



Revised Medicare Part D Disclosure Notices

The Centers for Medicare & Medicaid Services (CMS) recently posted revised model creditable/non-creditable Medicare Part D notifications. These notices are for use after June 15, 2008. The changes are primarily structural, not substantive. The new notices are available online at

http://www.cms.hhs.gov/CreditableCoverage/09_CCAfterJune15.asp#TopOfPage.

IMPORTANT REMINDERS ABOUT CREDITABLE/NON-CREDITABLE COVERAGE DISCLOSURES

When to Send Disclosure Notification

As a reminder, there are five times when a notice of creditable coverage (or non-creditable coverage) needs to be furnished:

1. Prior to the Annual Coordination Election period (open enrollment for Medicare part D) beginning November 15th through December 31st each year;
2. Prior to an individual's initial enrollment period;
3. Prior to the effective date of coverage for a Medicare eligible individual entering a group health plan;
4. When the employer no longer offers or the employer changes prescription drug coverage so that it is no longer creditable or that it becomes creditable; and
5. Upon request by the beneficiary.

If you provide the notice earlier in the year, are you required to send the notice again prior to November 15?

If the creditable coverage notification is provided to all plan participants annually, then CMS considers 1 & 2 (above) satisfied. The guidance clarifies that "prior to" means that the individual must have been provided the notice within the past 12 months. If the plan sponsor notified all plan participants in January 2008 of the creditability of prescription drug coverage for the January 1 – December 31, 2008 plan year (and properly notified new hires and made no plan changes that would affect credibility mid-year), then the plan sponsor likely satisfies the November 15, 2008 notice deadline. Plan sponsors should ensure every Medicare eligible individual was properly notified (no one was "missed"). If an employer is unsure, unclear or wants to operate conservatively, they may wish to send the notices again prior to November 15 deadline.

Responsibility for the Notice

The employer/plan sponsor is ultimately responsible for providing the disclosure notification to Medicare eligible plan participants. While some insurance providers may send a creditable coverage notification to covered participants, plan sponsors are

ultimately responsible for ensuring that Medicare eligible participants receive the notice in accordance with the above timelines.

Who Receives the Notice?

The regulations only require that Medicare eligible participants receive the disclosure notification. A Medicare eligible participant includes covered employees, spouses, dependents and COBRA qualified beneficiaries. Because an employer may not know whether these individuals are Medicare eligible, we continue to recommend that the plan sponsor distribute the notice to all eligible participants. By providing the notice to all participants, employers are protected against missing an eligible individual.

How to Deliver the Medicare Part D Notice

Sending the notice via first class mail is a permissible method of delivery. Generally, only one notice is required per household. However, if the employer knows that a spouse or dependent resides at a separate address, a separate notice should be mailed.

Handing the notice out at the workplace may be permissible; however, an employer would need to use another form of delivery (like mail) for an eligible spouse or COBRA qualified beneficiary.

Employers should maintain sufficient evidence of having mailed or delivered the notice.

What about Electronic Delivery?

As of February 15, 2007, electronic delivery of Medicare Part D letters to participants is permitted in limited situations:

Employees with Work-site Access

Employer/Plan Sponsors may distribute the Medicare Part D notice electronically to all employees with worksite access. Additionally, if this method is used, the plan sponsor does not need to provide a copy for the covered spouse/dependent. The new guidance states that the employee is responsible for providing a copy of the electronic disclosure to their Medicare-eligible dependents covered under the group health plan if employers provide the Medicare Part D disclosure notice electronically (under the Work-site Access Rule).

In order to provide electronic disclosure the following must be met: 1) appropriate and reasonable means are used to ensure that the system for furnishing documents results in *actual receipt* of the transmitted information and protect the confidentiality of personal information relating to an individual's account or benefits (such as a return receipt response via email), 2) the electronic materials are prepared and furnished in accordance with otherwise applicable requirements, 3) a notice stating the significance of the document is furnished at the time the electronic document is provided, and 4) a paper version of the document is available upon request.

Merely posting the notice to the employer's website is not sufficient. Further, if the employer knows that a covered spouse or dependent resides at a different address from the employee, separate disclosure notices are still required, and, if delivered electronically, each will need to satisfy the No Worksite Access rule outlined below.

No Work-site Access

There are additional rules when an individual does not have access to an employer's electronic information system on a daily basis as a part of work duties and the plan sponsor would like to send Medicare Part D notices electronically.

If the employee or Medicare-eligible spouse or dependent or COBRA qualified beneficiary requests electronic delivery, the employer must inform the participant of the following: 1) his/her right to obtain the paper version, 2) how to withdraw consent, 3) update information and 4) hardware/software requirements needed to access the information electronically.

Once those steps are met, the employer must receive electronic consent from the participant. Finally, in addition to having the disclosure notice sent to the individual's email address, the employer must post the notice on the entity's website with a link to the creditable coverage notice on the employer's home page.

In light of the administrative burden, many employers choose the mailing option as an alternative to electronic delivery.

What about Including the Notice with Open Enrollment Materials?

Including the material in open enrollment information is permissible subject to certain requirements. The disclosure notice must be "prominent and conspicuous." This means there must be a prominent reference (in 14 point font in a separate box, bolded or offset) on the first page of the provided plan information indicating the Medicare Creditable Coverage language is included in this information. The guidance provides a sample of this language.

Further, if open enrollment materials are disseminated at the worksite, an employer will need to utilize an alternative method for delivering the notice to COBRA qualified beneficiaries and eligible spouses and dependents.

RESOURCES:

- Disclosure of Creditable Coverage to Medicare Part D Eligible Individuals Guidance (as visited July 10, 2008)
http://www.cms.hhs.gov/CreditableCoverage/Downloads/Updated_Guidance_02_15_07.pdf

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