

Medicare Part D Disclosures: Don't Forget to Notify CMS by March 31st!

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Introduction

As you are no doubt by now aware, the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) added a new prescription drug benefit to the Medicare program. This new prescription drug benefit was added as Part D of the Medicare program and, beginning in 2006, it allows individuals who are entitled to Medicare Part A or who are enrolled in Medicare Part B to voluntarily enroll for Part D's prescription drug coverage. These individuals are referred to as "Part D eligible individuals."

You may recall that an employer sponsoring a group health plan which provides prescription drug coverage to Part D eligible individuals was required, by November 15th of last year, to send a disclosure notification to such Part D eligible individuals letting them know whether the prescription drug coverage under the employer's plan is either (i) at least as good as (or better than) Part D coverage, or (ii) not as good as Part D coverage. For purposes of Part D, the former is referred to as "creditable coverage," while the latter is referred to as "non-creditable coverage."

If your company was required to notify Part D eligible individuals by November 15th of last year, you were probably aware at that time that you also needed to send a disclosure to the Centers for Medicare and Medicaid Services (CMS) indicating whether the prescription drug coverage offered under your company's group health plan is creditable coverage or non-creditable coverage. You were probably also aware that the obligation to send the disclosure to CMS was being delayed until CMS issued guidance regarding the timing, format and content of the disclosure. That guidance (and, therefore, the obligation to notify CMS) has now arrived.

Specifics of the CMS Guidance

The CMS guidance is titled "Creditable Coverage Notice to CMS Guidance." The guidance was posted on the CMS website at the beginning of this year and is available at the following website address: <http://www.cms.hhs.gov/CreditableCoverage/Downloads/Disclosure2CMSGdnc.pdf>.

"The first and most pressing deadline is that an initial disclosure must be made to CMS no later than March 31, 2006."

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Consult your attorney for advice appropriate to your circumstances.

Here are the major highlights of the CMS guidance:

- Who Must Provide the Required Disclosure. The disclosure to CMS must be made on behalf of most health plans that provide prescription drug coverage to Part D eligible individuals. Included among the types of health plans for which disclosure must be made are employer-sponsored group health plans, church health plans, governmental health plans, and union-sponsored health plans. Note that disclosure must be made to CMS regardless of whether the plan's coverage is primary or secondary to Medicare.

Entities that are Part D plans (i.e., PDPs, MA-PD plans, PACE plans and cost-based HMOs or CMPs) are exempt from providing any disclosure to CMS. In addition, an employer who has been approved to receive the 28% retiree drug subsidy is also exempt from providing any disclosure with respect to the retirees for which the employer is claiming the subsidy.

For entities with subsidiaries (division, line of business, operating unit, control group, etc.), a single disclosure form can be submitted for the entire consolidated entity if the plan year is the same for all subsidiaries. Alternatively, a separate disclosure form can be submitted for each subsidiary.

- Manner of Providing the Required Disclosure. The required disclosure of whether the prescription drug coverage provided is creditable coverage or non-creditable coverage must be made to CMS electronically through the completion of an on-line disclosure form. This on-line disclosure form is available on the CMS website at the following website address: <http://www.cms.hhs.gov/apps/ccdisclosure/default.asp>. Importantly, the CMS guidance indicates that the on-line disclosure form is the sole method available for making the required disclosure to CMS.
- Timeframe for Providing the Required Disclosure. There are several different times at which the required disclosure must be made. The first and most pressing deadline is that **an initial disclosure must be made to CMS no later than March 31, 2006**. This March 31st deadline is the deadline that applies for plan years ending in 2006.

For plan years that end in 2007 and beyond, disclosure must be made to CMS within 60 days after the beginning of the plan year for which the disclosure is being made. Thus, for a calendar year plan, disclosure to CMS for the 2007 plan year must be made within 60 days after January 1, 2007.

In addition, if there is a termination of the prescription drug coverage, or if there is a change in the creditable coverage status of the prescription drug coverage, disclosure must be made to CMS within 30 days after any such termination or change.

- Content of the Required Disclosure. The content of the on-line disclosure form is fairly self-explanatory. Information that must be submitted includes the following: (i) the name, address, phone number and EIN of the entity offering the prescription drug coverage; (ii) the type of coverage offered (most employers will choose "Employer Sponsored Plan" here); (iii) the number of benefit options available under the coverage; (iv) the

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creditable coverage status of the options offered; (v) the period covered by the disclosure to CMS; (vi) the estimated number of Part D eligible individuals expected to be covered as of the start of the plan year; (vii) the estimated number of Part D eligible individuals covered under retiree coverage; (viii) the latest date the notice of creditable coverage status was provided to Part D eligible individuals; (ix) the date on which required notice of a change (if any) in creditable coverage status was provided to Part D eligible individuals; (x) the name, title and e-mail address of the individual providing the required disclosure to CMS; and (xi) the date the required disclosure to CMS is being submitted.

Conclusion

The March 31, 2006, deadline for making the initial required disclosure to CMS is quickly approaching. If your company needs to make this disclosure to CMS, you or another representative of your company should visit the CMS website and fill out the on-line disclosure form CMS has provided. If you need assistance in filling out the form, or if you have any other questions regarding the initial required disclosure to CMS, please feel free to contact us.