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UPDATE

What All Employers (Including Those with No Retiree Coverage) Need to Know About Medicare Part D

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Medicare Part D's new prescription drug benefit becomes available on January 1, 2006. Employers sponsoring group health plans with retiree prescription drug coverage that extends to Medicare eligible participants must apply by **September 30, 2005** if they want to obtain the Part D subsidy for 2006. Employers sponsoring group health plans with prescription drug coverage for active and/or retiree populations must notify Medicare eligible participants (and those seeking to enroll who are Medicare eligible) by **November 15, 2005** as to whether the group health plan's prescription drug coverage is "creditable."

Basics of Medicare Part D

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (the "Act") extends prescription drug coverage to Medicare by adding a voluntary benefit. Individuals are Medicare Part D eligible if they are entitled to benefits under Medicare Part A and/or are enrolled in benefits under Medicare Part B and live in the service area of a Medicare Part D Plan.

In 2006, the Medicare Part D benefit covers 75% of the first \$2,250 of enrollees' prescription drug costs. Enrollees pay a monthly premium of approximately \$37 and a \$250 deductible. Enrollees also pay 100% of their prescription drug costs between \$2,250 and \$5,100 (sometimes referred to as the "donut hole"). The Medicare Part D plan will pay 95% of drug costs after enrollees pay \$3,600 in out-of-pocket prescription drug costs. Eligible individuals can first sign up for Medicare Part D coverage during an initial enrollment period running from **November 15, 2005** to **May 15, 2006**.

Employer Options for Retiree Health Plans

Employers that provide retiree prescription drug coverage to Medicare eligible retirees have the following options:

- **Apply for the Prescription Drug Subsidy.** Employers that qualify for the prescription drug subsidy can receive government assistance covering approximately 28% of qualifying retiree prescription drug costs. Employers may only receive the subsidy with respect to retirees who decline Medicare Part D coverage.
- **Create a Plan that Wraps Around Medicare Part D.** Under this option, retirees enroll in a Medicare Part D prescription drug plan and their employers' plans "wrap around" the Medicare Part D coverage. Together the two plans create coverage similar to the employer-provided coverage offered before the Act took effect.
- **Establish a Medicare Part D Prescription Drug Plan.** Employers may apply to establish a Medicare Part D prescription drug plan and receive federal subsidies. This approach is probably practical only for employers with very large retiree populations.
- **Continue Current Funding Arrangement.** Employers that do not want to undergo the subsidy application process, that know their plans are not eligible for the subsidy, or that do not want to (or cannot) make significant changes to their plans can continue their current funding arrangements.

- **Eliminate Retiree Prescription Drug Coverage.** Employers can discontinue their retiree prescription drug coverage and encourage their retirees to enroll in Medicare Part D.

Actuarial Equivalence and September 30 Application Deadline for Employer Subsidies

Only employers that provide prescription drug coverage that is “actuarially equivalent” to (meaning at least as generous as) the standard Medicare Part D benefit are eligible for the prescription drug subsidy. As the term suggests, the equivalence must be certified by an actuary. To receive the subsidy, the actuary must certify that the plan satisfies two tests: a gross value test and net value test.

- Under the gross value test, the expected amount of claims paid by the employer must be at least equal to the amount of claims covered under the standard Medicare Part D benefit.
- Under the net value test, retiree contributions are subtracted from the value of the employers’ retiree prescription drug coverage and compared with the standard Medicare Part D coverage net of any Medicare enrollee contributions.

To qualify for the prescription drug subsidy in 2006, employers must certify their plans’ actuarial equivalence by **September 30, 2005**—the date prescription drug subsidy applications are due. Employers must annually recertify actuarial equivalence.

Creditable Coverage and November 15 Notice Deadline

Medicare Part D eligible individuals face a late enrollment penalty if they experience a gap in creditable prescription drug coverage that lasts for a continuous period of 63 days or longer. The penalty requires them permanently to pay a higher premium for the coverage. To help Medicare Part D eligible individuals avoid this result, the Act includes a creditable coverage notification requirement. **Employers must provide notices by November 15, 2005 to all individuals who are eligible for Medicare Part D and enrolled in (or seeking to enroll in) the employers’ prescription drug coverage.** Employers must distribute creditable coverage notices if the employers’ coverage satisfies the creditable coverage test (or satisfies the safe harbor) and non-creditable coverage notices if it does not.

A prescription drug plan’s coverage is creditable if it passes the gross value test of the actuarial equivalence determination described above. Fortunately, employers that are not applying for the prescription drug subsidy can use a safe harbor standard (rather than the actuarial equivalence standard) to determine if their plans’ prescription drug coverage is creditable. Prescription drug plans are deemed to be creditable if they:

- Provide coverage for brand name and generic prescriptions; and
- Provide reasonable access to retail providers and, optionally, for mail order coverage; and
- Are designed to pay on average at least 60% of participants’ prescription drug expenses; and
- Satisfy at least one of the following:
 - *Plans that do not integrate prescription drug coverage with other benefits (such as medical and dental benefits).* The prescription drug coverage has (i) no annual benefit maximum or a maximum annual benefit payable by the plan of at least \$25,000, or (ii) an expectation that the amount payable by the plan will be at least \$2,000 per Medicare eligible individual in 2006.
 - *Plans that integrate prescription drug coverage with other benefits.* The integrated health plan has (i) no more than a \$250 deductible per year, (ii) no annual benefit maximum or a maximum annual benefit payable by the plan of at least \$25,000, and (iii) no less than a \$1,000,000 lifetime combined benefit maximum.

The Centers for Medicare and Medicaid Services ("CMS") have issued model creditable and non-creditable coverage notices and limited guidance about notice distribution. The CMS guidance, which includes links to the model notices, is available at: <http://www.cms.hhs.gov/medicarereform/CCGuidance.pdf>.

Mechanics of Creditable Coverage Notice

Employers must initially distribute the notices by November 15, 2005 and annually after that. Employers must also provide the notices prior to individuals' initial Medicare Part D enrollment period, prior to enrollment in the employers' plans, when the creditable status of their plans' coverage changes, and upon request by a Medicare beneficiary. Because employers may not know which participants are Medicare eligible (particularly with respect to dependents), the notices may need to be distributed to all participants. Employers may not electronically distribute the notices to anyone who has not expressly consented to electronic disclosure.

Employers must also notify CMS of the creditable coverage status of their plans each year and any time they make changes to their plans that affect whether the coverage is creditable. CMS has not yet issued guidance about providing this notification.

Conclusion

Medicare Part D deadlines are approaching quickly. Employers applying for the prescription drug subsidy must submit their completed applications and actuarial equivalence attestations by September 30, 2005. All employers with Medicare Part D eligible employees or dependents—even employers without retiree prescription drug coverage—must provide creditable coverage notices by November 15, 2005.

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