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Deadline Looms for Medicare Part D Notices of Creditable Coverage

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In a May 2005 commentary item, “Medicare Part D: What Employers Need to Know—Subsidies for Providing Prescription Drug Coverage to Retirees,” we explained that under the new Medicare Part D, employers must assess whether their prescription drug coverage for retirees and employees eligible for Part D is “creditable.”

Any employer providing prescription drug coverage to Medicare-eligible beneficiaries (retirees and employees) must provide such beneficiaries “Notices of Creditable Coverage” before November 15, 2005, regardless of whether the employer seeks the 28% subsidy from the government. Employers seeking subsidies must hire actuaries to assist in preparation of Notices of Creditable Coverage, and all employers providing prescription drug coverage to Medicare-eligible individuals must gear up now in order to meet the November 15 deadline.

What is Creditable Coverage?

Prescription drug coverage is “creditable” if the actuarial value of the coverage equals or exceeds the actuarial value of standard Medicare prescription drug coverage, as demonstrated through the use of generally accepted actuarial principles and in accordance with Centers for Medicare and Medicaid Services (CMS) guidance. In general, the actuarial determination measures whether the expected amount of paid claims under the employer’s prescription drug coverage is at least as much as the expected amount of paid claims under the standard Medicare prescription drug benefit. Employers should seek actuarial advice in performing these calculations.

The determination of creditable coverage affects the premiums that Part D enrollees may have to pay. For example, Medicare beneficiaries who are not covered under creditable prescription drug coverage, and who choose not to enroll before the end of their initial enrollment period for Part D, will likely pay a higher premium on a permanent basis if they subsequently enroll in Part D. Because of the effect creditable coverage has on premiums, any employer sponsoring a group health plan that provides prescription drug coverage to Medicare-eligible beneficiaries (retirees and employees) must disclose to them whether the plan’s coverage is creditable.

Employers Seeking Subsidies Must Obtain Actuarial Attestation of Equivalence

If coverage is creditable, and a qualified actuary provides an attestation of actuarial equivalence, an employer may seek subsidies under Part D.

Employers Not Seeking Subsidies May Use a Simplified Method for Determining Creditable Coverage and Do Not Need an Actuarial Attestation

CMS has provided a simplified method of determining creditable coverage for entities that are not applying for retiree drug subsidies. Under the simplified method, prescription drug coverage is deemed creditable if:

- it provides coverage for brand and generic prescriptions;
- it provides reasonable access to retail providers and, optionally, for mail order coverage;
- the plan is designed to pay on average at least 60% of participants' prescription drug expenses;
- it satisfies at least one of the following:
 - a prescription drug only plan has no maximum annual benefit or a maximum annual benefit payable by the plan of at least \$25,000;
 - a prescription drug only plan has an actuarial expectation that the amount payable by the plan will be at least \$2,000 per Medicare-eligible individual in 2006;
 - for employers that have integrated health coverage (prescription drug benefits are integrated with other coverage such as medical and dental), the integrated health plan has
 - no more than a \$250 deductible per year, has no maximum annual benefit or a maximum annual benefit payable by the plan of at least \$25,000, and has no less than a \$1,000,000 lifetime combined benefit maximum.

Disclosure of Creditable Coverage

The Part D regulations require sponsors to provide Notice of Creditable Coverage to the government, as well as to Part D-eligible individuals who are enrolled in or seeking to enroll in an employer's prescription drug plan or group health plan providing prescription drug coverage.

Disclosure to CMS

Sponsors are required to provide a Notice of Creditable Coverage to the CMS annually and upon a change that affects whether the coverage is creditable. Although CMS has

Deadline Looms for Medicare Part D Notices of Creditable Coverage

released guidance on the Notice requirement for beneficiaries, it has not yet clarified the timing, format, and language for the Notice to CMS.

Disclosure to Individuals

CMS clarified that sponsors must provide a Notice of Creditable Coverage to an individual:

- prior to an individual's "initial enrollment period" in Part D; the regulations clarify that this period will be the same as the enrollment period for Medicare Part B starting after February 2006;¹ in the meantime, individuals first eligible to enroll in Part D in February 2006 or earlier will have an initial enrollment period from November 15, 2005 through May 2006;
- prior to the commencement of the "annual coordinated election period" for Part D; for 2006, this period begins on November 15, 2005 and ends on May 15, 2006, overlapping most of the "initial enrollment period" above;
- prior to the effective date of an individual's enrollment in prescription drug coverage and upon any change that affects whether the coverage is creditable;
- upon request by the individual.

Content of Notice to Individuals

The following information must appear in the Notice of Creditable Coverage:

- the determination that the plan's coverage is creditable or non-creditable;
- an explanation of the meaning of creditable coverage, i.e., that the amount the plan expects to pay on average for prescription drugs for individuals covered by the plan in 2006 is the same or more than what Medicare Part D would provide;
- if the plan's coverage is non-creditable, individuals must be informed that they can only enroll in a Part D plan from November 15, 2005 through May 15, 2006 and at other specified times thereafter;
- an explanation of the significance of creditable coverage, i.e., that a plan participant may be subject to higher premiums in a Part D plan if she or he fails to enroll in a creditable plan when first eligible.

In addition to the information above, CMS has recommended that plans provide further information, including:

- the plan participant's right to a Notice of Creditable Coverage and that the participant may receive it upon request and at the times mentioned above;

¹ This period is the seven months beginning three months before an individual first meets the eligibility requirements of Part B.

Deadline Looms for Medicare Part D Notices of Creditable Coverage

- that the participant may retain coverage under the plan or enroll in a Part D plan;
- a clarification of whether the plan's coverage is available to participants in Part D plans and whether a participant may resume coverage under the plan after dropping coverage to enroll in a Part D plan;
- that assistance with prescription drug costs for people with limited income and resources is available through the Social Security Administration.

Method for Delivering Notice

CMS clarified that employers have flexibility regarding how they provide Notices of Creditable Coverage to beneficiaries. First, the Notice need not be sent as a separate mailing, and therefore may be provided with other plan participant information materials, including enrollment and renewal materials. Also, an employer may provide a single Notice to the covered Medicare individual and all Medicare-eligible dependents (e.g., spouses) covered under the same plan. If the employer knows, however, that a Medicare-eligible spouse or dependent resides at a different address than the participant, a separate Notice must be provided to that person.

The Notice may be provided electronically only if the beneficiary has indicated to the employer that she or he has adequate access to electronic information. Before a beneficiary may agree to receive information electronically, the beneficiary must be informed of:

- his or her right to obtain a paper version;
- how to withdraw his or her consent to receive it electronically;
- how to update address information;
- any hardware or software requirements to access and retain the Notice.

Given that the determination of whether your prescription drug coverage is creditable must be completed before the Notice may be sent, and the first Notice must be provided by November 15, plan sponsors are urged to focus on this new process as soon as possible.

For more information, in the Tax Management Portfolios, see Kenty, 389 T.M., Medical Plans – COBRA, HIPAA, HRAs, HSAs and Disability, and in Tax Practice Series, see ¶5920, Health & Disability Plans.