



EXPERT UPDATE



Medicare Part D Disclosure Overview



HENDERSON
BROTHERS

Medicare Part D Disclosure Notice

Overview

Employers that 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.

Plan Sponsor CMS Disclosure Requirement

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 guidance on the timing, format and 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 website, which is the sole method for compliance with the requirement. The CMS Creditable Coverage Disclosure website is available at:
www.cms.gov/CreditableCoverage/40_CCDisclosure.asp#TopOfPage.

Notices required for Medicare Eligible Health Plan Participants

CMS has provided model language that can be used when disclosing creditable coverage status to beneficiaries, which is available at:
www.cms.gov/CreditableCoverage/Model%20Notice%20Letters.asp#TopOfPage.

Providing the Notices

Entities have flexibility in the form and manner of providing Creditable Coverage 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 materials were provided.

If an entity chooses to incorporate the Creditable Coverage Disclosure Notice with other plan participant information, then the disclosure must be prominent and conspicuous. This means that the Disclosure Notice portion of the document, or a reference to the section in the document that contains the Disclosure Notice portion, 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.

Distributing 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.

In addition, an entity may 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 and update address information, and any hardware or software requirement to access and retain 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.

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 individuals could re-enroll in their prescription drug coverage if they drop their current coverage and enroll in Medicare prescription drug coverage and later drop the Medicare 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.)

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 Oct. 15 through Dec. 7 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.)

Please note that the information contained in this document is designed to provide authoritative and accurate information, in regard to the subject matter covered. However, it is not provided as legal or tax advice and no representation is made as to the sufficiency for your specific company's needs. This document should be reviewed by your legal counsel or tax consultant before use.

EXPECT AN EXPERT