



Legislative Update

September 1, 2010

Reminder: Medicare Part D Creditable Coverage Disclosure

The Medicare Modernization Act (MMA) requires group health plan sponsors that provide prescription drug coverage to notify Medicare Part D eligible individuals whether their prescription drug coverage is creditable coverage, which means that the coverage is expected to pay on average as much as the 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. (In simple terms, if an employer's coverage is-- on average-- at least as good as standard Medicare prescription drug coverage, then the employer's coverage is creditable). Such disclosures must be made through notices, the form and content of which has been prescribed by CMS.

The disclosure requirements apply to entities offering various types of prescription drug coverage, including group health plan coverage. For these purposes, group health plans include health plans as defined under ERISA, including certain [account-based medical plans](#), as well as group health plans sponsored for employees or retirees by unions, churches, and federal, state or local governments.

The Medicare Part D Creditable Coverage rules include **two (2) disclosure requirements**:

- The first disclosure requirement is to provide an annual [written disclosure notice](#) to all Part D eligible individuals who are covered under its prescription drug plan, prior to November 15th 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 your 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.
- The second disclosure requirement is for entities 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, within 30 days after termination of a prescription drug plan, or within 30 days after any change in creditable coverage status. Disclosure to CMS is required whether the entity's coverage is primary or secondary to Medicare, however, entities that contract with Medicare directly as a Part D plan or that contract with a Part D plan

to provide qualified prescription drug coverage are exempt from the disclosure to CMS requirement.

See the CMS [Creditable Coverage requirements](#) page for general Part D notice guidance for employer and union-sponsored plans and model notice documents.

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.

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