Medicare Part D Notice of Creditable (or Non-Creditable) Coverage

Plan sponsors of group health plans providing prescription drug coverage to individuals who are eligible for Medicare Part D prescription drug coverage are required to satisfy certain notice requirements.

Background

Individuals must enroll in Medicare Part D prescription drug coverage when first eligible (generally, at age 65). If they do not do so, they are subject to a permanently higher monthly premium when enrolling at a later date. A key exception to this general rule is for individuals who do not enroll when initially eligible because they are enrolled in other prescription drug coverage which is creditable. Coverage is considered creditable if it is at least as good or better than the actuarial value of Medicare Part D prescription drug coverage. The required notice of creditable coverage (or notice of non-creditable coverage) is designed to help individuals determine the timing of when they must enroll in Medicare Part D.

Determining whether a prescription drug plan is creditable

Generally, prescription drug coverage under an employer group health plan will be creditable. There is a safe harbor method of determining creditable coverage status. The requirements are easily satisfied. However, for qualifying high deductible health plans (HDHPs) offered in connection with a health savings account (HSA), the HDHP may not be creditable unless it is expected to pay, on average, at least 60% of participants' prescription drug expenses. It may be necessary to obtain actuarial advice to make this determination in connection with an HDHP.

Notice requirements

- **Who provides?** The notice must be furnished by the employer/plan sponsor. It is possible to arrange to have a third party such as an insurer or third party administrator provide the notice on the employer/plan sponsor's behalf.

- **Which group health plans?** The notice requirement applies to all employer group health plans providing prescription drug coverage. Medical FSAs and HSAs are not included (but the HDHP connected to the HSA is included).
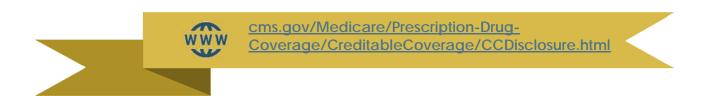
- **Who is entitled to receive the notice?** The only individuals who are required to receive the notice are those participants who are eligible for Medicare Part D. But making this determination, particularly in the case of dependents, may be challenging. As a result, most employer/plan sponsors choose to provide the notice to all employees to facilitate compliance. CMS has issued model notices for disclosing whether coverage is creditable or non-creditable. Once the employer/plan sponsor makes the determination, the applicable notice should be used (Model Creditable Coverage Disclosure Notice or Model Non-Creditable Coverage Disclosure Notice, as applicable).

- **When is the notice required to be provided?** The notice is required to be provided in several circumstances, most importantly, upon initial enrollment in prescription drug coverage under the employer's group health plan, upon a participant's request and annually before October 15th.

Penalty for Noncompliance

Fortunately, there is no penalty for employer/plan sponsors who do not comply with the notice requirement. However, if the employer provides retiree prescription drug coverage and claims a subsidy under Medicare Part D (only a minority of employers do so) providing the notice is a precondition to obtaining the subsidy. Even though there is no penalty for noncompliance for most employers, it is still advisable to comply to assist participants in helping them to determine when they need to enroll Medicare Part D.

CMS Reporting

In addition to the participant notice requirement, employer/plan sponsors are also required to disclose to CMS whether their prescription drug coverage is creditable or non-creditable. The disclosure is required on an annual basis within 60 days after the beginning of each plan year. The CMS reporting is electronic. (Visit the below website for more information.)

WWW cms.gov/Medicare/Prescription-Drug-Coverage/CreditableCoverage/CCDisclosure.html

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