



# Legislative Update

October 27, 2009

## Update to the Medicare Prescription Drug, Improvement and Modernization Act (MMA) of 2003

The Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA) mandates that certain entities offering prescription drug coverage disclose the creditable or non-creditable status of their prescription drug plan to:

- Active employees
- Retirees (where applicable) and spouses old enough to be eligible for Medicare
- Employees and spouses age 65 and older
- Individuals eligible for Medicare due to having end stage renal disease
- Individuals eligible for Medicare due to disability
- Centers for Medicare and Medicaid Services (CMS)

Two steps are required: creditable or non-creditable disclosure notices distributed to the groups above and disclosure submitted to CMS.

### Creditable or Non-Creditable Coverage Disclosure Notices

The final regulations provide that group health plans - or entities that offer prescription drug coverage on a group basis to active and retired employees and to Medicare Part D eligible individuals - must provide, or arrange to provide, **a notice of creditable or non-creditable prescription drug coverage** to Medicare Part D eligible individuals who are covered by, or who apply for, prescription drug coverage under the entity's plan. This creditable coverage notice alerts the individuals as to whether or not their prescription drug coverage is at least as good as the Medicare Part D coverage. Medicare beneficiaries who are not covered by creditable prescription drug coverage and who choose not to enroll before the end of their initial enrollment period, and enroll at a later date, will likely pay higher premiums.

At a minimum, Disclosure Notices for creditable or non-creditable coverage must be provided at the following times:

1. ***Prior to the Medicare Part D Annual Coordinated Election Period - beginning November 15th through December 31st of each year***
2. Prior to an individual's Initial Enrollment Period for Part D
3. Prior to the effective date of coverage for any Medicare eligible individual that joins the plan
4. Whenever prescription drug coverage ends or changes so that it is no longer creditable or becomes creditable
5. Upon a beneficiary's request

***Individuals who did not receive a notice of creditable or non-creditable coverage on or after November 15 of last year must be provided with a notice no later than November 14 of this year.***

---

CMS has updated the Medicare Part D model Creditable and Non-Creditable Coverage Disclosure Notices as of January 1, 2009. [Click here](#) to read the revised notices, as well as the related CMS guidance regarding the use of these notices.

**Disclosure to CMS**

Plan sponsors are also required to disclose to CMS whether their prescription drug coverage is creditable or non-creditable. The disclosure must be made to CMS on an annual basis, or upon any change that affects whether the coverage is creditable. Disclosure of creditable coverage status must be provided within 60 days after the beginning date of the plan year for which the entity is providing the disclosure to CMS. Disclosure notices must also be filed with CMS within 30 days after the termination of a plan's prescription drug coverage or after any change in its creditable coverage status.

CMS has provided guidance for making such disclosures (i.e., timing, format and model language). Of note, plan sponsors are required to use the disclosure form on the CMS Creditable Coverage Disclosure Web Page unless specifically exempt as outlined in related CMS guidance. [Click here](#) for the disclosure form. This is the sole method for compliance with the disclosure requirement. The disclosure form lists required data fields that must be completed in order to generate the Disclosure Notice to CMS, such as types of coverage, number of options offered, creditable coverage status, period covered by the Disclosure Notice, number of Part D eligible individuals covered, date the Creditable Coverage Disclosure Notice is provided to Part D eligible individuals, and change in creditable coverage status.

**Please contact your Conner Strong representative with any questions, toll-free at 1-877-861-3220.**

*This Legislative Update is provided for general informational purposes only and is not intended to be legal advice. Readers are urged to contact an attorney for legal advice or assistance.*