



EMPLOYEE BENEFITS CLIENT ALERT

November 2007

MEDICARE PART D: CMS REVISES MODEL NOTICE AND DISCLOSURE NOTICE REQUIREMENTS

INTRODUCTION

Under Medicare Part D regulations, employers offering prescription drug coverage to Medicare-eligible individuals (including active and retired employees and their dependents) must disclose to the Centers for Medicare and Medicaid Services ("CMS") and Medicare-eligible individuals whether the plan's prescription drug coverage is "creditable." In order to be creditable, prescription drug coverage must equal or exceed the actuarial value of defined standard prescription drug coverage under CMS guidelines. Earlier this year, CMS revised its model creditable coverage notice that employers must distribute to Medicare-eligible participants and their covered dependents on or before November 15 of each year. CMS also recently issued revised guidance on the CMS disclosure notice requirements.

This Employee Benefits Client Alert discusses how to determine if an employer's prescription drug coverage is creditable. It also discusses updated guidance on providing notice of creditable coverage to Medicare-eligible individuals and CMS disclosure notice requirements.

Why Is the Creditable Coverage Notice Important?

Individuals who are eligible for Medicare Part D who initially waive participation in the program may be penalized through higher premiums if they later elect Medicare Part D coverage. Such penalties occur if the individual waiving coverage does not have creditable coverage through his or her group health plan. Therefore, Medicare-eligible individuals covered under an employer-sponsored health plan need to know whether their coverage is creditable to make an informed decision when electing to participate or waive participation in the Medicare Part D prescription drug program.



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Creditable Coverage Determination

CMS created a safe-harbor plan design to assist employers sponsoring prescription drug coverage in determining if an employer's plan is creditable for purposes of Medicare Part D. Under the safe-harbor plan design, a prescription drug plan is deemed to be creditable if it:

- Provides coverage for brand and generic prescriptions;
- Provides reasonable access to retail providers and, optionally, for mail order drug coverage;
- Is designed to pay on average at least 60% of the participants' prescription drug expenses; and
- Satisfies at least one of the following:
 - The prescription drug coverage provides a maximum annual benefit of \$25,000 or more (including unlimited benefits).
 - The prescription drug coverage has an actuarial expectation that the amount payable by the plan will be at least \$2,000 per Medicare-eligible individual.
 - If the plan has integrated health coverage, the plan has no more than a \$250 deductible per year, has a maximum annual benefit of \$25,000 or more (including unlimited benefits), and has no less than a \$1,000,000 lifetime combined benefit maximum.

If an employer cannot rely on the safe harbor for its prescription drug plan, the employer must annually make an actuarial determination on whether the anticipated amount of paid claims is at least as much as the expected amount of claims paid under the standard Medicare prescription drug benefit. A qualified actuary must make this determination. Plans that do not apply for the retiree drug subsidy are not required to obtain an actuarial attestation by a qualified actuary to make such a determination. The safe harbor does not apply to employers participating in the retiree drug subsidy program, because their actuaries are required to attest to the plan's creditable coverage.

Notice to Medicare-Eligible Individuals

Medicare-eligible individuals must receive creditable coverage notices at various times, including prior to the start of Medicare's annual Part D enrollment period (November 15 through December 31); prior to an individual's initial enrollment for Medicare Part D; prior to the effective date of coverage for a Medicare Part D-eligible employee or covered dependent; when an employer's prescription drug coverage ends or when it changes status as creditable coverage; or upon an individual's request. Most employers provide creditable coverage notices to all employees at the time they first become eligible to enroll in the group health plan and then annually with the plan's open enrollment materials to avoid inadvertently missing a Medicare-eligible individual, such as an employee or covered dependent who is Medicare-eligible due to disability.



CMS permits electronic dissemination of creditable coverage notices under certain conditions. Employers may provide electronic documents to participants without their consent as long as the participants have access to their employer's electronic information system on a daily basis as part of their job duties. If this type of delivery is used, employers need to inform participants that the participants are responsible for providing a copy of the electronic disclosure to their Medicare-eligible dependents covered under the employer's group health plan.

Earlier this year, CMS revised its model notice as posted on its Web site available at: <http://www.cms.hhs.gov/creditablecoverage/>. We recommend employers compare their current creditable coverage notice to the model notice on the CMS Web site to determine if any changes are required.

Notice to CMS

In addition to providing Medicare-eligible individuals with creditable coverage notices, employers who offer prescription drug coverage must provide CMS with an annual disclosure notice. Employers must provide disclosure notices within 60 days after the beginning of the plan year for which the disclosure is made (e.g., March 1 for calendar year plans). Employers must resend disclosure notices to CMS within 30 days if the prescription drug coverage terminates or there is a change in creditable coverage.

Generally, group health plans that offer prescription drug coverage must provide the disclosure notice to CMS. While a special exemption exists for those employers who participate in the retirement drug subsidy program, such employers are *still* required to provide notice to CMS with respect to any Medicare-eligible employees who are not claimed as part of the employer's Medicare Part D subsidy.

The disclosure notice requires general information such as the name, address and federal tax identification number of the organization and the name, title and telephone number of the person completing the form. The disclosure notice may be accessed on the CMS Web site at: https://www.cms.hhs.gov/CreditableCoverage/45_CCDisclosureForm.asp. As part of its updated guidance, employers without Internet access may fax the disclosure notice to CMS.

Additional Information

If you have questions or would like assistance in determining whether your group prescription drug plan satisfies the CMS safe harbor for creditable coverage or if you would like assistance completing or reviewing the required CMS Creditable/Noncreditable Coverage Notice, please contact a member of the Kutak Rock Employee Benefits Practice Group.



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For further information about this Client Alert or any specific legal question, please contact your regular Kutak Rock LLP contact or any member of the Employee Benefits Practice Group, including those identified below:

John E. Schembari	402-346-6000	john.schembari@kutakrock.com
Peter C. Langdon	402-346-6000	peter.langdon@kutakrock.com
Kathryn M. Magli	402-346-6000	kathryn.magli@kutakrock.com
Janis J. Winterhof	402-346-6000	janis.winterhof@kutakrock.com
Juliana Reno	402-346-6000	juliana.reno@kutakrock.com

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