

NEW MEDICARE PART D RULES
“CREDITABLE COVERAGE” MODEL NOTICES RELEASED

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1. **New Rules.** The Medicare Prescription Drug Improvement and Modernization Act (the “Act”) revised the Medicare system and added a new outpatient prescription drug benefit (known as “Medicare Part D”). Since the actual elections for Medicare Part D involve employee choices, that topic will be addressed at the end of this Summary. The Centers for Medicare and Medicaid Services (“CMS”) published comprehensive rules implementing many of the Act’s important features and has engaged in substantial “outreach” activities to educate employers and employees regarding the new rules. Substantial confusion originally existed in November, 2005, when the Medicare Part D open enrollment process began. However, most employers and employees are becoming familiar with the new rules. This summary is intended to review and explain how the Act affects employer-sponsored group health plans in the following two important areas:
 - a. Employers with **20** or more employees and union-sponsored group health plans must provide certain Notices to their Medicare-eligible participants and CMS advising whether the coverage under their prescription drug plans is so-called **“creditable coverage”** (i.e., and provides coverage as good as the Medicare Part D program). A common misunderstanding is that this Notice requirement only applies to plans that cover retirees. However, **“any”** employer-sponsored plan covering active employees and their beneficiaries must comply with the Notice requirements if any covered employee or beneficiary is Medicare eligible. (i.e., any employee or spouse who are age **65**.)

This Notice must be provided to active employees, spouses and dependents who are covered by an employer’s group health plan and who also are covered by Medicare because of their age, disability, or end-stage renal disease.
 - b. The Act also includes a subsidy designed to encourage employers to provide retiree medical coverage. The subsidy is beyond the scope of this summary, but will be separately addressed with clients of Palmieri & Eisenberg (“P&E”) who maintain retiree health benefits.
2. **Executive Summary.**
 - a. All employers providing prescription drug coverage to their active employees, spouses, and dependents, or maintaining retiree medical plans were required to issue an initial notification to such individuals prior to **November 15, 2005**.

- b. An “**annual**” Notice must also be issued to employees, etc. Thus, employers were required to notify employees prior to **November 15, 2006**, whether an employer's plan continued to provide creditable coverage.
- c. Employers were required to initially notify CMS by **March 31, 2006** through an on-line registration by process of their drug programs provided creditable coverage.
- d. Employers must notify CMS “**annually**” within **60** days after the beginning of each medical plan year using an On-Line Disclosure Form to confirm if prescription drug coverage is comparable to Medicare Part D. Notice is also required to CMS within **30** days after drug coverage terminates or changes its creditable coverage status. For medical plans using the calendar year as the plan year, the Disclosure Statement must be issued on or before **March 1, 2007**.
- e. Employers must determine whether their prescription drug programs provide sufficient benefits to be classified as **creditable coverage**. Depending upon whether an employer’s plan provides creditable coverage or not, either a Creditable Coverage Notice or a Non-Creditable Coverage Notice must be issued to all eligible individuals.
- f. If an employer’s plan does not provide creditable coverage, and an individual does not enroll in Medicare Part D during their first open enrollment period, the late enrollment penalty of **1%** per month may be charged to the individual if they have a “**gap**” in creditable coverage of **63** days or more when they enroll in Medicare Part D. For example, a delay in enrolling of **18** months could result in an **18%** increase in the cost of Medicare Part D drug coverage.
- g. Beginning on November 15, 2005, Medicare beneficiaries were eligible to enroll in a new Medicare Advantage Plan (“MAP”) or Prescription Drug Plan (“PDP”) that contract with Medicare.
- h. Medicare Part D-eligible individuals who have creditable coverage through their employer’s health plan may stay in that plan, not enroll in Medicare Part D, and avoid any late enrollment penalties if they enroll in a Medicare Part D program in the future.
- i. If an employer’s health plan does not provide creditable coverage, then Medicare-eligible individuals need to enroll in Medicare Part D to avoid certain late enrollment penalties. The Model Notices are intended to help Medicare Part D-eligible individuals decide whether or not to enroll in Medicare Part D, based on whether or not their employer’s health plan provides creditable coverage.
- j. Employers may delegate the responsibility to issue notifications to their insurance carriers, brokers and third party vendors. Employers must determine if their vendors will assist in this process.

- k. CMS issued Model Notices to assist employers in communicating these rules to employees. The Model Notices were revised by CMS in 2006.
 - l. Part D is available to everyone who is eligible for Medicare in the U.S. and U.S. territories.
3. **Affected Employers**. Affected employers include churches and federal, state and local governments that sponsor group health plans for employees or retirees. The requirement applies to employers that provide retiree health coverage, regardless of whether they apply for the federal retiree drug subsidy available to employers that provide drug coverage that is at least “**actuarially equivalent**” to the Part D coverage. However, employers that provide retiree drug coverage and which contract with a Prescription Drug Plan (“PDP”) (or that contract with Medicare to become a PDP) to provide drug coverage to retirees **are exempt** from the Notice requirement.
 4. **Creditable Coverage**. Coverage is considered “**creditable**” if the actuarial value (i.e., expected amount of paid claims) equals or exceeds the actuarial value of standard prescription drug coverage under Medicare Part D, regardless of whether the coverage is paid for by an employer or its employees. For plans that have multiple benefit options, the actuarial value test applies separately to each benefit option. However, the determination of creditable coverage requires the attestation of a qualified actuary only if the employer elects to apply for the retiree drug subsidy. In addition, CMS provides that coverage will be “**deemed**” creditable if certain requirements are satisfied.
 5. **Notice Content**. CMS originally developed two Model Notices. However, in May, 2006, CMS issued new guidance including a Model Personalized Disclosure Notice and revised Model Creditable Coverage and Noncreditable Coverage Notices. The Model Notices are substantially unchanged from the generic Notices issued in 2005, but have been reorganized and rewritten to make them easier to understand. The Personalized Notice includes the following information:
 - a. The Medicare beneficiary’s first and last name, social security number, or Health Insurance Claim Number.
 - b. The date ranges of Creditable Coverage.
 - c. A statement that the Health Plan’s drug coverage was determined to be creditable or noncreditable.
 - d. The Health Plan’s name and contact information.
 - e. Medicare eligible individuals who delay in enrolling in Medicare Part D coverage will be required to provide copies of a Creditable Coverage Notice as proof that they have maintained creditable coverage since the end of their Medicare Part D initial enrollment period. New information may be found at:
http://www.cms.hhs.gov/creditablecoverage/02_CCAfterMay15.asp#TopOfPage.

6. **Timing.** It is important to remember that the appropriate Notice must be provided at the following times:
 - a. **Prior to** an individual’s initial enrollment period for Medicare Part D;
 - b. **Prior to** the annual Medicare Part D enrollment period running **November 15** through **December 31** of each year;
 - c. **Prior to** the effective date of a Medicare beneficiary’s coverage under the employer’s health plan;
 - d. **Whenever** prescription drug coverage ends or changes so that it is no longer creditable or becomes creditable; and
 - e. **Upon** a Medicare beneficiary’s **request.**

7. **Delivery.** While the employer providing the coverage is responsible for providing the Notice, nothing in the regulations prevents the employer from having it provided by a third party (e.g., the insurer providing the prescription drug coverage). The Notice need not be sent as a separate mailing; it may be provided with other plan participant information materials (including SPDs or annual enrollment materials). If the Notice is incorporated with other plan participant information, then the reference to the Notice must be **prominently** and **conspicuously** referenced in at least a **14**-point font in a separate box, bolded, or offset on the first page that begins the plan participant information being provided.

A single Notice may be provided to the covered Medicare individual and all Medicare-eligible dependent(s) covered under the same plan. However, separate Notices are required if it is known that any Medicare-eligible spouse or dependent resides at a **different address** from the participant.

8. **The Standard Medicare Part D Outpatient Prescription Drug Benefit.** Medicare Part D covers outpatient prescription drugs, as well as insulin and associated medical supplies and certain prescription biological products, but **not** over-the-counter drugs. Prescription drugs that are covered under Medicare Parts A (hospital charges) or B (physician services) are also excluded from coverage under Medicare Part D. Individuals who are entitled to benefits under Medicare Part A, or who are enrolled in Medicare Part B, are eligible. As is the case currently with Medicare Part B, there is a deadline for enrollment. If an individual fails to timely enroll, then he or she must pay a higher rate upon late enrollment. The increased rate will not apply where the individual continues to work past age **65** and is covered under a group health plan with prescription drug coverage that qualifies as “**creditable coverage**”.

Unlike Medicare Parts A and B where benefits are paid by the Government, usually through intermediaries, Medicare Part D benefits are provided commercially through either a Medicare Advantage – Prescription Drug Plan (“MA-PDP”) or through a stand-

alone Prescription Drug Plan (“PDP”). PDPs are state-licensed, risk bearing entities that meet Federally-established reserve requirements. MA-PDPs and PDPs are funded through a combination of monthly premiums and Medicare subsidies. The prescription drug benefits that they provide must be either the standard Part D benefit or a benefit that is the actuarial equivalent of the standard Part D benefit. CMS’s final rule establishes rules for determining actuarial equivalence, which are explained below.

A simplified summary of the cost sharing under Medicare Part D is as follows:

Cost	CMS	Individual
First \$250 deductible	\$0	\$250
Next \$2,000	\$1,500 (75%)	\$500 (25%)
Next \$2,850 (True out-of-pocket cost)	\$0	\$2,850
Initial Costs: \$5,100	\$1,500	\$3,600
Amounts in Excess of \$5,100 (i.e., \$1,500 paid by Part D and \$3,600 paid by individuals) have a co-payment	Co-Payments or 95% of the cost of the drug.	Greater of: (i) \$2 for generic drugs and \$5 for other drugs; or (ii) 5% of the cost of the drug.

This Summary was prepared by the Law Firm of Palmieri & Eisenberg, located in Princeton, New Jersey, for clients and associates of the Firm. This Summary is being provided to help educate clients and employers regarding these new rules. P&E is **not** providing any legal advice to any employers to whom this Summary is provided, as a courtesy. Employers are strongly encouraged to work with their own legal counsel in reviewing these important issues.

Any advice in this summary concerning a federal tax issue is not intended or written to be used, and cannot be used by any taxpayer, for the purpose of avoiding any tax penalties that can be imposed by the Internal Revenue Service, or for promoting, marketing or recommending any tax-related matters addressed herein in accordance with IRS Circular 230.

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