



Electronic Dispatch

Employee Benefits Law Action Memo

January 2006

[Go to BS&K Employee Benefits Home Page](#)

ADDITIONAL GUIDANCE ISSUED ON MAKING REQUIRED MEDICARE PART D CREDITABLE COVERAGE DISCLOSURES

The Centers for Medicare and Medicaid Services ("CMS") recently issued guidance concerning the obligation of employers to annually disclose the Medicare Part D creditable status of their prescription drug coverage to CMS. In accordance with the CMS guidance, most employers with group health plans will be required to submit an on-line disclosure form to CMS on or before March 31, 2006.

Background

As was noted in our July 2005 Employee Benefits Law Action Memo, under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, employers that currently provide prescription drug coverage to Medicare Part D eligible beneficiaries (i.e., eligible active employees, retirees and/or dependents) are required to make certain disclosures regarding whether or not that prescription drug coverage is "creditable" for purposes of Medicare Part D. Employers were required to determine whether their prescription drug coverage was creditable in order to issue a disclosure notice to Medicare Part D eligible beneficiaries by November 15, 2005. However, CMS had not yet issued guidance with respect to the manner in which employers were required to notify CMS as to the creditable status of their prescription drug coverage.

Who Must Provide a Disclosure to CMS?

Affected Employers

All employers that sponsor prescription drug plans for Medicare Part D eligible beneficiaries, as well as other entities that provide prescription drug coverage, such as church plans, union Taft-Hartley plans, state and local governmental plans, individual health insurers, tribal health plans, military and veterans plans and Medigap plans, are required to make an annual disclosure to CMS.

The CMS guidance indicates that only prescription drug coverage that is offered to Medicare Part D eligible beneficiaries is covered by the new disclosure rules. Practically speaking, it may be impossible for an employer to determine whether an employee's spouse and/or dependent(s) are eligible for Medicare. Therefore, it is recommended that employers and other entities offering prescription drug coverage submit the required disclosure form to CMS.

Exempt Employers

The CMS guidance provides that employers who have been approved for the 28% retiree drug subsidy (described more fully in our August 2005 Employee Benefits Law Action Memo) are exempt from filing the disclosure with respect to the retirees for whom the employer is claiming the subsidy. (The employer's retiree drug subsidy application will serve as its disclosure to CMS for these purposes.) That notwithstanding, CMS has indicated informally that employers will still need to submit the disclosure to CMS with respect to active Medicare Part D eligible employees who have chosen to delay enrollment in Medicare Part D.

Method and Content of Disclosure

The only method of providing the disclosure to CMS is by completing an electronic disclosure form on the CMS Creditable Coverage Disclosure Web Page at <http://www.cms.hhs.gov/apps/ccdisclosure/default.asp>. In order to generate the disclosure form on-line, employers must provide the name of the entity sponsoring the plan (such as the employer or union – not the name of the carrier or insurer), as well as the entity's address, telephone number and EIN. An individual employed by the entity and completing the form must provide his or her name, title and e-mail address. With regard to the coverage provided, the employer



must identify, among other things, the type of coverage offered, the number of benefit options that the entity offers, the creditable coverage status of the options offered by the entity, the period covered by the annual disclosure to CMS, and the latest calendar date on which it provided the required disclosure to Medicare Part D eligible beneficiaries. The employer must also provide an estimate of the number of Medicare Part D eligible beneficiaries expected to be covered under the employer's plan(s) as of the beginning date of the plan year, and an estimate of the number of Medicare Part D eligible beneficiaries expected to be covered through a group health retiree plan.

Only one disclosure form must be submitted for an employer's group health plan if the plan year and type of coverage is the same for all subsidiaries (divisions, lines of business, operating units, control groups, etc.).

The CMS disclosure is required regardless of whether the employer's prescription drug coverage is primary or secondary to Medicare Part D prescription drug coverage.

Timing of the Disclosure

For plan years that end in 2006, the initial CMS disclosure must be completed on-line by March 31, 2006. For plan years ending in 2007 and beyond, the plan's creditable coverage status must be disclosed to CMS within 60 days of the beginning date of the plan year for which the entity is providing the disclosure.

Further, for any plan year, a disclosure to CMS must also be made within 30 days after a prescription drug plan is terminated, or within 30 days after any change in the creditable coverage status of the prescription drug plan.

Recommended Action

Employers that sponsor prescription drug plans should (1) determine whether they are required to make a disclosure to CMS regarding the creditable coverage status of those plans, and (2) if such a disclosure is required, complete the CMS disclosure form on or before March 31, 2006.

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