Part D Creditable Coverage Disclosures

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Introduction

Employers sponsoring group health plans that offer prescription drug coverage must notify eligible individuals about whether the coverage is considered "Creditable" or "Non-Creditable." The purpose of the notice is to assist individuals in making an informed decision about whether to enroll in Medicare Part D, and to avoid late enrollment penalties for failing to enroll in Part D when they are first eligible if it turns out that the employer's prescription drug plan is not creditable.

Background

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) amended Title XVIII of the Social Security Act (SSA) to establish a voluntary program for prescription drug coverage under Medicare. The implementing regulations to the MMA established several requirements for employers who sponsor group health plans that offer prescription drug coverage. Among these requirements is a requirement to provide notification to individuals who are eligible for the employer's prescription drug coverage informing them about whether the coverage is creditable. This requirement is discussed in more detail below, along with a reminder about the related requirement to report annually to CMS.

Determining Whether Coverage Is Creditable

Prescription drug coverage is creditable if the actuarial value of the coverage equals or exceeds the actuarial value of standard prescription drug coverage under Medicare Part D. In other words, coverage is creditable if the expected amount of paid claims under the coverage is at least as much as the expected amount of paid claims under the standard Medicare Part D benefit.

Often an insurance carrier or third-party administrator will provide information to a plan sponsor detailing whether a plan's drug coverage is creditable. But if a plan sponsor does not receive this information from the carrier or administrator, the plan sponsor is responsible for making the determination itself.

If a plan sponsor is not applying for the subsidy available to sponsors of a qualified retiree prescription drug plan, the sponsor may be able to use a "simplified method" for determining whether the drug coverage in a plan is creditable.

To qualify for the simplified determination (and be deemed creditable), the plan must meet the following criteria:

1. Cover brand-name and generic prescription drugs;
2. Provide reasonable access to retail providers;
3. Pay on average at least 60% of participants' prescription drug expenses; and

4. Depending upon whether the plan is stand-alone or integrated (i.e., the prescription drug benefit is combined with other coverage with a combined deductible and annual/lifetime maximums):
    - A stand-alone drug plan must satisfy at least one of the following standards:
        - Have either no annual benefit maximum or a minimum annual benefit of $25,000;
        - Have an actuarial expectation that the amount payable by the plan will be at least $2,000 annually per Medicare-eligible individual; or
    - An integrated plan must:
        - Have a maximum annual deductible of $250;
        - Have either no annual benefit maximum or a minimum annual benefit of $25,000; AND
        - Have a lifetime combined benefit maximum of at least $1 million.

See the simplified method description here – https://www.cms.gov/Medicare/Prescription-Drug-Coverage/CreditableCoverage/Downloads/CCSimplified091809.pdf.

If a plan does not meet the criteria under the simplified determination method, that does not automatically mean the plan is not creditable; but in that case, the plan must obtain an actuarial determination of whether the actuarial value of the coverage equals or exceeds the actuarial value of standard prescription drug coverage under Medicare Part D.

Creditable Coverage Disclosures to Eligible Plan Participants

Content of Notice

CMS makes model Part D notices available in both English and Spanish for purposes of the disclosure requirement. The model notices can be found on CMS' page here – https://www.cms.gov/Medicare/Prescription-Drug-Coverage/CreditableCoverage/Model-Notice-Letters.html.

Plan sponsors are not required to use the models as long as any tailored notices meet certain content requirements. Specifically, disclosures of creditable coverage must address the following:

1. That the employer has determined that the prescription drug coverage is creditable;
2. The meaning of creditable coverage, as defined by the guidance; and
3. Why creditable coverage is important and that the individual could be subject to payment of higher Part D premiums if he or she subsequently has a break in creditable coverage of 63 days or longer before enrolling in a Part D plan.

Disclosures of non-creditable coverage must address the following:

1. That the employer has determined that the prescription drug coverage is not creditable;
2. The meaning of creditable coverage, as defined by the guidance;
3. That an individual generally may only enroll in a Part D plan from October 15 through December 7 of each year, starting with the 2012 plan year; and

4. An explanation of why creditable coverage is important and that the individual may be subject to payment of higher Part D premiums if he or she fails to enroll in a Part D plan when first eligible.

If a plan sponsor's Part D notice contains the above required elements, it will satisfy the disclosure requirement. But note that CMS also has other recommended language for notices that plan sponsors may want to consider including if they choose not to use the model notices. This recommended language may be found here - https://www.cms.gov/Medicare/Prescription-Drug-Coverage/CreditableCoverage/downloads/Updated_Guidance_09_18_09.pdf

Timing of Notice

The Part D notice is required to be provided to Part D (Medicare) eligible individuals at the following times:

1. Prior to commencement of the annual enrollment period for Part D (**Oct 15**);
2. Prior to an individual's initial enrollment period (IEP) for Part D;
3. Prior to the effective date of coverage for any Part D eligible individual who enrolls in the plan sponsor's prescription drug coverage;
4. Whenever the employer no longer offers prescription drug coverage or changes it so that it is no longer creditable or becomes creditable; and
5. Upon request by the Part D eligible individual.

The first three occasions use the term "prior to," which according to CMS means within the last 12 months.

The employer can meet the timing requirements under the first three bullet points by providing the notice to all eligible employees at the following times:

1. Each year during the employer's open enrollment period, or in late September/early October to coincide with the Part D open enrollment period; and
2. When individuals are first eligible for the prescription drug coverage (e.g., new hires).

Who Is Entitled to a Notice

The Part D notice must be provided to "Part D eligible individuals" who are eligible to enroll the plan sponsor's prescription drug plan. This includes employees, COBRA participants, and retirees, as well as their spouses and dependents. Individuals are considered "Part D eligible" if they:

1. Are enrolled in either Medicare Part A or Medicare Part B; and
2. Live in the service area of a Part D plan.

In other words, if somebody is both Part D eligible and eligible to enroll in the plan sponsor's prescription drug plan, a notice is required.

In general, CMS has indicated that a plan sponsor providing a disclosure notice may generally provide a single notice to both the eligible individual and all of his or her eligible dependents. However, a separate disclosure notice must be provided if the plan sponsor knows that any eligible spouse or dependent resides at a different address from the participant.

Best Practice: Since it may be difficult for a plan sponsor to identify which individuals are eligible for Part D (e.g., spouses or disabled dependents), many plan sponsors choose to provide the disclosure

notice to everyone who is eligible to enroll in its prescription drug plan (regardless of whether they are Part D eligible).

Method of Delivery

When providing Part D notices, CMS prefers using paper documents because Part D eligible individuals are more likely to receive and understand them, and because it is easier to ensure that paper documents have been received by both employees and eligible spouses and dependents.

However, although paper notices sent by mail are preferred, Part D notices may be sent electronically in accordance with the Department of Labor's (DOL's) electronic delivery safe harbor for required ERISA disclosures. The safe harbor allows for electronic distribution to those who have access to the employer's electronic system as an integral part of their daily duties at their regular workplace, and to those who provide consent.

CMS also permits delivery of the Part D notice via email if eligible individuals indicate that they have adequate access to electronic information, provide a valid mail address, and submit their consent electronically. Before receiving consent, the plan sponsor must inform individuals of their right to receive a paper copy, how to withdraw consent, how to update address information, and any hardware/software requirements for accessing and saving the disclosure. The plan sponsor must also post a link to the Part D notice (except for any personalized notices) on its website/homepage.

Reporting to CMS

In addition to the disclosure requirements to individuals, **plan sponsors of prescription drug plans are also required to report to CMS annually, *within 60 days of the beginning of the plan year*, whether the coverage they offer is creditable or non-creditable.** Note that Part D creditable coverage reporting is **separate and distinct** from the CMS Data Match program that was discontinued earlier this year. Reporting to CMS annually on the creditability of the prescription drug coverage is still required. This reporting requirement is also separate and distinct from the Medicare Secondary Payer reporting requirements under Section 111 that are due to CMS on a quarterly basis.

For more information and guidance on the process of creditable coverage reporting, please visit CMS' website, found here: https://www.cms.gov/Medicare/Prescription-Drug-Coverage/CreditableCoverage/index.html.

LISI Contracted Carrier's Determination for 2019

Aetna
Anthem
Blue Shield
California*Choice*®
Covered California
Health Net
Kaiser Permanente®
Sharp Health Plan
Sutter Health Plus
UnitedHealthcare
Western Health Advantage