



Medicare Part D Notice Requirements

Issue Date: September 2018

Quick Facts:

- Employers that sponsor group health plans that provide prescription drug coverage to Medicare-eligible individuals must disclose the creditable or non-creditable status of the drug coverage for the upcoming calendar year.
- The notices must be provided each year before October 15, which is the start date of the annual Medicare open enrollment period.
- Model creditable or non-creditable coverage notices are available from the Centers for Medicare & Medicaid Services (CMS).

Background

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) requires employers that offer prescription drug coverage to notify Medicare-eligible individuals as to whether their prescription drug coverage is creditable or non-creditable for the upcoming calendar year.

Creditable coverage is prescription drug coverage that is actuarially equal to or greater than the prescription drug coverage provided under Medicare Part D – Medicare’s voluntary prescription drug program.

Knowing a prescription drug plan’s creditable status is crucial to an individual's decision of whether to enroll in a Medicare Part D prescription drug plan, because Medicare beneficiaries who are not covered by creditable prescription drug coverage and who choose not to enroll in Medicare Part D before the end of their initial Medicare enrollment period must pay higher premiums if they enroll in Medicare Part D at a later date.

Disclosure to Individuals

Correlation with Medicare Enrollment

In order for Medicare-eligible individuals to make informed and timely enrollment decisions, group health plan sponsors must disclose the status (creditable or non-creditable) of the plan’s prescription drug coverage prior to the start of annual Medicare enrollment which begins October 15 each year.

Medicare Part D notices must be provided to all Medicare Part D eligible individuals who are covered under or who apply for the plan’s prescription drug coverage. The Medicare Part D notice is utilized to inform individuals about the plan’s prescription drug coverage status for the next calendar year.

A “Medicare Part D eligible individual” is an individual who:

- is entitled to Medicare Part A and/or enrolled in Part B as of the effective date of coverage under the Part D plan; and
- resides in the service area of a prescription drug plan or Medicare Advantage plan that provides prescription drug coverage.

Medicare Part D eligible individuals could include active employees, disabled employees, COBRA participants, retirees, as well as their covered spouses and dependents. Because employers do not generally know the Medicare eligibility status of dependents, distributing the notice to all employees who are eligible to participate in the employer's plan is considered the best method to ensure delivery to potentially eligible individuals.

Content of Part D Notices

[Model Part D notices](#) are available on CMS's website for plan sponsors to use in disclosing the creditable coverage status of their plans. Employers are not required to use the CMS notices; however, if the model language is not used, a plan sponsor's notices must contain the following information:

- A statement that the plan sponsor has determined that its prescription drug coverage is creditable or not.
- An explanation of creditable or non-creditable coverage.
- A description of the beneficiary's right to a notice.
- An explanation of the coverage options available to beneficiaries.
- An explanation of why creditable coverage is important and advice, that even though coverage is creditable, an individual could be subject to higher Part D premiums if the individual subsequently has a break in creditable coverage of 63 continuous days or longer before enrolling in a Part D plan.

Form and Manner of Delivering Part D Notices

Plan sponsors have flexibility in the form and manner of delivery of the Medicare Part D notices. The notices do not need to be sent in a separate mailing, but if the Medicare Part D notice is incorporated with other plan materials, it must be placed on the first page or, alternatively, prominently referenced in at least 14-point font in a separate box, bolded or offset on the first page.

For example:

If you (and/or your dependents) have Medicare or will become eligible for Medicare in the next 12 months, a Federal law gives you more choices about your prescription drug coverage. Please see page [XX](#) for more details.

As a general rule, a single Medicare Part D notice may be provided to the covered Medicare beneficiary and all of his or her Medicare eligible dependent(s). However, if a plan sponsor knows that any Medicare-eligible spouse or dependent lives at a different address, it must send a separate notice to the Medicare-eligible spouse or dependent at that address.

Electronic Delivery

Plan sponsors may send Medicare Part D notices electronically under certain circumstances. CMS has stated that health plan sponsors may follow the electronic disclosure standards under U.S. Department of Labor regulations. Thus, if participants have access to an employer's email system as part of their regular work duties, the employer can provide the notices electronically if certain other conditions are met. The rules for providing health plan notices and other documents electronically to employees without regular access to the employer's email system are more complicated. Consequently, most plan sponsors mail required notices to such employees. See this archived [EPIC Compliance Alert](#) from August, 2017 for more information on electronic delivery of ERISA and other disclosures.

Timing of Medicare Part D Notices

At a minimum, Medicare Part D notices must be provided:

1. prior to the Medicare Part D annual election period that begins October 15 each year;
2. prior to an individual's initial enrollment period for Part D;
3. prior to the effective date of coverage for any Medicare-eligible individual who joins the plan;
4. whenever prescription drug coverage ends or changes so that it is no longer creditable or becomes creditable; and
5. upon a beneficiary's request.

If the Medicare Part D notice for the next calendar year is provided to all plan participants annually, before October 15 of each year, items (1) and (2) above will be satisfied. In addition to providing the annual notice, many plan sponsors include a Medicare Part D notice in new hire packets and with other plan enrollment materials. This approach ensures that Medicare eligible individuals are notified in a timely fashion that their prescription drug coverage for the next calendar year is creditable or non-creditable.

Action Steps

Employers should confirm whether their health plans' prescription drug coverage is creditable or non-creditable for the next calendar year and distribute Medicare Part D notices before October 15, 2018. Employers that distribute open enrollment materials prior to October 15 can include Medicare Part D notices with other required health plan notices. Employers that start open enrollment later than October 15 will need to send a separate Medicare Part D notice prior to October 15.

Please be aware that this does not represent legal or tax advice and is only Frenkel's interpretation of the laws, regulations and statutes. It is highly recommended that you seek the advice of your legal and tax professional as to the applicability of this information to your particular situation.