



Medicare Part D Notices Required Before October 15

Insights

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Employers that provide prescription drug coverage (Rx Coverage) to their employees must notify all Medicare-eligible employees regarding the Rx Coverage's creditable or non-creditable status under the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA). Affected employers must provide the required notices before October 15 each year to coordinate with the start of the annual Medicare open enrollment period. The Medicare Part D notice requirement is generally straightforward, but we still see a flurry of questions every year regarding these notices. We have created this guide to help answer some of the most common employer inquiries.

Background

The Medicare Part D rules state that individuals must pay a higher cost for Medicare Part D coverage if they fail to enroll before the end of their initial Medicare enrollment period unless they delay enrollment because they have creditable Rx Coverage. The Centers for Medicare and Medicaid Services (CMS) considers Rx Coverage to be creditable if it is actuarially equivalent or greater than the prescription drug coverage under Medicare Part D. Thus, MMA included the Medicare Part D notice rule to ensure that individuals received the information they need to make an informed choice regarding prescription drug options and avoid higher costs Medicare Part D costs for late enrollment.

Target Audience

All Medicare Part D-eligible individuals who are covered under (or who apply for coverage under) the plan's Rx Coverage must receive a Medicare Part D notice. Medicare defines this group to include any individual who is entitled to Medicare Part A and/or enrolled in Part B as of the coverage effective date of the Medicare Part D plan, and who lives in the Medicare Part D plan's service area. Keep in mind that CMS interprets being "entitled" to Medicare Part A to require an individual to have applied for and been granted Part A coverage.

The tricky part is that Medicare Part D-eligible individuals could be active employees, disabled employees, qualified beneficiaries receiving COBRA coverage, and retirees. Additionally, any of their covered spouses and dependents also are Medicare Part D-eligible. Employers typically do not have accurate information on spouse and dependents, so the best practice is to issue notices to all individuals eligible for the Rx Coverage.

Generally, one Medicare Part D notice will suffice for a covered Medicare beneficiary and all their dependents and spouse. But where an employer knows that any Medicare-eligible spouse or dependent resides at a different address, the employer must send separate notice to that last-known address.

Notice Timing

Medicare enrollment starts annually on October 15. Because the Medicare Part D notice rules require employers to issue notices before that date, employers must be sure they provide notices by October 14.

Employers tend to focus on the October Medicare Part D notices because they relate to a firm, regular deadline. However, Medicare rules also require employers that offer Rx Coverage to issue Medicare Part D Notices at other intervals. For example, Medicare Part D notices must be furnished:

- prior to an individual's initial enrollment period for Medicare Part D;
- before the Rx Coverage effective date for any Medicare-eligible individual who joins the plan during the year; and
- upon a Medicare Part D-eligible individual's request.

To avoid missing any of the foregoing deadlines, many plan sponsors include a Medicare Part D notice in their new hire information materials and with other plan enrollment materials. Doing so will help employers be more certain that all Medicare-eligible individuals get timely notice regarding the creditable or non-creditable status of their Rx Coverage.

Finally, employers must provide a Medicare Part D notice whenever they no longer offer Rx Coverage or if the coverage changes so that it is no longer creditable or becomes creditable.

Manner of Delivery

Employers can send Medicare Part D notices separately or include them with other plan materials. Employers can opt to send the notices along with open enrollment materials, but that will work only if the open enrollment period begins before October 15. Further, if an employer chooses to send Medicare Part D notices with other plan materials, CMS mandates that the Medicare Part D notice be the first page of the materials. Alternatively, the employer can place a notice on the first page that references where in the materials individuals can find the required notice. Employers must set off such a reference in a separate, prominent box in a bold face font no smaller than 14-point.

CMS allows employers to send Medicare Part D notices electronically and has stated that employers who follow the general electronic disclosure rules set by the U.S. Department of Labor (DOL) for other group health plan information will be deemed to have met their Medicare Part D Notice obligations. Essentially, this would require either that an intended recipient has access to the

employer's email system as part of their normal job duties or else the employer would need to clear several other hurdles to be reasonably certain that the Medicare Part D notices were received.

Additionally, employers choosing electronic delivery must be sure to:

- prepare and provide electronic materials according to otherwise applicable requirements;
- notify each recipient of the significance of the document; and
- state that a paper version is available on request.

Also, if a plan sponsor opts to issue Medicare Part D notices under DOL electronic disclosure rules, the sponsor must inform plan participants that they must give a copy of the disclosure to their Medicare-eligible dependents covered under the group health plan providing Rx Coverage.

If intended recipients do not have access to an employer's electronic information system as part of their regular job duties, an employer can still send Medicare Part D notices electronically, but there are more burdensome requirements. Thus, many employers choose to use regular mail to avoid the extra administrative burdens imposed by the electronic disclosure rules.

Notice Content

Keep in mind that the information in the Medicare Part D notice pertains to the upcoming calendar year of coverage not the current year. Thus, a Medicare Part D notice issued in 2021 will describe the Rx Coverage available for 2022. Medicare Part D notices must:

- state that the plan sponsor has deemed the relevant Rx Coverage to be creditable or not;
- explain what it means for coverage to be creditable or non-creditable;
- describe the beneficiary's right to a notice;
- list the coverage options available to beneficiaries including the option to enroll in Medicare Part D during Medicare's regular annual enrollment period; and
- provide details as to why creditable coverage is important and how an individual could still be subject to higher Medicare Part D premiums if they later have a break in creditable coverage of 63 or more continuous days before enrolling in a Medicare Part D plan.

CMS has posted model Medicare Part D notices to its website. Employers do not have to use the model notices to fulfill their notice duties, but they must include the above-listed items if they choose to create their own notices. Be aware that employers cannot use the model notices as-is; they will require employer-specific modifications including specifying whether Rx Coverage is creditable or not. We see many Medicare Part D notices that have been issued or included in open enrollment materials without having been appropriately modified.

Conclusion

Employers who offer Rx Coverage must be sure to follow CMS rules to provide Medicare Part D-eligible individuals proper notice of their prescription drug coverage options, including providing all Medicare Part D-eligible individuals notice before October 15. Employers should not confuse this requirement for the additional requirement to annually notify CMS as to the creditable status of Rx Coverage through CMS's online portal.

We will monitor these developments and provide updates as warranted, so make sure that you are subscribed to [Fisher Phillips' Insights](#) to get the most up-to-date information direct to your inbox. If you have further questions, contact your Fisher Phillips attorney, the author of this Insight, or any attorney in our [Employee Benefits and Tax Practice Group](#).

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