following data elements:

- Transaction Type = '2' (update)
- Employer Size = '1' (the value entered on original submission)
- Termination Date = 12/31/2009
- All other fields should match the values that were sent on the original record.

The RRE should also submit add transactions for all of those 39 individuals previously reported and accepted. These Add records will document the effective date of the new Employer Size indicator. In addition, the RRE must submit Add records for any new Active Covered Individuals that were added to the plan since the last file was submitted. Lastly, the RRE should submit an Add record for Ms. Smith since she is still an Active Covered Individual who is a Medicare beneficiary and now, due to the new Employer Size indicator, her GHP coverage will be primary to Medicare. In other words, the RRE should be submitting Add records for all Active Covered Individuals that are Medicare beneficiaries to report the new value in the Employer Size indicator. These Add records must have an effective date of 1/1/2010 which reflects when the employer size indicator changed.

The Add records will include the following data elements:

- Transaction Type = '0' (add)
- Employer Size = '2' (the new value - used for an employer with 100 or more employees)
- Effective Date = 01/01/2010 (or for newly covered individuals, the effective date of GHP coverage if later)
- All other fields should be submitted with the RRE's most current information.

Reporting an Employer Size Change – Example 7a:

Given the same conditions as given in Example 7 directly above, suppose that one of the new Active Covered Individuals for which the RRE needs to report in first quarter 2010 was hired November 23, 2009 and her GHP coverage was effective on that date (11/23/2009). Also suppose the RRE's file submission timeframe is the first week of the second month of each quarter so a record for this individual was not submitted in the RRE's fourth quarter 2009 MSP Input File. When the RRE initially reports the GHP coverage for this person in its first quarter 2010 MSP Input File, since the GHP coverage to be reported for this person spans a period of time with two different employer size indicators, two Add records must be submitted, one to reflect the employer size indicator of '1' for the coverage prior to 1/1/2010 and the other to reflect the employer size indicator of '2' for the coverage that continues 1/1/2010 and subsequent.

The first Add record will include the following data elements:

- Transaction Type = '0' (add)
- Employer Size = '1' (20 to 99 employees – the employer size indicator in effect 11/23/2009 - 12/31/2009)
- Effective Date = 11/23/2009 (start of the individual's GHP coverage)
- Termination Date = 12/31/2009 (last date the employer size indicator of 1 applies)

The second Add record will include the following data elements:

- Transaction Type = '0' (add)
- Employer Size = '2' (100 or more – the employer size indicator in effect 1/1/2010 and subsequent)
- Effective Date = 1/1/2010 (effective date of the employer size indicator change)

Reporting an Employer Size Change – Example 8:

Suppose an RRE previously submitted Add records for 10 Active Covered Individuals for a particular GHP with an Employer Size value equal to 0 meaning 1 to 19 employees. This employer did not employ 20 or more employees for 20 or more weeks in 2008 so Medicare must be primary to GHP coverage at the start of 2009. The BCRC determined that Medicare is primary rather than secondary for the coverage reported on these 10 Add records and returned an 'SP' disposition code and an SPES error code on each corresponding response record.

On January 5th, 2009, this employer hired an additional 10 employees who worked for 20 or more calendar weeks in 2009. These weeks happened to be consecutive in this example although that is not required under the 20 week rule. Starting week 20 of 2009 (May 18, 2009), the GHP became primary payer under the Working Aged provision and remains primary for the remainder of GHP coverage in 2009 because the 20 or more employee threshold was met as of this date. Remember, as soon as the 20-employee threshold is met, Medicare becomes the secondary payer under the Working Aged provision for the remainder of that year and through the next year. As of 5/18/2009, the employer size indicator changes from a value of '0' to a value of '1.'

In the RRE's second quarterly submission, they must submit add transactions for all Active Covered Individuals in the plan. It is important that the Effective Dates reported are 5/18/2009 or the effective date of a particular individual's GHP coverage if that is **after** 5/18/2009. This will ensure that the BCRC creates an MSP occurrence starting at the date that Medicare becomes the secondary payer. Update records are not required since no previously submitted record was accepted with a '01' disposition code.

The Add records will include the following data elements:

- Transaction Type = '0' (add)
- Employer Size = '1' (the new value - used for an employer with 20-99 employees)
- Effective Date = 05/18/2009 (or the effective date of the individual's GHP coverage if later)
- All other fields should be submitted with the RRE's most current information.

Initial Reporting When Employer Size Reaches 20 and Employer is Not Part of a Multi-Employer/Multiple Employer Plan

As stated previously in this guide, if an employer has less than 20 full and/or part-time employees as defined in 42 C.F.R. Part 411.101 and 42 C.F.R. Part 411.170, and the employer is not part of a multi-employer/multiple employer GHP, then the covered individuals under that plan do not have to be reported under Section 111 unless a covered individual is receiving dialysis or has had a kidney transplant (ESRD). However, records for all Active Covered Individuals in these plans may be submitted with the proper value in the Employer Size (Field 16). If reported and the BCRC determines that MSP does not exist, then an SPES error code will be returned as explained in Section 9.2.1.

If coverage was not previously reported for any individuals due to the employer size being less than 20 employees, and subsequently the number of employees increases to 20 or more, the affected covered individuals must be reported on Add records if they meet the other requirements to be included on the MSP Input File. When these Add records are submitted, you must use the later of the effective date of the new employer size indicator or the individual's GHP coverage effective date in Field 10 (Effective Date) of the MSP Input File Detail Record rather than simply the effective date of the individual's GHP coverage. This will ensure that the BCRC creates an MSP occurrence starting at the date that Medicare becomes the secondary payer.