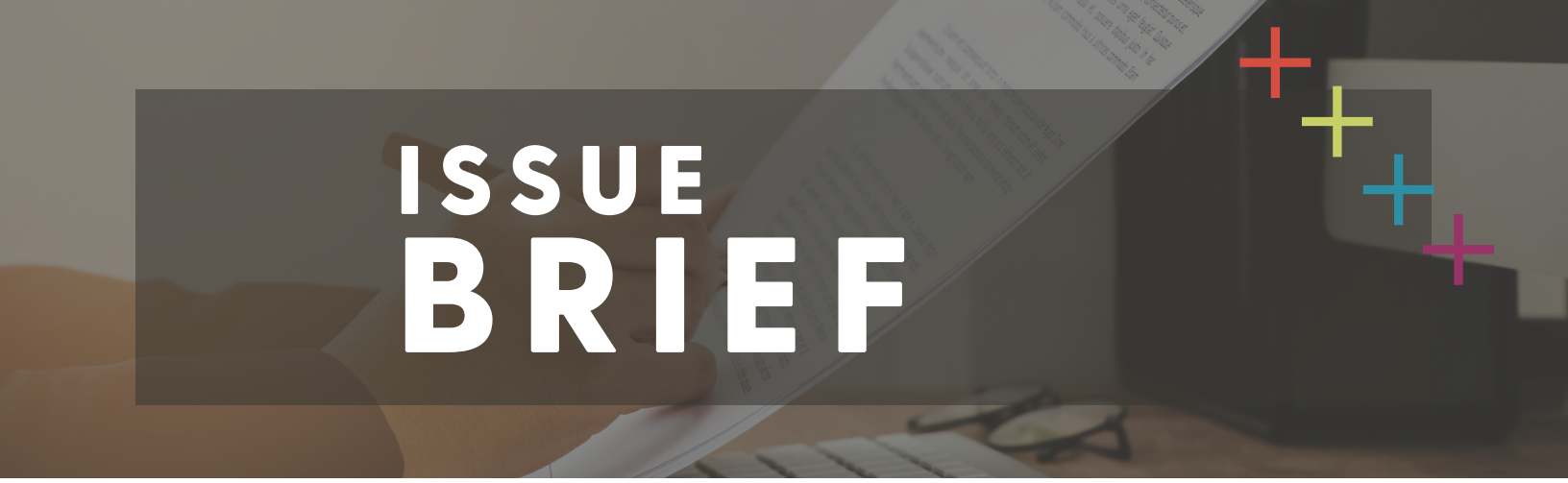

ISSUE BRIEF

MEDICARE PART D CREDITABLE COVERAGE NOTICE & REPORTING REQUIREMENTS

Issue Date: September 2022

As we approach the Medicare annual open enrollment period, this is a reminder that employers sponsoring group health plans that offer prescription drug coverage must notify eligible individuals about whether the coverage is "Creditable" or "Non-Creditable." The purpose of the notice is to assist individuals in making an informed decision about whether to enroll in Medicare Part D, and to avoid late enrollment penalties for failing to enroll in Part D when they are first eligible if it turns out that the employer's prescription drug plan is not creditable. Employers are also required to report annually to the Centers for Medicare & Medicaid Services (CMS) on the creditable status of their prescription drug coverage.

DETERMINING WHETHER PRESCRIPTION DRUG COVERAGE IS CREDITABLE

Prescription drug coverage is creditable if the actuarial value of the coverage equals or exceeds the actuarial value of standard prescription drug coverage under Medicare Part D. In other words, coverage is creditable if the expected amount of paid claims under the coverage is at least as much as the expected amount of paid claims under the standard Medicare Part D benefit. Often an insurance carrier or third-party administrator will provide information to a plan sponsor detailing whether a plan's drug coverage is creditable. But if a plan sponsor does not receive this information from the carrier or administrator, the plan sponsor (e.g., the employer) is responsible for making the determination.

If a plan sponsor is not applying for the subsidy available to sponsors of a qualified retiree prescription drug plan, the sponsor may be able to use a "simplified method" for determining whether the prescription drug coverage in a plan is creditable. To qualify for the simplified determination and be deemed creditable, the plan must meet the following criteria:

1. Cover brand-name and generic prescription drugs;
2. Provide reasonable access to retail providers;
3. Pay on average at least 60% of participants' prescription drug expenses; and
4. Depending upon whether the plan is stand-alone or integrated (i.e., the prescription drug benefit is combined with other coverage with a combined deductible and annual/lifetime maximums):
    - A stand-alone drug plan must satisfy at least one of the following standards:
        - Have either no annual benefit maximum or a minimum annual benefit of $25,000;
        - Have an actuarial expectation that the amount payable by the plan will be at least $2,000 annually per Medicare-eligible individual; or
    - An integrated plan must:
        - Have a maximum annual deductible of $250;
        - Have either no annual benefit maximum or a minimum annual benefit of $25,000; AND
        - Have a lifetime combined benefit maximum of at least $1 million.

See the simplified method description here – https://www.cms.gov/Medicare/Prescription-Drug-Coverage/CreditableCoverage/Downloads/CCSimplified091809.pdf.

If a plan does not meet the criteria under the simplified determination method, that does not automatically mean the plan is not creditable; but in that case, the plan must obtain an actuarial determination of whether the actuarial value of the coverage equals or exceeds the actuarial value of standard prescription drug coverage under Medicare Part D.

NOTE: For high deductible health plans (HDHPs), the prescription drug coverage will typically be integrated with the HDHP (i.e., shared deductible and maximum limits, if any). When that's the case, the HDHP will not meet the simplified determination criteria for creditable coverage status because the annual deductible will always exceed $250. If the carrier or administrator does not advise as to the creditable status of the HDHP, it may require an actuarial determination to determine creditable status.

CREDITABLE COVERAGE DISCLOSURES TO ELIGIBLE PLAN PARTICIPANTS

Detailed guidance from CMS on these disclosures can be found here - https://www.cms.gov/Medicare/Prescription-Drug-Coverage/CreditableCoverage/downloads/Updated_Guidance_09_18_09.pdf

Content of the Notice

Disclosures of creditable coverage must address the following:

- That the employer has determined that the prescription drug coverage is creditable;
- The meaning of creditable coverage, as defined by the guidance; and
- Why creditable coverage is important and that the individual could be subject to payment of higher Part D premiums if there is a break in creditable coverage of 63 days or longer before enrolling in a Part D plan.

Disclosures of non-creditable coverage must address the following:

- That the employer has determined that the prescription drug coverage is not creditable;
- The meaning of creditable coverage, as defined by the guidance;
- That an individual generally may only enroll in a Part D plan from October 15 through December 7 of each year; and
- An explanation of why creditable coverage is important and that the individual may be subject to payment of higher Part D premiums if he or she fails to enroll in a Part D plan when first eligible.

CMS makes model notices available in both English and Spanish, for purposes of the disclosure requirement. The model notices can be found on CMS' page here – https://www.cms.gov/Medicare/Prescription-Drug-Coverage/CreditableCoverage/Model-Notice-Letters.html

Timing of the Notice

The notice is required to be provided to Medicare Part D eligible individuals at the following times:

1. Prior to commencement of the annual enrollment period for Part D (Oct 15);
2. Prior to an individual's initial enrollment period (IEP) for Part D;
3. Prior to the effective date of coverage for any Part D eligible individual who enrolls in the plan sponsor's prescription drug coverage;
4. Whenever the employer no longer offers prescription drug coverage or changes it so that it is no longer creditable or becomes creditable; and
5. Upon request by the Part D eligible individual.

The first three occasions use the term "prior to," which according to CMS means within the last 12 months, so the employer can meet the first three timing requirements by providing the notice at the following times:

+ Each year during the employer's open enrollment period, or in late September/early October to coincide with the Medicare Part D open enrollment period; and
+ When individuals are first eligible for the prescription drug coverage (e.g., new hires).

Who Is Entitled to a Notice

The notice must be provided to Medicare Part D eligible individuals who are eligible to enroll in the plan sponsor's prescription drug plan. This includes employees, COBRA participants and retirees, as well as their spouses and dependents. Individuals are considered to be eligible for Medicare Part D if they are enrolled in either Medicare Part A or Medicare Part B and live in the service area of a Part D plan. In other words, if somebody is both Part D eligible and eligible to enroll in the plan sponsor's prescription drug plan, a notice is required.

Since it may be difficult for a plan sponsor to identify which individuals are eligible for Medicare Part D (e.g., spouses or disabled dependents), many plan sponsors choose to provide the disclosure notice to everyone who is eligible to enroll in their prescription drug plan.

Method of Delivery

When providing the notices, CMS prefers using paper documents because Part D eligible individuals are more likely to receive and understand them, and because it is easier to ensure that paper documents have been received by both employees and eligible spouses and dependents. However, although paper notices sent by mail are preferred, the notices may be sent electronically in accordance with the Department of Labor's (DOL's) electronic delivery safe harbor for required ERISA disclosures. The safe harbor allows for electronic distribution to those who have access to the employer's electronic system as an integral part of their daily duties at their regular workplace, and to those who provide consent.

In general, CMS has indicated that a plan sponsor providing a disclosure notice may generally provide a single notice to both the eligible individual and all of his or her eligible dependents. However, a separate disclosure notice must be provided if the plan sponsor knows that any eligible spouse or dependent resides at a different address from the participant.

REPORTING TO CMS

In addition to the disclosure requirements to individuals, plan sponsors of prescription drug plans are also required to report to CMS annually, within 60 days of the beginning of the plan year. For example, for a calendar year plan, the employer should report by early March 2023 on whether the coverage offered for 2023 is creditable or non-creditable. Note that this reporting requirement is also separate and distinct from the Medicare Secondary Payer reporting requirements under Section 111 that are due to CMS on a quarterly basis and typically handled the insurance carrier or administrator. Reporting to CMS on the creditable status of the prescription drug coverage is generally the responsibility of the employer. This reporting is done electronically. The instructions and online form for reporting creditable status to CMS can be found here - https://www.cms.gov/Medicare/Prescription-Drug-Coverage/CreditableCoverage/CCDisclosure