

EMPLOYEE BENEFITS

Group Health Plan Creditable/Non-Creditable Coverage Notices Due by 10/14/2023

October 2023

Sponsors of group health plans that provide prescription drug benefits are responsible for determining and notifying Medicare-eligible beneficiaries of whether the plan provides creditable* or non-creditable drug coverage before October 15 of each year.

When is the Notice of Creditable or Non-Creditable Coverage (aka “Part D Notice”) due?

The Notice must be provided at each of the following times:

1. Before the start of the Medicare Part D annual coordinated enrollment period (ACEP). The 2023 ACEP begins October 15 and runs through December 7 for Medicare prescription drug coverage (Part D) and Medicare Advantage plans (Part C) effective January 1, 2024. Therefore, generally, the notice deadline is October 14, 2023;
2. Before the individual’s initial Medicare enrollment period;
3. Prior to the effective date of the individual’s coverage under the employer’s health plan;
4. Upon request; and
5. Whenever creditable status for the prescription drug coverage provided by the health plan changes.

Because employers may not know which employees’ family members are Medicare-eligible due to age or disability status, many employers will distribute the Notice to all employees covered by the group health plan.

Note that plan sponsors who distribute the Part D notice at least once per year to all plan participants in advance of the October 14 deadline (i.e., within the 12 consecutive months preceding October 14) generally are considered to have satisfied the notice requirements under one (1) and two (2) above. In other words, if a plan sponsor delivered the Notice to a plan participant anytime within the 12 months preceding October 14, they would not need to redistribute the Notice to that participant before the covered individual’s annual or initial Medicare enrollment period.



**“Creditable coverage” means that the prescription drug coverage provided by the group health plan provides benefits that are at least equal to or better than Medicare Part D.*

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For what time period am I providing the Notice?

CMS guidance does not address whether the Notice should reflect the creditable coverage status of the group health plan as (1) the date on which the notice is distributed or (2) some future date (e.g., the following plan year). Given the lack of guidance, plan sponsors should seek advice about this issue from legal counsel.

In any case, if there are subsequent changes in creditable coverage status, a new Notice must be distributed to affected participants and beneficiaries.



To whom must the Notice be provided?

The appropriate Part D Notices must be provided to affected participants and beneficiaries (who are Medicare-eligible due to age or disability) covered by the Group Health Plan, including active employees, retirees and their spouses and dependents who are Medicare-eligible.

How is the creditable or non-creditable status of the prescription drug benefits provided by a Group Health Plan determined?

A simplified (safe harbor) method for determining creditable coverage status may be applied if the plan fits within specific parameters. See [Creditable Coverage Simplified Determination](#). If employers are receiving a Retiree Drug Subsidy, or the plan does not fit within the simplified determination parameters, and the plan sponsor would like to show creditable status, an actuarial determination is required.

How do plan sponsors notify participants and beneficiaries about their drug coverage?

In general, fully insured carriers will determine creditable coverage status for their products, and most carriers will send Part D Notices. However, it is important to check with the individual carriers to confirm whether they have sent the Notices and when or if they plan to do so.

Employers providing benefits through a self-insured plan may be responsible for determining the creditable coverage status of the prescription drug benefits the plan provides and sending the notices. In some cases, the employer's third-party administrator may be able to assist with compliance.

The Medicare Part D Notice of Creditable or Non-Creditable Coverage may be distributed with other plan materials, such as inclusion in a Benefits Guide or Open Enrollment packet. However, the Notice must be distributed properly to employees and beneficiaries (as discussed below) and must be prominently displayed. The Notice must be in 14-point font and either be bolded, offset or boxed and placed on the first page of the material, or the notice can be referenced on the first page of the material (in 14-point font and either be bolded, offset or boxed) notifying the reader of where to find the Notice within the material. This is to help ensure that participants and beneficiaries understand the importance of the creditable or non-creditable coverage status notice.

The Notice may also be distributed electronically in some situations. Electronic distribution is permitted to "plan participants who have the ability to access electronic documents at their regular place of work if they have access to the plan sponsor's electronic information system on a daily basis as part of their work duties." If electronic distribution is used for these participants, the rules indicate that "the plan sponsor must inform the plan participant that the participant is responsible for providing a copy of the electronic disclosure to their Medicare-eligible dependents covered under the group health plan."

A single notice sent to the employee via first-class mail generally meets the requirement for distribution to all covered family members within the same household. However, separate notices must be sent to Medicare-eligible beneficiaries known to reside at a different address from the employee.

These disclosure rules are addressed in detail in the Centers for Medicare & Medicaid Services (CMS) [guidance](#).



Why does the CMS require the Part D Notice to be distributed?

The Notice requirement is important because Medicare-eligible beneficiaries who delay enrollment in Medicare Part D for 63 or more days after losing other creditable prescription drug coverage will pay a surcharge (penalty). The penalty results in increased Part D premiums when they enroll in Medicare Prescription Drug (Part D) coverage. The surcharge is equal to 1% of the standard national Part D monthly premium (for 2024, the standard premium is projected to be \$34.70 per month, a 6% increase to the 2023 basic Part D premium rate of \$32.09), multiplied by the number of months the individual did not have creditable or Part D coverage when they were eligible. The penalty is permanent, and assessed every month the beneficiary has Part D coverage. Employees, spouses and dependents covered by plans that constitute creditable coverage may defer enrollment in Part D until they no longer have other creditable coverage, without late enrollment penalties, as long as they enroll in Medicare Part D before the 63 days after they lose creditable coverage.

What must be included in the Notice?

CMS has made [model notices](#) for creditable and non-creditable coverage available to plan sponsors. The current notice templates have not been updated since April 2011.

Plan sponsors may provide the Notice(s) in languages other than English if a large portion of their workforce is literate in non-English languages to help ensure all affected participants and beneficiaries understand the significance of the notices. However, there are no specific statutory requirements to produce the Notice of Creditable or Non-Creditable prescription drug coverage in a non-English language. Spanish versions of both model notices, which plan sponsors may use to communicate to employees who are literate in Spanish only, are also available on the CMS website.

Are there other requirements for employers?

Within 60 days after the beginning of the employer's plan year, the employer must electronically report to CMS the status of their prescription drug plan(s) and the last date the Part D notice was provided. Mid-year additional reporting is required if the plan benefits change and any coverage changes result in a change in the creditable (or non-creditable) status of the health plan's prescription drug coverage.

CMS disclosure responsibility lies with the plan sponsor (employer), regardless of whether the plan is fully insured or self-funded. All plan sponsors are responsible for compliance, regardless of the number of employees enrolled in their health plan(s). For 2024 calendar year plans, for example, CMS reporting is due by 2/29/2024. The CMS online disclosure form can be found [here](#).

To complete the electronic disclosure, certain information will be required, including:

1. The number of plan(s) that cover active employees and retirees, if applicable.
2. The determination as to whether all plans are creditable, non-creditable or some are creditable, and some are not. In many cases, the Simplified Determination Method may be used. However, if the plan sponsor is receiving a Retiree Drug Subsidy (RDS) payment, the plan(s) receiving the subsidy must be creditable, and an actuary must determine creditable status.
3. The approximate number of Medicare-eligible participants and beneficiaries covered by creditable and non-creditable plans.
4. Whether any plans cover employees who are members of a collective bargaining agreement.
5. The last date the Part D Notices were distributed. Although creditable/non-creditable status reporting is made for the current plan year, note that the last distribution date might have occurred in the previous plan year.



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