

# The November 15, 2005 Prescription Drug Notice Deadline Is Approaching: Have You Sent Your Medicare Part D Creditable Coverage Certificates?

## 1. What is Medicare Part D?

There is a new prescription drug benefit available under Medicare, effective January 1, 2006. This benefit, known as Medicare Part D, will be available to all Medicare-eligible individuals who enroll and pay the applicable premium.

Medicare Part D will provide partial coverage for most outpatient prescription drugs. The monthly premium will be approximately \$34 per month in 2006.

## 2. How do the new requirements under Medicare Part D impact employers?

The Medicare Part D regulations require that ALL plan sponsors of health plans providing prescription drug benefits must provide a certificate of creditable coverage to all plan participants who are eligible for Medicare Part D. This obligation applies to every group health plan providing prescription drug benefits, even if the plan does not provide for retiree health or drug coverage. A health reimbursement arrangement ("HRA") is a group health plan subject to the notice requirement. The certificate tells plan participants whether the plan's prescription drug coverage is "creditable," or at least as valuable as the standard Medicare Part D plan.

## 3. What is the purpose of the Medicare Part D notice?

The Medicare Part D notice is intended to help individuals make an informed decision about enrolling in Medicare Part D and avoid late enrollment penalties by specifying whether their health plan coverage is creditable.

If a Medicare Part D eligible individual delays enrolling in Medicare Part D when first eligible, the individual will be subject to higher monthly premiums unless the individual has "creditable" prescription drug coverage from the date of first becoming eligible for Medicare Part D until the date of actual enrollment in Medicare Part D (without any coverage gaps of 63 days or more).

The higher premium charge is based on the number of months that the individual did not have creditable coverage and applies for as long as the individual is

### POSTED:

Oct 20, 2005

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enrolled in Medicare Part D. Also, the higher premium is based on a percentage of the standard Medicare Part D premium, so it will increase each year as the standard premium increases.

#### **4. When is the initial deadline for providing a certificate of creditable coverage?**

The initial certificate must be provided prior to November 15, 2005.

Note that plan sponsors are required to provide a certificate, even if the plan does not provide creditable coverage, (i.e., a notice of non-creditable coverage).

#### **5. Which participants must receive the Medicare Part D notice?**

The employer must provide the notice to every active employee, retiree and dependent who is eligible for Medicare Part D and is covered by prescription drug benefits under the group health plan. Medicare Part D eligible individuals are those who are entitled to Medicare Part A and/or enrolled in Medicare Part B, primarily due to attaining age 65, disability or end stage renal disease. Many employers are sending a certificate to all plan participants, since it may be difficult to identify every Medicare Part D eligible, covered participant.

#### **6. Who must provide a certificate?**

The certificate obligation is imposed on every plan sponsor of a group health plan providing prescription drug benefits, whether the prescription drug coverage is insured or self-insured. The certificate obligation applies whether or not the plan sponsor is applying for the Medicare Part D tax-free retiree drug subsidy. Note that applicable guidance provides that sponsors of health savings accounts ("HSAs") and flexible spending accounts ("FSAs") are not required to provide certificates with respect to those plans.

#### **7. How does an employer determine whether its group health plan coverage is creditable?**

A group health plan's prescription drug coverage is creditable if the actuarial value of the coverage equals or is greater than the actuarial value of the standard Medicare Part D coverage. This must be based on generally acceptable actuarial principles and applicable guidance. Generally, guidelines measure whether the expected amount of paid prescription drug claims for Medicare Part D eligible individuals is at least as much as the expected amount of paid prescription drug claims under standard Medicare Part D benefits. This is a gross determination – it

does not take into account whether the coverage is paid for by the participant or the plan sponsor.

A safe harbor is also available that does not require the services of an actuary to determine whether a group health plan provides creditable coverage. Under this safe harbor, a prescription drug plan is deemed to provide credible coverage if it:

1. includes brand and generic prescriptions;
2. provides reasonable access to retail providers or mail order coverage;
3. pays on average at least 60% of the cost of prescription drug expenses;
4. for a prescription drug plan that is not integrated with other benefits (medical, dental, etc.), the plan either has no annual benefit maximum or a maximum annual benefit of at least \$25,000, or the plan is expected to pay at least \$2,000 for each Medicare-eligible participant in 2006; and
5. for integrated benefit plans, the integrated health plan has no more than a \$250 deductible per year, has no annual benefit maximum or a maximum annual benefit payable by the plan of at least \$25,000 and has no less than a \$1 million lifetime combined benefit maximum.

A health FSA is disregarded in determining if an individual has creditable coverage, and coverage under an HSA is not considered in determining whether a high deductible plan qualifies as creditable coverage.

## **8. What information must the Medicare Part D notice include?**

The Centers for Medicare and Medicaid Services ("CMS") published sample notices for plans to use this year only (2005). CMS will issue further guidance for plans to use in future plan years. Note that there are separate [model notices](#) for creditable and non-creditable coverage. If the model notice is used, the notice content requirement is satisfied.

Employers may consider adding additional information to the model notice. CMS recommends that the notice explain the options that individuals will have when they become eligible to enroll in Medicare Part D. For example, an employee can retain plan coverage and delay enrolling in Medicare Part D or enroll in Medicare Part D as a supplement. If the employer is applying for the retiree drug subsidy, the notice can "encourage" employees to not enroll in Medicare Part D by stating that the plan's prescription drug benefits are as good or better than Medicare Part D (based upon an average, actuarial basis), and that Medicare Part D coverage would be duplicative of the plan's benefits. (The subsidy is only available for those Medicare Part D eligible employees that retain employer plan coverage

and do not enroll in Medicare Part D.) The notice could explain the plan's coordination of benefits with Medicare Part D and the consequences of waiving prescription drug coverage under the plan in favor of a Medicare Part D plan. The notice could also clearly explain that a Medicare Part D eligible individual who loses creditable coverage has only 63 days to enroll in a Medicare Part D plan before incurring the late enrollment penalty. This enrollment period is not the same as the other Medicare enrollment periods.

#### **9. What are the requirements for providing the Medicare Part D notice?**

An employer can provide the notices by mail or through electronic delivery. However, there are stringent standards for providing the notices by electronic delivery that employers may find difficult to meet. The employer can mail a single notice for all Medicare-eligible family members residing at the same address. However, if the employer knows that any participant's Medicare-eligible spouse or dependent resides at a different address than the participant, the plan must provide a separate notice to that individual. If the employer includes the notice with other information, the notice must be displayed "prominently and conspicuously." This means a reference to the notice in a separate box, bolded or offset, must appear on the first page of the document in at least a 14 point font.

#### **10. When does an employer have to provide the notices?**

The initial certificate must be provided prior to November 15, 2005. After the initial notice, a certificate must be provided at each of the following additional times:

1. prior to each annual Medicare Part D enrollment period (November 15 through December 31 each year);
2. prior to an individual's initial Medicare Part D enrollment period;
3. prior to the effective date of coverage for any Medicare Part D eligible individual who becomes covered by the plan;
4. when the plan's prescription drug coverage ends or creditable coverage status changes; and
5. at any time upon a participant's request.

The first two timing requests are met if the notice is provided to all plan participants. (The "prior to" condition is satisfied if the notice has been provided within the last 12 months.) To comply with all of these requirements, we recommend employers include a Certificate of Creditable Coverage as part of a plan's annual enrollment information or with other plan information that is



provided on an annual basis, such as the summary annual report.

The employer must also provide a copy of its notices to CMS on an annual basis. CMS has not yet provided guidance about the form, content and timing of this filing requirement.

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