



Electronic Dispatch

Employee Benefits Law Information Memo

July 2005

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

CERTAIN GROUP HEALTH PLANS MUST SATISFY NOTICE REQUIREMENTS UNDER MEDICARE PART D

Prescription drug coverage will be available under Medicare beginning January 1, 2006, as a result of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 ("Act"). The Act requires employers that currently provide prescription drug coverage to Medicare-eligible beneficiaries (i.e., eligible active employees, retirees and/or dependents) to disclose whether or not such prescription drug coverage is "creditable coverage." This disclosure must be provided by November 15, 2005, regardless of whether the employer's prescription drug coverage is primary or secondary to Medicare.

Employers that contract with a prescription drug plan through Medicare, or that contract with Medicare to provide a qualified prescription drug plan, are exempt from the disclosure requirements.

Purpose of the Disclosure

The disclosure is required to provide Medicare beneficiaries with information regarding how an employer's prescription drug coverage compares to the new Medicare Part D prescription drug coverage, and whether such employer coverage is "as good as" Medicare Part D prescription drug coverage (i.e., "creditable coverage"). This information is important, because eligible individuals who do not enroll before the end of the initial Medicare Part D enrollment period (November 15, 2005 – May 15, 2006) and who are not covered by creditable prescription drug coverage for any continuous period of sixty-three days or longer immediately preceding enrollment for Medicare Part D coverage will pay a higher premium when they subsequently enroll for Medicare Part D coverage. This late enrollment penalty is at least 1% for each month the eligible individual went without creditable coverage. The late enrollment penalty generally will apply for as long as the individual is enrolled for Medicare Part D coverage, and the higher premium charge will likely increase each year.

Eligible individuals who are covered under a prescription drug plan providing creditable coverage generally will not be assessed a late enrollment penalty if they choose to remain in the employer's plan and enroll in a Medicare prescription drug plan at a later date.

Determination of Creditable Coverage

Coverage is considered creditable if the actuarial value (i.e., the expected amount of paid claims) of the employer's prescription drug coverage equals or exceeds the actuarial value of the standard Medicare Part D prescription drug coverage. This determination does not take into account whether the employer or the eligible individual pays for the prescription drug coverage. An employer may need to consult with an actuary to determine if its prescription drug coverage will be considered creditable coverage.

Recently issued guidance indicates that if an employer is not seeking (or cannot seek) the employer subsidies offered under Medicare Part D, it can determine whether its prescription drug coverage is creditable, without the help of an actuary, if the following standards are met:

- coverage for brand and generic prescriptions is provided;
- reasonable access is provided to retail providers (and, in certain circumstances, to mail order coverage providers);
- the plan is designed to pay, on average, at least 60% of participants' prescription drug expenses; and
- at least one of the following is satisfied:

Bond, Schoeneck & King, PLLC • New York • Albany Buffalo Garden City Ithaca New York Oswego Syracuse Utica • Kansas • Overland Park
Bond, Schoeneck & King, P.A. • Florida • Bonita Springs Naples



1. the coverage either has no annual benefit maximum, or has a maximum annual benefit of at least \$25,000;
2. the coverage has an actuarial expectation that the amount payable by the plan will be at least \$2,000 per Medicare-eligible individual in 2006; or
3. if the employer has prescription drug coverage that is integrated with other health coverage (e.g., medical or dental coverage), the integrated health plan has no greater than a \$250 deductible per year, the maximum annual benefit must be at least \$25,000, and the lifetime combined benefit maximum must be no less than \$1,000,000.

Content of the Notice

The Centers for Medicare and Medicaid Services (“CMS”) has issued two model notices to use when disclosing creditable coverage status to eligible beneficiaries: a creditable coverage notice and a non-creditable coverage notice. These model notices only apply to the Medicare Part D initial enrollment period. CMS will be providing further model notices for new plan enrollees, and for future enrollment periods.

In the event an employer chooses not to use the model notices, any other notice provided must include the following information:

- the employer’s determination regarding whether or not the prescription drug coverage is creditable;
- the definition of “creditable coverage”;
- an explanation of why creditable coverage is important, with a caution that an individual may still be subject to a higher premium if there is a subsequent break in coverage of sixty-three days before enrolling in Medicare Part D; and
- for non-creditable coverage notices, that an eligible individual may only enroll for Medicare Part D coverage from November 15, 2005 – May 15, 2006, and at other specified times.

CMS also recommends (but does not require) that the following information be included in notices of creditable coverage:

- an explanation of an individual’s right to the notice, including the times an individual can request a copy of the notice;
- an explanation of the options available to an individual when Medicare Part D coverage becomes available to them (e.g., remaining in the employer’s plan or enrolling in Medicare Part D as a supplement);
- if current prescription drug coverage is integrated with other health coverage, clarification that the individual will still be eligible to receive all other current health coverage if they choose to enroll in a Medicare prescription drug plan;
- clarification of the circumstances (if any) under which an individual could get prescription drug coverage back if current coverage is dropped and the individual enrolls in Medicare prescription drug coverage; and
- information on how to get assistance paying for Medicare Part D coverage, including contact information for the Social Security Administration.

How and When to Send the Notice

The notice does not have to be sent as a separate mailing. It may be provided with other plan participant information materials, provided that a reference to the notice is prominent and conspicuous (i.e., at least 14-point font in a separate box, bolded, or as an offset on the first page of the plan participant information being provided). A single notice may be provided to cover all eligible individuals residing at the same address. The employer may provide the notice through electronic means, but only if the eligible individual has indicated that he or she has adequate access to electronic information. The eligible individual must also be informed of his or her right to obtain a paper version of the notice, how to withdraw consent to receive the notice electronically, how to update his or her electronic address, and any hardware or software requirements for accessing and retaining the notice.

An eligible individual wishing to receive the notice electronically must submit his or her consent to the employer electronically. The notice must also be posted on the employer’s web site, if applicable, with a link to the notice on the employer’s home page.

At a minimum, the notice must be provided at the following times:

- prior to the eligible individual's initial enrollment period for Medicare Part D;
- prior to the annual Medicare Part D enrollment period (November 15 – December 31 of each year);
- prior to the effective date of coverage for any Medicare-eligible individual who joins the plan;
- when prescription drug coverage ends, or when such coverage changes so that it is no longer creditable or becomes creditable; and
- upon an eligible individual's request.

Notice to CMS

An employer must also disclose annually to CMS whether its prescription drug coverage is creditable or non-creditable. CMS will be providing future guidance regarding the timing, format and model language for this disclosure.

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

In Central New York, call 315-218-8000 or e-mail:

Lisa A. Christensen	lchristensen@bsk.com
Stephen C. Daley	sdaley@bsk.com
John C. Godsoe	jgodsoe@bsk.com
Brian K. Haynes	bhaynes@bsk.com
Richard D. Hole	rhole@bsk.com
Ted Lewkowitz	tlewkowitz@bsk.com
Aaron M. Pierce	apierce@bsk.com

In the Capital District, call 518-533-3000 or e-mail:

Joanmarie M. Dowling	jdowling@bsk.com
Amelia M. Klein	aklein@bsk.com

In Western New York, call 716-566-2800 or e-mail:

Darcie A. Falsioni	dfalsioni@bsk.com
--------------------	-------------------

In New York City and on Long Island, please contact either of the following members of our Labor and Employment Law Department:

On Long Island, call 516-267-6300 or e-mail:

Terry O'Neil	toneil@bsk.com
--------------	----------------

In New York City, call 646-253-2300 or e-mail:

Louis P. DiLorenzo	ldilorenzo@bsk.com
--------------------	--------------------