



September 15, 2016

## Medicare Part D Notices due before October 15

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. 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. This disclosure is important because a Medicare D late enrollment penalty (in the form of higher Medicare D premiums) may apply to individuals who do not maintain creditable coverage for a period of 63 days or longer following their initial enrollment period for Medicare D. 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.

In addition to the required disclosure to Medicare eligible individuals regarding the plan's prescription drug coverage, group health plans (with a prescription drug benefit) must also notify the Centers for Medicare & Medicaid Services (CMS) annually of their prescription drug plan's creditable or non-creditable status by completing an on-line disclosure form. The [Disclosure to CMS Form](#) must be submitted electronically within 60 days of the beginning of each plan year.

This Update primarily focuses on the Medicare D notice that must be provided annually to Medicare eligible individuals. For more information on the Medicare D creditable coverage disclosure requirements, please see CMS' [Creditable Coverage web page](#).

### Who is Required to Issue Medicare D Notices?

Generally, all group health plan sponsors that provide prescription drug coverage are required to issue Medicare D notices. This includes prescription drug plan sponsors in both private and public sectors. For a list of entities subject to the Medicare D disclosure requirement, see CMS' [Entities Required To Provide Disclosure To All Medicare Eligible Individuals](#). All size employers offering prescription drug benefits are subject to these rules as there is no exception for small employers.

### When Must Medicare D Notices Be Issued?

The creditable coverage notice must be distributed annually before October 15th. Under the guidance, the Medicare notice must be provided to Medicare D eligible individuals prior to the start of the annual Part D enrollment period of October 15th through December 7th. Other times the notice must be provided are as follows:

- prior to an individual's initial enrollment period for Part D (the seven-month period that

- begins three months before the month an individual first meets the eligibility requirements for Medicare Parts A and B and ends three months after the first month of eligibility);
- prior to the effective date of coverage for any Part D eligible individual that enrolls in the prescription drug coverage;
  - whenever the employer no longer offers prescription drug coverage or the plan's creditable or non-creditable status changes; and
  - upon request by the Part D eligible individual.

If notices are provided to all plan participants annually, prior to October 15 each year, CMS will consider the notice requirement as met for both the Medicare D annual enrollment period (Oct. 15th – December 7th) and the individual's initial enrollment period.

### **Who Must Receive the Notice?**

The MMA requires that Medicare D disclosure notices are provided to Medicare D eligible individuals enrolled in or seeking to enroll in a prescription drug plan. Medicare D eligible individuals may include actively working individuals, COBRA participants, disabled individuals, and retirees as well as the spouses and dependents of these groups. It may be difficult for an employer to identify all Medicare D eligible individuals, especially individuals not currently enrolled in the plan, those "seeking to enroll in" the plan, and individuals eligible for Medicare for a reason other than age (i.e., a spouse or dependent child that may be Medicare eligible due to a disability or end stage renal disease.)

Because of this, many employers take the approach of sending the Medicare D creditable coverage notice to all individuals eligible for prescription drug coverage under their plan. Under this approach, a group health plan will not need to know which individuals are eligible for Medicare D and which are not since all individuals will receive a disclosure notice, hence satisfying the requirement to send the notice to all Medicare D eligible individuals.

Another method for identifying Medicare D eligible individuals is for the employer to enter into a voluntary data-sharing agreement (VDSA) with CMS. Under a VDSA, an employer provides information to CMS about the individuals who are enrolled in its group health plans and CMS tells the employer which of these individuals are Medicare beneficiaries. For more information on the VDSA, please see the [VDSA website](#).

### **Notice Form and Delivery**

The Medicare D notices to individuals must meet specific content requirements. To assist entities with meeting these requirements, CMS provides [model notices](#) for creditable and con-creditable prescription drug coverage. The forms, last updated April 2011, are available in both English and Spanish. While employers are not required to use the model notices to satisfy the disclosure requirement, correct use of the model notices will ensure the notice meets the required content standards.

Medicare D notices to participants may be sent as a stand-alone document or with other documents such as open enrollment materials. Notices sent with other materials must be "prominent and conspicuous." To meet this requirement, CMS has stated that "the disclosure notice portion of the document (or a reference to the section in the document being provided to the individual that contains the required statement) must be prominently referenced in at least 14-point font in a separate box, bolded, or offset on the first page" of the other information that is being provided.

Sponsors may provide paper Medicare D notices by mail or send notices to participants electronically, for example, by email, if certain requirements are met. CMS prefers the paper method of delivery for Medicare D notices since Part D eligible individuals are more likely to receive and understand the paper form. Also if needed, the paper copy may be used to prove the individual had creditable coverage, which may be required by Medicare when/if an individual enrolls in Medicare D after their initial enrollment period. Electronic disclosure of Medicare D notices must meet current DOL electronic distribution standards. While the DOL electronic distribution rules can be complex (see DOL [Technical Release 2011-03](#) for a full account of the electronic distribution rules), in simplified terms, electronic disclosure (without prior consent) may generally only be made to individuals who have computer access as an integral part of their work duties. Among other requirements, if a plan sponsor provides the Medicare D notice in accordance with the DOL electronic disclosure requirements, the sponsor must also inform individuals that they are responsible for providing a copy of the disclosure to their Medicare eligible dependents.

Should you have questions about this or any aspect of group health plan requirements, contact your Conner Strong & Buckelew account representative toll free at 1-877-861-3220. For a complete list of Legislative Updates issued by Conner Strong & Buckelew, visit our online [Resource Center](#).



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