



LEGISLATIVE BRIEF

Medicare Part D Common Questions: Notification Requirements

What notices must employers provide to Medicare Part D Eligible Individuals?

Employers who offer prescription drug coverage to active or retired employees who are eligible for Medicare, or their spouses/dependents, must notify each Part D Eligible Individual who is enrolled in or seeks to enroll in such coverage whether the coverage qualifies as Creditable Coverage under the Part D rules. If the coverage is not creditable, the notice must explain that there are limits on when the individual may enroll in a Part D plan during a year, and that he or she may be subject to a lifetime late enrollment penalty under Part D.

Under Medicare Part D, what notice must employers provide to the Centers for Medicare and Medicaid Services (CMS)?

Employers must notify CMS regarding whether the prescription drug coverage they offer constitutes Creditable Coverage. Such notification must be made on an annual basis, no later than 60 days from the beginning of a plan year or 30 days after termination of a prescription drug plan, and within 30 days after any change that affects whether the coverage is creditable.

CMS has provided further detailed guidance on its website regarding the timing, format and model language of the disclosure that employers must make to CMS. An entity is required to provide the Disclosure Notice through completion of the disclosure form on the CMS Creditable Coverage Disclosure web page (www.cms.hhs.gov/creditablecoverage), which is the sole method for compliance with the requirement.

Under Medicare Part D, what must be included within the Creditable Coverage Disclosure Notices?

CMS has provided sample language that can be used when disclosing creditable coverage status to beneficiaries. The model language is located on the CMS website at www.cms.hhs.gov/creditablecoverage. This model language can be used for annual disclosures, new plan enrollees (those with Part D Initial Enrollment Periods after May 15, 2006), upon request by a beneficiary and for use in future plan years.

Under Medicare Part D, when must the Creditable Coverage Disclosure Notices be provided?

The Notices must be provided to Part D Eligible Individuals annually, before Nov. 15 of each year.* Further, the Notices must be provided: before the individual's Initial Enrollment Period for Part D; before the effective date of enrollment in the prescription drug coverage and upon any change that affects whether the coverage is creditable prescription drug coverage; and upon request.

* Starting in 2011, the Medicare Part D Annual Coordinated Election Period will run from **Oct. 15 through Dec. 7** of each year, as provided by Section 3204 of the Patient Protection and Affordable Care Act of 2010.

Under Medicare Part D, how must the Creditable Coverage Disclosure Notices be provided?

Entities have flexibility in the form and manner of providing Disclosure Notices to beneficiaries. The Notice need not be sent as a separate mailing. It may be provided with other plan participant information materials, including enrollment and/or renewal materials. The entity may provide a single Disclosure Notice to the covered Medicare individual and all Medicare eligible dependent(s) covered under the same plan. However, the entity is required to provide a separate Disclosure Notice if it is known that any spouse or dependent that is Medicare eligible resides at a different address than from where the participant/policyholder materials were provided.

If entities choose to incorporate Creditable Coverage Disclosure Notices with other plan participant information, then the disclosures must be prominent and conspicuous. This means that the Disclosure Notice portion of the document,

Medicare Part D Common Questions: Notification Requirements

or a reference to the section in the document being provided to the beneficiary that contains the required statement, must be prominently referenced in at least 14-point font in a separate box, bolded, or offset on the first page of the provided plan participant information.

Under Medicare Part D, may the Creditable Coverage Disclosure Notices be provided electronically?

Entities may use the electronic disclosure requirements under the Department of Labor regulations to meet the Creditable Coverage Disclosure Requirements. These regulations allow the entity sponsoring a group health plan to provide a Creditable Coverage Disclosure Notice electronically to plan participants who have the ability to access electronic documents at their regular place of work if they have access to the entity's electronic information system on a daily basis as part of their work duties. If this electronic method of disclosure is chosen, the entity must inform the plan participant that the participant is responsible for providing a copy of the electronic disclosure to their Medicare eligible dependents covered under the group health plan.

An entity can also provide a Creditable Coverage Disclosure Notice through electronic means only if the Medicare beneficiary has indicated to the entity that he or she has adequate access to electronic information. An entity must not take the right to provide beneficiary materials via electronic means as a permissible way to deliver documents to all beneficiaries. Before beneficiaries agree to receive their information via electronic means, they must be informed of their right to obtain a paper version, how to withdraw their consent, update address information, and identify any hardware or software requirement to access and retain the Creditable Coverage Disclosure.

Under Medicare Part D, what is required for electronic transfer of the Creditable Coverage Disclosure Notice?

A valid e-mail address must be provided to the entity and the consent from the beneficiary must be submitted electronically to the entity. In addition to having the Disclosure Notice sent to the beneficiary's email address, the Notice (except for personalized notices) must be posted on the entity's website, if applicable, with a link to the Creditable Coverage Disclosure Notice on the entity's home page.

Under Medicare Part D, where coverage is Creditable, are employers required to use the model Creditable Coverage Disclosure Notices?

Employers are not required to use the model Creditable Coverage Disclosure Notices. However, in the event the model language is not used, such employers are required to address the following content standards:

- That the entity has determined that the prescription drug coverage it provides is creditable;
- The meaning of creditable coverage, i.e., that the amount the plan expects to pay on average for prescription drugs for individuals covered by the plan in the applicable year for which the Disclosure Notice is being provided is the same or more than what standard Medicare prescription drug coverage would be expected to pay on average; and
- An explanation of why creditable coverage is important and a caution that even though coverage is creditable, the person could be subject to payment of higher Part D premiums if the person subsequently has a break in creditable coverage of 63 continuous days or longer before enrolling in a Part D plan.

CMS recommends that the entities also provide the following clarifications in their Disclosure Notices:

- An explanation of a beneficiary's rights to a Notice;
- An explanation of the benefit plan provisions/options that affect Part D beneficiaries or their dependents that are related to Part D and their benefit plan;
- Whether the covered Medicare individuals and/or their covered dependents will still be eligible to receive all of their current health coverage if they or their dependents enroll in a Medicare prescription drug plan;
- A clarification of the circumstances, if any, under which the individual could re-enroll in his/her prescription drug coverage if they drop their current coverage and enroll in Medicare prescription drug coverage and later drop the Medicare coverage; and

Medicare Part D Common Questions: Notification Requirements

- Information on how to get extra help paying for a Medicare prescription drug plan including the contact information for the Social Security Administration (SSA). (Recommended CMS language: *For people with limited income and resources, extra help paying for a Medicare prescription drug plan is available. Information regarding this program is available through the Social Security Administration (SSA). For more information about this extra help, visit SSA online at www.socialsecurity.gov, or call them at 800-772-1213.*

Under Medicare Part D, where coverage is Not Creditable, are employers required to use the model Non-Creditable Coverage Disclosure Notices?

Employers are not required to use the model Non-Creditable Coverage Disclosure Notices. However, in the event the model language is not used, such employers are required to address the following content standards:

- That the entity has determined that the prescription drug coverage it provides is not creditable;
- The meaning of creditable coverage, i.e., that the amount the plan expects to pay on average for prescription drugs for individuals covered by the plan in the applicable year is less than what standard Medicare prescription drug coverage would be expected to pay on average;
- That an individual may only enroll in a Part D plan from Nov. 15 through Dec. 31 of each year;* and
- An explanation of why creditable coverage is important and that the individual may be subject to payment of higher Part D premiums if the person fails to enroll in a Part D plan when first eligible.

CMS recommends that the entities also provide the following clarifications in their Disclosure Notices:

- An explanation of a beneficiary's rights to a Notice;
- An explanation of the benefit plan provisions/options that affect Part D beneficiaries or their dependents that are related to Part D and their benefit plan;
- Whether the covered Medicare individuals and/or their covered dependents will still be eligible to receive all of their current health coverage if they or their dependents enroll in a Medicare prescription drug plan;
- A clarification of the circumstances, if any, under which the individual would re-enroll in his or her prescription drug coverage if they drop their current coverage and enroll in Medicare prescription drug coverage; and
- Information on how to get extra help paying for a Medicare prescription drug plan including the contact information for the Social Security Administration (SSA). (Recommended CMS language: *For people with limited income and resources, extra help paying for a Medicare prescription drug plan is available. Information regarding this program is available through the Social Security Administration (SSA). For more information about this extra help, visit SSA online at www.socialsecurity.gov, or call them at 800-772-1213.*

* Starting in 2011, the Medicare Part D Annual Coordinated Election Period will run from **Oct. 15 through Dec. 7** of each year, as provided by Section 3204 of the Patient Protection and Affordable Care Act of 2010.