

# EMPLOYEE BENEFITS UPDATE

## The New Medicare Part D Prescription Drug Benefit: Employer Group Health Plan Compliance Responsibilities

October 2005

Medicare's new prescription drug benefit (called "Medicare Part D") becomes effective January 1, 2006. Every employer that sponsors a group health plan that provides prescription drug coverage (whether for active employees or retirees) must:

- ◆ Determine whether their prescription drug coverage is "creditable" (which means that it is at least as good as Medicare Part D coverage).
- ◆ Provide written notice of creditable status to Medicare Part D-eligible employees and retirees before November 15, 2005.
- ◆ Provide written notice to the Center for Medicare and Medicaid Services (CMS) of the plan's prescription drug creditable coverage status (due date to be announced by CMS).

*Note: The introduction of Medicare Part D benefits provides employers who offer prescription drug coverage to Medicare-eligible retirees with several options for reducing the cost of that coverage. Most notably, employers may: apply for a government subsidy, provide coverage that supplements Part D, or provide coverage through an approved plan. Application for the government subsidy must be submitted to CMS by October 31st. This BTA Update does not discuss the options available to retiree healthcare plan sponsors as BTA consultants have addressed this directly with affected clients.*

### Background

Medicare is currently comprised of two parts: Part A, which is hospital insurance, and Part B, which is medical insurance. For many years there has been concern about the rising cost of prescription drugs and in particular the cost to senior citizens. To address this problem, Congress passed the Medicare Modernization Act ("MMA") of 2003 adding a prescription drug program to Medicare, commonly referred to as Part D, which will go into effect January 1, 2006.

MMA not only created this new prescription drug program, but it also created new employer responsibilities. Under MMA, employers who currently provide prescription drug coverage must determine whether the coverage they provide is actuarially equivalent to the standard Part D benefit, and then provide notice to the Centers for Medicare and Medicaid Services ("CMS") and to their Medicare-eligible employees and dependents (and to retirees if the employer provides retiree healthcare coverage) regarding whether the coverage they provide is qualified as "creditable coverage." This notice is designed to help individuals understand if they should enroll in Part D and the consequences of late enrollment.

### Determining whether group health plan coverage is "creditable"

Coverage is creditable if the actuarial value of the coverage is equal to or better than the actuarial value of



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the standard Medicare prescription drug coverage. The Medicare Part D 2006 prescription drug benefit package consists of:

- ◆ A \$250 annual deductible, then 75% Medicare-paid coverage up to \$2,250;
- ◆ No Medicare coverage for amounts over \$2,250 up to \$5,100 (referred to as the "coverage gap"); and,
- ◆ Medicare-paid catastrophic coverage of 95% for amounts above \$5,100 (the point at which the Medicare beneficiary reaches \$3,600 out-of-pocket expenses).

The CMS provided a safe harbor method to determine if a group health plan is "creditable." Under the safe harbor, a group health plan's prescription drug coverage is deemed creditable if, the plan's coverage:

1. Provides coverage for brand and generic drugs
2. Provides reasonable access to retail providers and, optionally, to mail-order coverage;
3. The coverage is designed to pay, on average, at least 60 percent of participants' prescription drug expenses; and
4. It has a maximum annual benefit for prescription drug coverage that is at least \$25,000, or has an actuarial expectation that the amount payable by the plan will be at least \$2,000 per Medicare eligible individual in 2006.
5. For integrated health coverage (i.e. plans that include prescription benefits as part of a medical plan, rather than utilizing a prescription drug card), the health plan has no more than a \$250 deductible per year, has no annual benefit maximum or a maximum annual benefit payable by the plan of at least \$25,000 and has no less than a

\$1,000,000 lifetime combined benefit maximum.

### Disclosure of Creditable Coverage Status

Part D regulations require plan sponsors to provide notice of creditable coverage status to CMS, as well as to Part D-eligible individuals who are enrolled in or seeking to enroll in an employer's plan providing prescription drug coverage. This requirement applies regardless of the employer's size. The notice must be provided to all Part D-eligible active employees and their covered spouses as well as those covered as retirees or through disability, and COBRA and CalCOBRA beneficiaries. In addition, health plan sponsors are required to provide the CMS with a copy of their notices on an annual basis, as well as in the event of a change in creditability status.

### Content of Notice

CMS has published two model notices that apply to the initial open enrollment period beginning November 15, 2005 to May 15, 2006; a creditable coverage notice and a non-creditable coverage notice. If an employer chooses not to use the model disclosure notice, the employer-drafted document must state whether the group health plan's prescription drug coverage is creditable or non-creditable (if non-creditable, individuals must be informed of the Part D enrollment periods). It must describe what creditable coverage means and why it is important. If coverage is creditable, it must include a caution that individuals with a break in creditable coverage of 63 days or more could pay higher Part D premiums. Or, an explanation that an individual may be subject to payment of higher Part D premiums if the person fails to enroll in a Part D plan when first eligible as a result of non-creditable coverage.

### Timing of Notice

This notice must be provided at each of the following times:



## The New Medicare Part D (Continued)

1. Prior to the annual Medicare Part D enrollment period (from November 15th through December 31st of each year);
2. Prior to an individual's initial enrollment period for Part D;
3. Prior to the effective date of coverage for any Medicare-eligible individual who joins the employer's plan;
4. Whenever prescription drug coverage ends or changes so that is no longer creditable or becomes creditable; and,
5. Upon request.

As long as a disclosure notice is provided to all plan participants, CMS considers items one and two to have been met. Additionally, CMS clarifies that the "prior to" condition is satisfied if notices have been provided within the past 12 months.

### Notice Distribution

CMS established guidelines for delivery by direct mail or electronic delivery.

### *Paper*

The notice need not be sent as a separate mailing. It may be included with other plan information materials (such as summary plan descriptions and enrollment information) provided that reference to the notice is prominent and conspicuous (meaning that it must be referenced in at least 14-point font in a separate box, bolded or offset on the first page of the communication materials). A single notice will suffice for a covered Medicare-eligible individual and all Medicare-eligible dependent(s) covered under the same plan residing at one address (unless you

know that a participant and a dependent reside at different addresses).

### *Electronic*

The CMS electronic delivery rules are more stringent than the Department of Labor's electronic delivery rules for ERISA disclosure. Notices may be sent by electronic delivery only if a participant has indicated to the employer that he or she has adequate access to electronic information. He or she must provide a valid e-mail address and his or her consent must be submitted electronically to the employer. Before a participant may agree to receive information electronically, the individual must also be informed of (1) his or her right to the paper version, (2) how to withdraw his or her consent, (3) how to update his or her address information, and (4) any hardware or software requirements for accessing and retaining the disclosure notice. The disclosure notice must also be posted on the employer's website, if applicable, with a link to the disclosure notice on the homepage.

### Penalties for Noncompliance

Employers who are applying for the subsidy available for their retiree prescription drug plans may not be able to receive the subsidy if they fail to deliver the Disclosure Notice. CMA currently has not announced any penalties that would apply to other employers who do not deliver the notice. CMA can waive late enrollment penalties for individuals who establish that their employer failed to tell them whether their coverage was creditable.

### BTA Comments and Compliance Assistance

#### Determining creditable status

Some HMO's and health insurance carriers are making the creditable coverage determination for all of the prescription drug plans they offer, and notifying the employer of their plan's creditable status. BTA account managers will assist you in obtaining this determination.



## The New Medicare Part D (Continued)

### Disclosure

When the creditable coverage determination is made, HMO's and health insurance carriers may agree to prepare and mail the notice to participants they have identified as Part D-eligible or they may provide a list of these participants for the employer's distribution. BTA will assist you in obtaining the associated notice from your insurance provider, if available, or will prepare a notice utilizing the CMS model language for your use.

Although the notice is only required to go to plan participants and dependents who are eligible for Medicare Part D, some plan sponsors may decide that it makes more sense to send the notice to all participants (and dependents residing at a separate address) instead of determining who is Part D-eligible. (If an individual is entitled to Medicare Part A and/or enrolled in Part B, they are eligible for Part D.)

To satisfy the requirement to notify newly eligible participants, BTA suggests that you include a copy of the "Notice of Creditable Coverage" with your medical plan enrollment materials. Going forward, BTA will assist you with the annual notice requirement to participants and CMS.

The CMS has not yet issued guidance on their preferred method of communicating your annual notice to them. BTA will notify you of the process once the CMS has provided direction.

### For Further Information

For more information and guidance, please contact your BTA Account Manager or visit the CMS website at <http://www.cms.hhs.gov/medicarerreform/Credcovrg.asp>. The CMS model language for disclosure notices can be found on their website at <http://www.cms.hhs.gov/medicarerreform/CCguidances.asp>.

*BTA prepared this communication for informational purposes only and it does not constitute legal advice and should not be relied upon as such.*



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