



Electronic Dispatch

# Employee Benefits Law Action Memo

August 2005

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## RETIREE PRESCRIPTION DRUG PLAN SPONSORS MUST ACT BY SEPTEMBER 30 TO OBTAIN MEDICARE SUBSIDY FOR 2006

Beginning in 2006, sponsors of eligible retiree prescription drug plans may obtain a subsidy from the Federal government for certain prescription drug costs incurred by qualifying retirees. The subsidy was created as part of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 ("Act"), the legislation that introduced the voluntary Medicare Part D prescription drug benefit. The subsidy is available for eligible prescription drug costs that are incurred in 2006 and subsequent years. Plan sponsors that wish to receive the subsidy in 2006 must apply prior to the [September 30, 2005 application deadline](#) (or request a 30-day extension). Due to the impending application deadline, eligible plan sponsors must take quick action in order to take advantage of the subsidy payments.

### Background

The new Medicare Part D prescription drug benefit will provide partial coverage for most outpatient prescription drug benefits and will be available to individuals who are entitled to benefits under Medicare Part A, or who are enrolled in Medicare Part B, and pay the required premium. With the creation of Medicare Part D coverage, Congress recognized that employers that sponsored retiree health plans that covered prescription drugs might decide to eliminate retiree drug coverage altogether in an effort to reduce costs. One of the ways Congress encouraged sponsors of retiree prescription drug plans to continue to offer such plans was to include in the Act a subsidy that is available to qualifying retiree prescription drug plan sponsors. The retiree drug subsidy will pay 28 percent of each qualifying retiree's eligible prescription drug costs (as defined by the applicable regulation) between \$250 and \$5000 in 2006. The Centers for Medicare and Medicaid Services ("CMS"), the organization that will administer the Medicare Part D prescription drug benefit program, has estimated that plan sponsors that choose to participate in the retiree drug subsidy program will receive an average of \$668 in annual retiree subsidy payments per participant.

### Who Is Eligible For the Subsidy?

The subsidy is only available to employers that maintain a "qualified retiree prescription drug plan." In general, a qualified retiree prescription drug plan is a group health plan which provides a prescription drug benefit that is the actuarial equivalent (or better) of the standard Medicare Part D prescription drug benefit. In order to demonstrate that a plan provides a prescription drug benefit that is at least the actuarial equivalent of the Medicare Part D prescription drug benefit, the plan must pass both a "gross value test" and a "net value test." To meet requirements for the "gross value test," the expected amount of paid claims under the plan must be at least equal to the expected amount of paid claims under the standard Medicare Part D coverage. Under the "net value test," the plan sponsor's contribution toward financing the retiree prescription drug coverage is taken into account. The net value of the sponsor's retiree prescription drug plan, which is calculated by subtracting the expected retiree premium from the expected amount of paid claims under the plan, must be at least equal to the net value of the Medicare Part D standard drug benefit.

Certain other obligations are imposed on plan sponsors in order to qualify for the subsidy. Among these is the requirement to provide Medicare-eligible beneficiaries under the plan with a notice stating that the prescription drug coverage offered by the plan sponsor is "creditable coverage" (i.e., the coverage satisfies the gross value test). Please see our July 2005 Employee Benefits Action Memo entitled "Certain Group Health Plans Must Satisfy Notice Requirements Under Medicare Part D" for more information regarding this disclosure requirement. The notice must be provided by November 15, 2005.

### Is the Subsidy Available For the Prescription Drug Costs of All Retirees?

No. A subsidy may only be paid with respect to the costs incurred by "qualified covered retirees" and their spouses and dependents. A qualified covered retiree is an individual who is (i) covered by a qualified retiree prescription drug plan, (ii) entitled to benefits under Medicare Part A or enrolled in Medicare Part B, and (iii) not enrolled in Medicare Part D coverage.

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## How Does an Employer Apply For the Retiree Prescription Drug Subsidy?

CMS has issued guidance addressing the steps employers must take to receive the retiree drug subsidy. The primary steps include:

1. Submit an application for the retiree drug subsidy to CMS by September 30, 2005 to qualify for the retiree drug subsidy in 2006. In subsequent years, calendar year plans will submit applications by September 30 of each year; non-calendar year plans will submit applications 90 days prior to the beginning of each plan year.
2. Attach to the application an actuary's attestation that the plan meets the Act's actuarial equivalence standard.
3. Ensure that the "creditable coverage" status of the plan has been or will be disclosed to plan participants and CMS. An employer must annually notify CMS regarding whether the prescription drug coverage is creditable or if the creditable coverage status of the coverage has changed. The disclosure to plan participants may be incorporated into other plan communications.
4. Electronically submit to CMS and periodically update enrollment information regarding retirees and their dependents. Employers may enter into a voluntary data sharing agreement with CMS to provide such data.
5. Electronically submit aggregate data about drug costs to CMS and reconcile the costs at year end. The submission of detailed individual claims data to CMS is not required. (However, claims data must be maintained for audit purposes.) Plan sponsors can choose whether to submit data and receive payments monthly, quarterly or annually.

### Recommended Action

Employers that maintain qualified prescription drug plans must take action now in order to ensure that they are eligible for the retiree prescription drug subsidy in 2006. Employers that have not already done so should take steps to retain a qualified actuary to determine whether their retiree prescription drug plan is actuarially equivalent to the standard Medicare Part D coverage. Employers should communicate with their retirees regarding the new Medicare Part D coverage, and should consider discouraging the retirees from signing up for the Medicare Part D coverage individually (as noted above, a retiree who is enrolled in Medicare Part D coverage is not a "qualified covered retiree"). Employers also should begin to gather census information regarding their retirees and to coordinate with their insurance provider or third-party administrator to prepare for the application process. Employers must either submit the application to CMS, or request a 30-day extension, by September 30, 2005.

If you have any questions, please contact any of the following members of our Employee Benefits Law Group:

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