

MEDICARE D – PRESCRIPTION DRUG FINAL RULE (Eff. Date 1/1/2006)

The Medicare Prescription Drug, Improvement and Modernization Act of 2003 created, for the first time, prescription drug coverage under the Medicare system and with it a tax-free subsidy to employers who maintain prescription drug coverage for Medicare eligible retirees. The Act also creates additional requirements with which health plans must comply.

OBLIGATION TO PROVIDE NOTICE OF PLAN STATUS AS CREDITABLE COVERAGE TO MEDICARE D

Definitions

Creditable Prescription Drug Coverage is any of the following types of coverage, but only if the coverage's value is actuarially equal to or greater than the value of the standard Medicare D – Prescription Drug coverage.

- Prescription drug coverage under an approved PDP or Medicare Advantage Drug Plan,
- Medicaid,
- A group health plan, including the Federal Employee Plan and a qualified retiree drug plan,
- State Pharmaceutical Assistance programs (SPAP),
- Prescription drug coverage provided to veterans, survivors and dependents under 38 USC Chapter 17,
- Military coverage under 10 USC Chapter 55, including TRICARE,
- Individual health insurance coverage,
- Coverage provided by a medical care program of the Indian Health Service, a Tribe or tribal organization, or the Urban Indian organization,
- Coverage provided by a PACE organization,
- Cost based HMO or CMP,
- A State High-Risk Pool

(423.56 (a) and (b) - Procedures to determine and document creditable status of prescription drug coverage)

Requirement to Disclose Creditable Status to Covered Individuals

Each entity that offers one of the above stated types of prescription drug coverage, with the exception of PDP, Medicare Advantage, PACE, cost based HMO and CMP coverage, must provide notice to all Medicare Part D eligible individuals regarding the plan's status as creditable prescription drug coverage under Part D. Notice must be provided to:

- All Medicare eligible individuals currently enrolled in the plan,
- Any Medicare eligible individual seeking to enroll in the plan,
- CMS (Centers for Medicare and Medicaid Services).

(423.56 (c) and (e) - General Disclosure Requirements and Disclosure to CMS)

Actuarial attestation is not required to determine creditable coverage status, unless the plan is applying for subsidy payment under the Act. A plan that is not applying for the subsidy is considered creditable if it meets all of the following requirements:

- Provides coverage for brand and generic prescription drugs,
- Provides reasonable access to retail providers and, optionally, for mail order coverage,
- The plan is designed to pay on average at least 60% of the participants' prescription drug expense, and

- The plan design meets one of the following:
 - the prescription drug benefit has no annual maximum or has an annual maximum of \$25,000 or more, or
 - the prescription drug benefit has an actuarial expectation that the amount payable by the plan will be at least \$2,000 per Medicare eligible individual in 2006, or
 - for plans with medical and prescription drug benefits combined only, the plan deductible is \$250 or less per year, and there is no prescription drug annual maximum or the annual maximum is \$25,000 or more, and the plan lifetime maximum for all benefits is at least \$1,000,000.

(CMS Creditable Coverage Guidance, 5/26/05)

For a plan that is applying to receive subsidy payments, the determination of creditable coverage status is based on the “Gross Value Test” that is used as the first prong in two prong test for receiving subsidy on a retiree drug plan. In general, the test compares the dollar value of paid claims under the health plan against the dollar value that Medicare Part D would have paid for the same claims.

(CMS Creditable Coverage Guidance, 5/26/05)

Timing and Content of Notice

Notice must be provided to Medicare eligible individuals, in a form and manner specified by CMS (refer to attached model notices), as follows:

- Prior to the individual’s initial enrollment period for Part D,
- Prior to enrollment in the plan,
- Upon any change in the plan’s status as creditable coverage under Part D,
- Annually, prior to the start of the Part D annual enrollment period on November 15,
- Upon request.

(423.56 (f)- Notification Content and Timing Requirements)

If the prescription drug coverage is not creditable coverage to Part D, the notice must include the following information:

- A statement that the coverage is not creditable coverage for Part D,
- A statement that Medicare Part D enrollment is limited to certain periods during the year,
- A statement regarding the late enrollment penalty under Medicare Part D (1% per month).

(423.56 (d)- Disclosure of non-creditable coverage)

Requirement to Disclose Creditable Coverage Status to Medicare

Disclosure to CMS is to be provided in a form and manner to be specified by CMS at a future date.

(423.56 (e)- Disclosure to CMS)

On December 30, 2005, CMS published additional guidance defining the form and manner in which disclosure is to be provided to CMS. Each entity that offers prescription drug coverage is required to complete an on-line form to notify CMS if the plan is creditable to Medicare D. The form can be accessed by selecting Disclosure to CMS Form under the Guidance Documents at www.cms.hhs.gov/creditablecoverage. Electronic notification is the only option for complying with the notice requirement and notice must be provided to CMS as follows:

- By March 31, 2006 for current plan years that end in 2006,
- Annually within 60 days of the start of a new plan year,
- Within 30 days after the termination of a plan,
- Within 30 days after any change in the plan’s status as creditable coverage under Part D.

The following information will be needed to complete the on-line form:

- Employer name,
- Employer tax identification number (TIN/EIN),
- Address,
- Phone number,
- Type of coverage (e.g. group health plan),
- Number of plan options offered,
- Creditable status of each plan option,
- Beginning and ending dates of the plan year notice is being provided for,
- Estimate of the number of Part D eligible individuals the plan covers,
- Estimate of the number of Part D eligible individuals that are covered as retirees,
- The date the employer provided creditable coverage notices to Part D eligible individuals under the plan,
- If this is a change to previously submitted information,
- Name, title and e-mail address of the individual completing the form,
- The date you are completing the form.

RETIREE PRESCRIPTION DRUG PLAN SUBSIDY

Employment based, retiree prescription drug plans that qualify for subsidy and complete the application process can receive 28% of the plan's claim cost, between \$250 and \$5000 per Medicare eligible individual, in providing prescription drug coverage. Cost estimates indicate that, for a typical retiree plan, reimbursement would be equal to approximately 20% of the overall drug claim cost if all covered individuals chose the plan's coverage and not Medicare Part D. Only prescription drug costs paid for Medicare eligible individuals that do not enroll in Medicare Part D are reimbursable.

Plans that Qualify for Subsidy

To qualify for the subsidy, a retiree health plan must:

- Provide an actuarial attestation relating to the equivalency of the plan's benefits to Part D,
- Provide creditable coverage notices to all Part D eligible individuals,
- Agree to maintain specified records and make them available for audit.

(423.884 (a)- Requirements for Qualified Retiree Prescription Drug Plans)

Reporting and Disclosure

The plan sponsor is required to have a written agreement in place with the insurer or health plan providing for the disclosure of information to CMS. The issuer or plan would then provide the necessary information to CMS.

(423.884 (b)- Disclosure of Information)

Application for Subsidy

The plan sponsor must submit an application to CMS annually for the subsidy. The application must be signed by an authorized representative of the plan sponsor and provided in a form and manner to be specified by CMS. The application process is electronic and must be done on-line at <http://rds.cms.hhs.gov>. Notice of approval or status of the application will also be provided electronically. The following information must be provided in the application:

- Employer TIN (tax identification number),
- Plan sponsor name and address,
- Contact name and e-mail address,
- Actuarial attestation and other documentation that may be required by CMS,

- A list of all individuals covered under the retiree plan that are eligible for, but have not elected Part D. For each individual the following information must be provided: full name, HIC or Social Security Number, date of birth, gender, relationship to retiree (self, spouse, dependent), group number, effective date (later of start of plan year or first date covered during that year), termination date, type of record (add, update, delete), and Plan Sponsor ID and Application ID,
- A signed sponsor agreement.
(423.884 (c)- Application)

In general, application must be made at least 90 days prior to the start of the plan's plan year. For the 2006 year only, applications may be submitted until September 30, 2005. A 30-day extension may be granted if the request for extension is filed prior to the normal filing deadline and approved by CMS. Requests for extension must be made on-line at <http://rds.cms.hhs.gov>.

(423.884 (c)(5)- Timing)

Once a completed application is submitted, the list of eligible individuals will be compared against the Medicare Beneficiary Database to determine that the individuals have not elected Medicare Part D. Any discrepancies will be reported back to the plan sponsor.

(423.884 (c)(7)- Data match)

Reporting Updates

The plan sponsor is required to provide updates to the information provided in the application on a monthly basis or at another frequency as specified by CMS.

(423.884 (c)(6)- Updates)

Actuarial Attestation

The actuarial attestation required as part of the application must include the following:

- Statement that the gross value of the retiree drug coverage is equal to or greater than the gross value of Part D,
- Statement that the net value of the retiree drug coverage is equal to or greater than the net value of Part D,
- Statement that the information is true and accurate to the best of the actuary's knowledge and belief,
- An acknowledgement that the information being provided and attested to is being used to obtain federal funds,
- Signature of a qualified actuary who is a member of the American Academy of Actuaries.

(423.884 (d)- Actuarial attestation-general)

Actuarial attestation must be provided annually at the time the plan sponsor's application for subsidy is made. If a material change that impacts the actuarial value of the coverage is planned, a revised attestation must be submitted at least 90 days prior to the implementation of the change.

(423.884 (d)(6)-Timing)

Gross value test. The gross value of the retiree coverage is determined by using the actual claim experience and demographic data for covered Part D eligible individuals to determine the claim payments under the plan. If a group's size or other factor limits the creditability of the data, normative data provided by CMS may be used to determine gross value.

(423.884 (d)(5)(ii)(A)- Specific rules for determining the actuarial value of the sponsor's retiree prescription drug coverage)

The same claim and demographic data is then used to determine the claim payments that would be made under Part D.

(423.884 (d)(5)(iii)(A)- Specific rules for determining the actuarial value of the defined standard prescription drug coverage under Part D)

Net value test. The net value of the retiree coverage is determined by subtracting from the gross value previously determined the amount of premium or contribution paid by the retirees. If a combined premium is charged that includes medical and prescription drug coverage, the actuary and plan sponsor must allocate an appropriate amount to the prescription drug coverage based on a sound method.

(423.884 (d)(5)(ii)(B)- Specific rules for determining the actuarial value of the sponsor's retiree prescription drug coverage)

The net value of Part D is determined similarly by subtracting from the gross value of Part D the monthly premium that would be paid and subtracting an amount to adjust for the impact of on the Part D benefit of the retiree coverage.

(423.884 (d)(5)(iii)(B)- Specific rules for determining the actuarial value of the defined standard prescription drug coverage under Part D)

Subsidy Payment

Payment of the subsidy can be made on a monthly, quarterly or annual basis, as elected by the plan sponsor. If monthly or quarterly payments are elected, corresponding monthly or quarterly reporting of claim payments is required in addition to an annual reconciliation filing. Monthly or quarterly reporting must include an estimate of the difference between actual and expected costs based on expected rebates and price concessions for the remainder of the year. If annually payments are elected, claim, rebate and other cost concession data must be submitted to CMS within 15 months after the end of the plan year.

(423.888 (b)- Payment method timing)

Documentation Requirement

Records relating to the subsidy application and reporting process must be maintained for a period of six years following the plan year in which the claims were incurred.

(423.888 (d)- Maintenance of Records)

PRESCRIPTION DRUG CREDITABLE COVERAGE NOTICE

IMPORTANT NOTICE ABOUT YOUR EMPLOYER PROVIDED PRESCRIPTION DRUG COVERAGE AND MEDICARE

Date: June 22, 2005

Employer Name:

Group Number:

Contact

Position/Office:

Address:

Phone Number:

Please read this notice carefully and keep it where you can find it. This notice has information about your current prescription drug coverage with the above named employer and new prescription drug coverage available January 1, 2006 for people with Medicare. It also tells you where to find more information to help you make decisions about your prescription drug coverage.

- Starting January 1, 2006, new Medicare prescription drug coverage will be available to everyone with Medicare.
- The above named employer has determined that **the prescription drug coverage offered under its group health plan is, on average for all participants, expected to pay out as much or more than the standard Medicare prescription drug coverage will pay.**
- Your current coverage provides benefits for other health expenses, in addition to prescription drugs. If you choose to enroll in a Medicare prescription drug plan, you will still be eligible to receive all of your current health and prescription drug benefits.
- Read this notice carefully. It explains the options you have under Medicare prescription drug coverage, and can help you decide whether you want to enroll.

For more information about this notice or your current prescription drug coverage, contact our office at the address listed above or by calling the phone number listed above. NOTE: You may receive this notice at other times in the future, such as before your initial enrollment period for Medicare, in November of each year prior to the annual enrollment period for Medicare prescription drug coverage, or if coverage under your employer's plan changes. You may also request a copy of the notice at any time.

For general information regarding the Medicare prescription drug coverage and additional resources you may access, please see the second page of this notice.

You may have heard about Medicare's new prescription drug coverage and wondered how it may affect you. Starting January 1, 2006, prescription drug coverage will be available to everyone with Medicare through Medicare prescription drug plans. All Medicare prescription drug plans will provide at least a standard level of coverage set by Medicare. Some plans might also offer more coverage for higher monthly premium.

Because your existing prescription drug coverage with the above named employer is on average at least as good as standard Medicare prescription drug coverage, you can keep that coverage and not pay extra for Medicare prescription drug coverage if you decide to enroll at a later date. People with Medicare can enroll in a Medicare prescription drug plan from November 15, 2005 through May 15, 2006. However, because you have existing prescription drug coverage that, on average, is as good as Medicare coverage, you can choose to join a Medicare prescription drug plan later. Each year after that you will have the opportunity to enroll in a Medicare prescription drug plan between November 15th and December 31st.

You should also know that if you drop or lose your coverage with the above named employer and do not enroll in Medicare prescription drug coverage after your current coverage ends, you may pay more to enroll in Medicare prescription drug coverage later. If, after May 15, 2006, you go 63 days or longer without prescription drug coverage that is at least as good as Medicare's prescription drug coverage, your monthly premium for Medicare prescription drug coverage will go up at least 1% per month for each month that you did not have coverage that is creditable to Medicare. For example, if you go nineteen months without creditable coverage and then elect Medicare, your premium for Medicare will be 19% higher than what most other people pay. You will have to pay this higher premium as long as you have Medicare coverage.

In addition, you may have to wait until the next November to enroll. Generally, after May 15, 2006, you can only join a Medicare prescription drug plan between November 15 and December 31 of any year.

If you decide to enroll in a Medicare prescription drug plan and drop your employer's prescription drug coverage, be aware that you may not be able to get that coverage back. You should compare your current prescription drug coverage, including which drugs are covered, with the coverage and cost of the plans offering Medicare prescription drug coverage in your area.

More information about your options under Medicare prescription drug coverage will be available in the "Medicare & You 2006" handbook. If you are eligible for Medicare, you will receive a copy of the handbook in the mail from Medicare. You may also be contacted directly by Medicare prescription drug plans. You can also get more information about Medicare prescription drug plans from these places:

- Visit www.medicare.gov for personalized help,
- Call your State Health Insurance Assistance Program (see your copy of the Medicare & You handbook for their phone number),
- Call 1-800-MEDICARE (1-800-633-4227). TTY users should call 1-877-486-2048.

For people with limited income and resources, extra help paying for a Medicare prescription drug plan is available. Information about this extra help is available from the Social Security Administration (SSA). For more information about this extra help, visit SSA online at www.socialsecurity.gov, or call them at 1-800-772-1213 (TTY 1-800-325-0778).

PRESCRIPTION DRUG CREDITABLE COVERAGE NOTICE

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Date: June 22, 2005

Employer Name:

Group Number:

Contact

Position/Office:

Address:

Phone Number:

Please read this notice carefully and keep it where you can find it. This notice has information about your current prescription drug coverage with the above named employer and new prescription drug coverage available January 1, 2006 for people with Medicare. It also tells you where to find more information to help you make decisions about your prescription drug coverage.

- Starting January 1, 2006, new Medicare prescription drug coverage will be available to everyone with Medicare.
- The above named employer has determined that **the prescription drug coverage offered under its group health plan is, on average for all participants, NOT expected to pay out as much as the standard Medicare prescription drug coverage will pay. This is important, because for most people, enrolling in Medicare prescription drug coverage before May 15, 2006 means you will get more assistance with drug costs.**
- Your current coverage provides benefits for other health expenses, in addition to prescription drugs. If you choose to enroll in a Medicare prescription drug plan, you will still be eligible to receive all of your current health and prescription drug benefits.
- You have decisions to make about Medicare prescription drug coverage that may affect how much you pay for that coverage, depending on when or if you enroll. Read this notice carefully – it explains your options.

For more information about this notice or your current prescription drug coverage, contact our office at the address listed above or by calling the phone number listed above. NOTE: You may receive this notice at other times in the future, such as before your initial enrollment period for Medicare, in November of each year prior to the annual enrollment period for Medicare prescription drug coverage, or if coverage under your employer's plan changes. You may also request a copy of the notice at any time.

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Because your existing prescription drug coverage with the above named employer is on average for all participants, NOT expected to pay out as much as the standard Medicare prescription drug coverage, you may want to consider enrolling in a Medicare prescription drug plan. People with Medicare can enroll in a Medicare prescription drug plan from November 15, 2005 through May 15, 2006. **This is important, because if you do not get Medicare prescription drug coverage, or equivalent, creditable coverage, before May 15, 2006, you may have to pay a higher premium if you join later. You will pay that higher premium as long as you have Medicare prescription drug coverage.**

If you do not enroll in Medicare prescription drug coverage by May 15, 2006 and change your mind later, your monthly premium for a Medicare prescription drug plan could be much higher than it would have been if you had enrolled by May 15. **If, after May 15, 2006, you go 63 days or longer without prescription drug coverage that is at least as good as Medicare's prescription drug coverage, your monthly premium for Medicare prescription drug coverage will go up at least 1% per month for each month that you did not have coverage that is creditable to Medicare. For example, if you go nineteen months without creditable coverage and then elect Medicare, your premium for Medicare will be 19% higher than what most other people pay. You will have to pay this higher premium as long as you have Medicare coverage.**

If you don't enroll in a Medicare prescription drug plan May 15, 2006, you may have to wait until the next November to enroll. **Generally, after May 15, 2006, you can only join a Medicare prescription drug plan between November 15 and December 31 any year. This may mean the number of months you have to wait for coverage will be longer, which could make your premium higher.**

If you decide to enroll in a Medicare prescription drug plan and drop your employer's prescription drug coverage, be aware that you may not be able to get that coverage back. You should compare your current prescription drug coverage, including which drugs are covered, with the coverage and cost of the plans offering Medicare prescription drug coverage in your area.

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