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May 23, 2011

Medicare Part D Model Disclosure Notices Updated

The Medicare Modernization Act (MMA) requires that employers sponsoring plans with prescription drug coverage (not just employers with retiree medical plans) notify Medicare eligible participants whether their prescription drug coverage is creditable coverage, which means that the employer's coverage is, on average, at least as good as standard Medicare prescription drug coverage. Group health plan sponsors offering prescription drug coverage must also disclose to the Centers for Medicare and Medicaid Services (CMS) whether such coverage is creditable or non-creditable. Such disclosures must be made through notices, the form and content of which has been prescribed by CMS.

Creditable Coverage Notice to Participants. The first disclosure requirement is to annually provide a written disclosure notice to all Medicare-eligible individuals who are covered under a prescription drug plan. The Notice must be provided in the fall each year and at various times as stated in the regulations, including to a Medicare-eligible individual when he/she joins the plan. This disclosure must be provided to Medicare-eligible active, working individuals and their dependents, Medicare-eligible COBRA individuals and their dependents, Medicare-eligible disabled individuals covered under a prescription drug plan and any retirees and their dependents. The MMA imposes a late enrollment penalty on individuals who do not maintain creditable coverage for a period of 63 days or longer following their initial enrollment period for the Medicare prescription drug benefit. Accordingly, this information is essential to an individual's decision whether to enroll in a Medicare Part D prescription drug plan.

- **Revised Notices.** CMS has now posted on its [website](#) revised model disclosure notices that plan sponsors may use to satisfy the disclosure requirement on or after April 1, 2011. As before, both English and Spanish versions are available (although there is no requirement that Part D notices be provided in any language other than English). Employers using the model notices will need to replace them with the revised versions, while those using customized versions of the notices should review their practices for providing personalized information for consistency with the revisions.
- **Earlier Annual Medicare Enrollment Period.** Medicare provides coverage to individuals who are at least age 65 or disabled. Part A (Hospital Insurance) and Part B (Medical Insurance) are known as the Original Medicare Plan. Part C (Medicare Advantage plans) includes managed care plans, private fee-for-service plans and Medical Savings Accounts. Part D (Outpatient Prescription Drug Plan) is voluntary prescription drug coverage. Each year, people enrolled in Medicare have an opportunity to switch among available options. Before 2011, this annual enrollment period ran from November 15 through December 31,

with any coverage changes effective for the next year. During the first three months of the calendar year, beneficiaries who were enrolled in a Medicare Advantage plan could drop that plan and move back into the traditional fee-for-service Parts A and B. The healthcare reform law moved this annual enrollment period to October 15 through December 7, though coverage changes still take effect on January 1 of the next year. The three-month Medicare Advantage disenrollment period is also shortened to 45 days (from January 1 through February 15).

- **Earlier Enrollment Period Reflected in Revised Notices.** The revised model notices replace the model notices that were posted in 2009. The revisions reflect the change in the Medicare Part D annual election period from its prior November 15 to December 31 timeframe to its new October 15 to December 7 timeframe. The change applies beginning with plan year 2012—i.e., beginning with the 2011 election period. Employers offering prescription drug coverage should plan to prepare and distribute the notices by October 15 for 2011 and later years — an earlier deadline than in past years. Because most employers aren't sure which participants and dependents might be covered by Medicare, notices may be provided to a broader group of individuals than required. Plan sponsors should focus on providing a general communication before Oct. 15 of each year. For calendar-year employer plans, distributing the notice as part of the open enrollment process has been a common method of compliance. Employers relying on this strategy may need to make some adjustments to the process to accommodate the earlier due date (for finalizing their drug plan designs, making creditable coverage determinations, and delivering enrollment materials). To be sure newly hired employees properly receive this notice, an employer could include the annual notice in communications distributed to new employees.

Online Disclosure to CMS. The second disclosure requirement is for certain employers to complete the [Online Disclosure to CMS Form](#) to report the creditable coverage status of their prescription drug plan. The disclosure should be completed annually no later than 60 days from the beginning of a plan year (contract year, renewal year), within 30 days after termination of a prescription drug plan, or within 30 days after any change in creditable coverage status. More information about this is available on the CMS [website](#).

Note that the Part D disclosure notice is totally different from the HIPAA certificate of creditable coverage. Under HIPAA, all individuals who lose coverage under an employer-provided health plan, or who would have lost coverage but for an election to take COBRA continuation coverage, must be provided with a HIPAA certificate. Although the MMA uses somewhat similar terminology for creditable coverage purposes, the requirements regarding form, timing, content, and method for delivery of the Part D disclosure notice are completely different than the HIPAA certificate of creditable coverage.

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