

**Guidance Issued On Medicare Part D****Creditable Coverage Disclosure to CMS****January 9, 2006**

On January 4, the Centers for Medicare & Medicaid Services (CMS) issued long-awaited guidance on the obligation for entities to inform CMS of whether prescription drug coverage is creditable for purposes of Medicare Part D. The guidance mandates that most entities providing prescription drug coverage complete an electronic Creditable Coverage Disclosure in order to inform CMS of whether the coverage is creditable or noncreditable. This Disclosure must initially be provided to CMS through the CMS Web site by March 31, 2006. After the initial Disclosure to CMS, subsequent annual Disclosures must be given no later than 60 days after the beginning of each plan year. The Disclosure will be used by CMS and Part D providers to, among other things, counsel potential Part D enrollees and determine whether any individuals who delay enrollment will be subject to a late enrollment penalty.

**Background**

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 added Part D to Medicare to provide prescription drug coverage to eligible retirees. In 2005, employers determined whether their prescription drug coverage was creditable for purposes of the November 15 Notice of Creditable Coverage to employees and dependents.

Even though enrollment in Part D was already underway, CMS had not yet described how employers should inform CMS that employer prescription drug coverage is (or is not) creditable for purposes of Part D.

**New Guidance on Creditable Coverage Disclosure to CMS**

The new guidance on the Disclosure to CMS requires all entities listed below to disclose to CMS whether their prescription drug coverage is creditable or noncreditable:

- Group health plans (including employer plans; union/Taft-Hartley plans; church plans; federal, state and local governmental plans; and other group-sponsored plans);
- Governmental plans such as Medicaid, State Pharmaceutical Assistance Programs and State High Risk Pools;
- Military coverage, including Veterans Administration coverage and TRICARE;

- Individual health coverage;
- Indian Health Service, Indian tribes or other tribal organizations and urban Indian organizations; and
- Medigap plans, waiver state plans, and plans with innovative benefits.

While the guidance limits the Disclosure requirement to coverage that is offered to Medicare Part D eligible individuals, in practice this means that virtually any entity offering prescription drug coverage should notify CMS, since it is often impossible to determine whether spouses or dependents of employees are eligible for Medicare. This suggested treatment parallels the common approach of distributing the annual Part D Notice of Creditable Coverage to all employees regardless of their age.

The only entities that are exempt from providing the Disclosure to CMS are PDPs, MA-PDs and PACE or cost-based HMOs, or CMPs that provide qualified Part D coverage (because they are, by design, not just creditable but actually providing Part D benefits).

The guidance also exempts employers who have claimed the 28% retiree drug subsidy from filing the Disclosure since they, through the subsidy application process, have already informed CMS that the coverage is creditable. However, this section of the guidance restricts the exemption to retirees for whom the employer is claiming the subsidy, thus leaving open the possibility (informally confirmed by CMS representatives) that employers still need to complete the Disclosure with respect to covered individuals under the plan for active employees who may be eligible for Part D coverage but who have postponed enrollment.

### **Content of Disclosure**

The electronic Disclosure (<http://www.cms.hhs.gov/apps/ccdisclosure/default.asp>) is the sole method of complying with the CMS Disclosure requirement. The Disclosure requests information about the name of the entity providing the coverage or sponsoring the plan (such as the employer or union—but not the name of the carrier, insurer or TPA), the EIN, and address and telephone number information. To the extent that an entity has subsidiaries, a single Disclosure can be made if the subsidiaries are covered under the same type of coverage and the coverage has the same plan year.

In addition to the identifying information, the Disclosure presents a number of radio button choices about the type of coverage (defined here as the type of entity offering the coverage), a fill-in-the-blank question about the number of prescription drug options and, finally, three radio button choices to determine whether all options are creditable, all options are noncreditable, or there is a mix of creditable and noncreditable options.

When the entity chooses one of the three radio buttons about creditable coverage, it is then presented with a number of additional items. These items vary slightly depending on the radio button chosen, but generally request a significant amount of additional information, such as the period covered by the Disclosure, the plan year begin and end dates, an estimate of the number of Part D eligible individuals at the beginning of the plan year, the number of eligible individuals covered under any employer/union retiree group health plan, the date when the Notice of Creditable Coverage was provided to individuals, whether there have been any changes in the creditable coverage status, when any such changes occurred and the date such changes were disclosed to Part D eligible individuals.

Finally, after presenting four statements the submitter must agree to, the Disclosure requests the name of the entity's authorized individual and his or her title and email address, along with the date.

### **Timing of Disclosure**

The initial Disclosure must be provided to CMS by March 31, 2006. Then, for plan years that end in 2007 and beyond, the Disclosure must be re-sent within 60 days after the beginning of each plan year. Finally, the Disclosure must be re-sent to CMS within 30 days after the prescription drug plan terminates or within 30 days after any change in the creditable coverage status of the prescription drug plan.

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