

June 2005

Attention All Employers: Notice of Creditable Coverage Due by November 15

All employer health plans must provide notice to Part D Eligible individuals by November 15, 2005 regarding whether a plan's prescription-drug coverage is "creditable" under Medicare. The Centers for Medicare & Medicaid Services ("CMS") has issued promised guidance and model language for the new notices. The guidance also offers a simplified method of determining whether coverage is "creditable" for employers not seeking to qualify for the new Medicare Part D subsidy for retiree prescription drug coverage.

When and Who

As described in our prior Management Alert, which can be viewed by clicking [here](#), employers offering prescription drug coverage to any individual who is eligible for Medicare's new Part D prescription drug coverage must provide a notice regarding creditable coverage no later than November 15, 2005, and at least annually thereafter. The notice must be provided to any "Part D Eligible" individual eligible for coverage under the employer's prescription drug plan (i.e., any active or retired employee, spouse or dependent who is entitled to Medicare Part A or who is enrolled in Medicare Part B).

Model Notices

The new guidance includes model language that can be used to provide the initial required notice. Two model notices are provided - one for plans offering creditable coverage, and one for plans whose coverage is not creditable. For employers that choose not to use the model language, the guidance sets forth a list of specific information the notice must contain.

Simplified Determination of "Creditable" Coverage

Employers who want to apply for the prescription drug subsidy must have an actuary attest that the value of the plan's prescription drug coverage is at least actuarially equivalent to the standard coverage under Medicare Part D (see our prior Management Alert). For employers or unions who are *not* applying for the retiree drug

subsidy, the new guidance provides a simplified method of determining whether a plan's prescription drug coverage is "creditable coverage." Under the simplified method, a plan's prescription drug coverage will be considered creditable if it:

- 1) Provides coverage for brand and generic prescriptions;
- 2) Provides reasonable access to retail providers and, optionally, for mail order coverage;
- 3) Is designed to pay on average at least 60% of participants' prescription drug expenses; and
- 4) Satisfies at least one of the following:
 - a) Has a maximum annual benefit of at least \$25,000 (or no annual maximum), or
 - b) Is actuarially expected to pay at least \$2,000 per Medicare-eligible individual in 2006;
 - c) If the prescription drug benefits are integrated with other benefits (such as medical or dental), the integrated health plan has no more than a \$250 deductible per year, and has a maximum benefit of at least \$25,000 annually and a \$1,000,000 combined lifetime benefit (or has no benefit maximum). An integrated plan must use the test set forth in this paragraph (c).

If a plan offers more than one benefit option, these tests must be applied separately to each benefit option of the plan.

How to Provide Notice

CMS clarified that the notice can be included with other materials provided to participants, such as enrollment and/or renewal materials or summary plan descriptions ("SPDs"), rather than provided as a separate notice. However, if included with other participant information, the disclosures regarding creditable coverage must be "prominent and conspicuous." CMS explained that

the required information regarding creditable coverage status (or a reference to the section in the document containing the required statements) must be prominently displayed in at least 14-point font in a separate box, bolded, or offset on the first page of the materials provided.

A single notice may be provided to the covered Medicare-eligible individual and all Medicare-eligible dependents covered under the same plan, unless it is known that any Medicare-eligible spouse or dependent resides at a different address than the one to which the participant's materials were mailed. However, the notice can be provided electronically only if the Medicare-eligible individual has consented to receive information electronically. Special rules must be followed in order to obtain a valid consent to electronic delivery.

When Notice Must Be Provided

While the regulations require that the notice be provided (a) before November 15 each year, (b) before an individual's initial enrollment period for Medicare, and (c) prior to the effective date of coverage for any Medicare-eligible individual that joins the plan, the guidance states that notice will be considered "prior to" these events if provided within the preceding twelve months. An employer can satisfy the first two requirements and avoid tracking Medicare enrollment periods by providing the notice to all plan participants annually.

In addition, notice will be required (a) whenever prescription drug coverage ends or changes so that it ceases to be creditable, or becomes creditable, and (b) upon request.

To obtain a copy of the CMS model notice, or if you have any questions concerning the notice requirement in connection with Medicare Part D, please contact the Seyfarth Shaw LLP Employee Benefits Group attorney with whom you work or any Employee Benefits attorney on the website at www.seyfarth.com.

ATLANTA

One Peachtree Pointe
1545 Peachtree Street, N.E., Suite 700
Atlanta, Georgia 30309-2401
404-885-1500
404-892-7056 fax

BOSTON

Two Seaport Lane, Suite 300
Boston, Massachusetts 02210-2028
617-946-4800
617-946-4801 fax

CHICAGO

55 East Monroe Street, Suite 4200
Chicago, Illinois 60603-5803
312-346-8000
312-269-8869 fax

HOUSTON

700 Louisiana Street, Suite 3700
Houston, Texas 77002-2797
713-225-2300
713-225-2340 fax

LOS ANGELES

One Century Plaza
2029 Century Park East, Suite 3300
Los Angeles, California 90067-3063
310-277-7200
310-201-5219 fax

NEW YORK

1270 Avenue of the Americas, Suite 2500
New York, New York 10020-1801
212-218-5500
212-218-5526 fax

SACRAMENTO

400 Capitol Mall, Suite 2350
Sacramento, California 95814-4428
916-448-0159
916-558-4839 fax

SAN FRANCISCO

560 Mission Street, Suite 3100
San Francisco, California 94105
415-397-2823
415-397-8549 fax

WASHINGTON, D.C.

815 Connecticut Avenue, N.W., Suite 500
Washington, D.C. 20006-4004
202-463-2400
202-828-5393 fax

BRUSSELS

Boulevard du Souverain 280
1160 Brussels, Belgium
(32)(2)647.60.25
(32)(2)640.70.71 fax

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