

March 28, 2005

### **New Notice Requirement for (Most) Employers Maintaining Health Plans**

By November 15, 2005, every employer who offers prescription drug coverage to *active or retired* employees (or their spouses/dependents) who are eligible for Medicare will be subject to new notice requirements under regulations issued by the Centers for Medicare & Medicaid Services (CMS). Active or retired employees (or their spouses/dependents) who are entitled to Medicare benefits under Part A or who are enrolled in Part B (“Part D Eligibles”) must be notified of whether such private coverage constitutes “creditable prescription drug coverage” for purposes of the new Medicare prescription drug coverage (“Part D”), which takes effect January 1, 2006. The notice requirement applies *regardless* of whether the employer applies for the new subsidy for retiree prescription drug coverage.

The notice requirement is designed to ensure that Part D Eligible individuals know whether their employer-provided coverage constitutes “creditable coverage” under Medicare Part D. An individual who does not enroll in Medicare Part D prescription drug coverage when he or she is first eligible may face a financial penalty upon later enrollment, unless they had alternative “creditable” prescription drug coverage.

While CMS intends to issue future guidance regarding the timing, form and manner of giving this notice (including model language), this One Minute Memo gives a general outline of the notice requirements to alert employers to the new requirements. While details must await additional guidance, CMS has indicated that the notice could be provided through summary plan descriptions or HIPAA notices, as long as the information is conspicuous and contains the required information.

#### **TWO NOTICES REQUIRED**

- An employer offering prescription drug coverage must notify each Part D Eligible individual who is enrolled in – or seeks to enroll in – such coverage whether the coverage qualifies as “creditable prescription drug coverage” under the Part D rules. If the coverage is not “creditable,” the notice must also explain that there are limits on when the individual may enroll in a Part D plan during a year, and that he or she may be subject to a late enrollment penalty under Part D.

- In addition, the employer must notify CMS of whether the coverage constitutes “creditable coverage.” Prescription drug coverage is “creditable” for Part D purposes if the actuarial value of the coverage equals or exceeds the actuarial value of the “standard prescription drug coverage” defined by CMS. CMS indicated that they will issue future guidance on this “actuarial equivalent” standard, and will provide a simplified method of determining creditable coverage for employers who do not choose to apply for the retiree drug subsidy.

## WHEN NOTICE MUST BE PROVIDED

The new notice must be provided to Part D Eligibles *annually*, before November 15 of each year. In addition, the notice must be provided (a) before the individual’s initial enrollment period for Part D, (b) before the effective date of enrollment in the prescription drug coverage and upon any change that affects whether the coverage is creditable prescription drug coverage, and (c) upon request.

Look for sample language for the notice and more details once CMS issues additional guidance.

*If you have any questions concerning retiree health coverage, Medicare Part D, or these notice requirements, 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](http://www.seyfarth.com).*



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