



Prescription Drug Coverage Sponsors Must Disclose Creditable Status to CMS

Insights

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The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) requires employers that offer prescription drug coverage to update the Centers for Medicare & Medicaid Services (CMS) regarding the creditable status of that coverage. Essentially, plan sponsors must report to CMS as to whether the prescription drug coverage they offer is at least as good as Medicare Part D prescription drug coverage or not.

Creditable Coverage

In general, creditable status hinges on whether the expected amount of paid claims under a sponsor's prescription drug coverage is at least as much as the expected amount of paid claims under the standard Medicare Part D benefit. Insured plan sponsors can usually get creditable status information from their carriers.

Additionally, certain plans can meet a creditable status safe harbor if the plan sponsor is not applying for any federal retiree drug subsidy. The simplified safe harbor requires that a plan:

- cover brand-name and generic prescriptions;
- afford reasonable access to retail providers;
- pay on average at least 60% of participants' prescription drug expenses; and
- satisfy at least one of the following standards:
 - the prescription drug coverage either has no annual benefit maximum or has a maximum annual benefit of at least \$25,000;
 - the prescription drug coverage has an actuarial expectation that the amount payable by the plan will be at least \$2,000 annually per Medicare eligible individual; or
 - for prescription drug benefits integrated with group health coverage, the prescription coverage has no more than a \$250 deductible per year; either has no annual benefit maximum or has a maximum annual benefit payable by the plan of at least \$25,000; and has a lifetime combined benefit maximum limit of at least \$1 million.

Finally, if a plan cannot meet the simplified safe harbor, it can get an actuarial determination of creditable coverage status.

Disclosure Timing

At a minimum, plan sponsors must provide the creditable (or non-creditable) coverage disclosure notice to CMS at the following times:

- Within 60 days after the beginning of the plan year for which the entity is providing the notice (e.g., typically no later than March 1 for calendar year plans);
- Within 30 days after the termination of the prescription drug plan; and
- Within 30 days after any change in the creditable coverage status of the prescription drug plan.

Disclosure Process

Plan sponsors must access and complete the proper creditable coverage disclosure notice through the CMS Creditable Coverage [web portal](#). Online submission is the only way for plan sponsors to comply with their disclosure obligation absent any specific exception. The web page also includes links to guidance and instructions for completing the submission.

Individual Medicare Part D Notices

In addition to the CMS disclosure, plan sponsors should remember to notify individuals who are eligible for Medicare Part D as to whether the prescription drug coverage the employer provides is creditable or non-creditable. The Medicare Part D notice must be provided annually before October 15 and at certain other designated times.

Action Steps

Plan sponsors should be prepared to disclose to CMS the creditable or non-creditable status of their prescription drug coverage within 60 days after the start of the plan year, and in the event of any change in the status of the drug coverage that may occur at other times during the plan year.

Conclusion

We will continue to monitor developments and provide updates as events warrant. Make sure you are subscribed to [Fisher Phillips' Insight system](#) to get the most up-to-date information. If you have 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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