Management Alert

Medicare Part D Creditable Coverage Notices are Due and Mandatory Insurer Reporting is Forthcoming

Creditable Coverage Notices

Employers who provide prescription drug coverage to Medicare eligible individuals must provide notice annually regarding whether the offered coverage is "creditable." (Coverage is deemed creditable when the actuarial value of the coverage is equal to or exceeds the coverage provided under Medicare Part D.) If notice is provided to all plan participants annually prior to November 15 each year, CMS will consider this notice requirement met.

The Centers for Medicare & Medicaid Services (CMS) recently issued updated model creditable coverage notices containing minor organizational changes and substantive modifications relating to re-enrollment and the Medicare special enrollment period. Although employers are not required to utilize the CMS model notices, they are required to disclose the information in a manner that meets standards set forth by CMS. Our experience has shown that it is also important to include language regarding an employer's right to modify or amend benefits at any time.

Who Must Receive a Copy of the Notice?

The notice must be provided to all Medicare Part D eligible individuals who are covered under or apply for an employer-provided prescription drug plan. This would include Medicare beneficiaries who are active employees, disabled or eligible for COBRA (to the extent that these individuals are eligible for prescription drug coverage), as well as Medicare beneficiaries who are covered as spouses or dependents (including spouses and dependents that may be disabled or eligible for COBRA). The employer often will not be able to accurately verify the status of an employee's dependents. Thus as a practical matter the notice should be distributed to all participants.

An individual is a Part D eligible individual if:

1. The individual is entitled to Medicare Part A and/or enrolled in Part B; and
2. The individual resides in the service area of a prescription drug plan (PDP) or of a Medicare Advantage plan that provides prescription drug coverage (MA-PD). An individual who is living abroad or is incarcerated is not eligible for Part D because he or she is not considered to "reside" in the service area of a Part D plan.

An individual becomes "entitled to" Medicare when the person actually has Medicare Part A coverage, and not simply when the individual is first eligible for such coverage.

When Does the Notice Need to be Sent?

Notice must be sent to each Medicare Part D eligible person at the following times:

- **Between November 15 and December 31 each year,** prior to the Medicare Part D Annual Coordinated Election Period;
- Prior to an individual's Initial Enrollment Period for Medicare Part D coverage;
- Prior to the effective date of coverage for any Medicare eligible individual that joins the employer plan;
- If the employer no longer offers prescription drug coverage or if the coverage offered is no longer creditable coverage; and
- Upon request.

Mandatory Insurer Reporting

Starting January 1, 2009, group health plans must provide reports to CMS so that CMS can identify situations where the group health plan is primary to Medicare. This Mandatory Insurer Reporting (MIR) Program will require quarterly electronic reporting, with a penalty for non-compliance of $1,000 a day per each individual for which information should have been submitted. Responsible reporting entities include insurers for group health plans, third-party administrators for group health plans that actually pay or adjudicate claims, and self-insured and self-administered group health plans.

Submissions must contain information such as: subscriber and beneficiary names (and relationship to subscriber), sex, Social Security Numbers, Medicare Health Insurance Claim Numbers, type of insurance coverage, reasons why the group health plans are primary for each employee, as well as other information. Such information is required to be submitted on "active covered individuals"—those individuals who are covered in a group health plan and: 1) are age 45 through 64 who have coverage based on their own or a family member's current employment status; 2) are age 65 and older who have coverage based on their own or a spouse's current employment status; 3) have been receiving kidney dialysis or have received a kidney transplant, regardless of their own or a family member's current employment status; or 4) are under age 45, known to be entitled to Medicare, and have coverage in the plan based on their own or a family member's current employment status.

Employer Action Required

Creditable Coverage Notices. Employers should ask their pharmacy benefit managers and/or third-party administrators whether they will be sending out these notices. If not, employers must act quickly to ensure timely preparation and distribution of these notices.

Mandatory Insurer Reporting. For group health plans that have insurers, or third-party administrators that pay or adjudicate claims, the third-party administrator (or insurer) is the responsible reporting entity that must meet the filing deadlines and requirements. Employers should make sure their third-party administrator (or insurer) is taking steps to comply with the program. For group health plans that already participate in a voluntary data sharing agreement or a

voluntary data exchange agreement with CMS, electronic registration began in October 2008, and reporting begins in the first quarter of 2009. For all other group health plans, electronic registration begins in April 2009 and reporting will begin on July 1, 2009. In the meantime, employers should work with their third-party administrators or insurers to monitor CMS guidance and to begin identifying information needed for reporting. CMS will be providing a model form to collect Medicare beneficiary information.

For more information, please contact the Seyfarth attorney with whom you work, or any Employee Benefits attorney on our website (www.seyfarth.com/EmployeeBenefits).

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