



EMPLOYEE BENEFITS ALERT

NON-CREDITABLE COVERAGE AND CHANGE IN ELECTION PERIOD

Employers Must Comply with Medicare Notice Requirements

September 9, 2011

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 added a new voluntary prescription drug benefit (Part D) to the Medicare program, and "Part D eligible individuals" can enroll in this new prescription drug benefit. As a group health plan policyholder that provides prescription drug coverage to eligible individuals, you are subject to certain mandates as a result of this law. We want to share the following information to help you understand your responsibilities and prepare.

Annual notice requirement to CMS – All employers who offer group health plans providing prescription drug coverage are required to notify the Centers for Medicare & Medicaid (CMS) annually regarding the creditability of their prescription drug coverage. (See "What is creditable prescription drug coverage?" below.)

Annual disclosure notice requirement – All employers who offer group health plans with prescription drug coverage must provide an annual disclosure notice to "Part D eligible individuals" each year by October 15. It is difficult to identify all employees and dependents enrolled in Medicare due to age, disability, or ESRD. Therefore, we recommend that you provide the disclosure notice to all covered individuals to ensure compliance. (This includes covered dependents and retirees.) PacificSource benefit books and proposal summaries include Medicare Part D information.

What is the purpose of the disclosure notice? – "Part D eligible individuals" have the opportunity to receive Medicare prescription drug coverage. They also have the option of delaying enrollment in Medicare Part D without penalty if they are covered under a group health plan that provides creditable prescription drug coverage. "Part D eligible individuals" must enroll during their initial enrollment period (within the 60 days of initially becoming eligible), the annual coordinated election period (which changed effective this year to be between **October 15 and December 7** annually), or their special enrollment period (within 63 continuous days of involuntarily losing creditable coverage), to avoid the late enrollment penalty. The late enrollment penalty is 1% each month after the first eligible month. Additionally, the individual may have to wait until the following October to enroll in Medicare Part D.

What must be included in the disclosure notice?

- Whether or not your group health plan's prescription drug coverage is creditable
- Information regarding opportunities to enroll in Medicare Part D and the employee's right to such information
- Financial assistance information
- Contact information for the Social Security Administration

What is creditable prescription drug coverage? – Coverage is creditable if it provides coverage for prescription drugs that is equal to or exceeds coverage under the standard Medicare Part D program. Although most of the prescription drug benefits offered with our health plans do satisfy the creditable coverage requirements, ***the prescription drug coverage under your health plan does not satisfy the creditability coverage requirements.***

Sample disclosure notice enclosed – A sample disclosure notice is enclosed for your use. The notice is based on the CMS model notice and should satisfy the content requirement for a disclosure notice if your prescription drug coverage is not creditable. The sample notice is also available through PacificSource InTouch for Plan Administrators. A different disclosure notice is available upon request for plans that provide prescription drug coverage that is creditable.

Timing for delivery of the disclosure notice – CMS recommends that the disclosure notice must be provided to “Part D eligible individuals” at least five times:

- Prior to October 15 each year (the annual coordinated election period)
- Prior to the period during which the individual becomes eligible to enroll in Medicare Part D (the individual’s initial enrollment period)
- Prior to the effective date of coverage for any “Part D eligible individual” that enrolls in your prescription drug coverage
- Whenever your prescription drug coverage ends or changes creditability status (special enrollment period see below)
- Upon request by the “Part D eligible individual”

Special Enrollment Period – It is important that a Part D eligible individual be notified immediately when their prescription drug coverage changes from Creditable Coverage to Non-Creditable Coverage. If the Part D eligible individual loses Creditable prescription drug coverage through no fault of their own, they have only a two-month window to enroll in a Medicare drug plan without penalty.

The method for delivering the disclosure notice – The notice may be mailed separately or with other plan participant materials, and can be sent electronically. If the notice is provided with other plan participant materials, it must meet the “prominent and conspicuous” requirement. CMS provides the following illustration (in bold-faced, 14-point type) that would be located on the first page of plan participant materials:

If you have Medicare or will become eligible for Medicare in the next 12 months, a new Federal law gives you more choices about your prescription drug coverage. Please see page XX for more details.

More information – Additional details regarding the notice requirements and creditable coverage for Medicare Part D are available on the CMS Web site at www.cms.hhs.gov/CreditableCoverage.

You are also welcome to contact PacificSource Legal and Compliance Manager Jim GraVette by phone at (541) 686-1242, extension 2552, or by e-mail at jgravette@pacificsource.com.

Enclosure: sample disclosure notice