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Deadline to Submit Creditable Coverage Disclosures to CMS Approaches

Group health plan sponsors that provide prescription drug coverage to Medicare Part D eligible individuals must disclose to CMS on an annual basis whether the coverage qualifies as creditable or non-creditable. This requirement applies to all plan sponsors that provide prescription drug coverage, even those that do not make coverage available to retirees. Calendar year plans must submit this year's disclosure to CMS by March 1, 2011.

Background

Individuals who do not enroll in Medicare Part D prescription drug coverage when first eligible will be subject to a late enrollment penalty if they have gone 63 or more consecutive days without prescription drug coverage that is creditable (i.e., at least actuarially equivalent to the Medicare Part D coverage). Thus, both Medicare Part D eligible individuals and the Centers for Medicare & Medicaid Services (CMS) need to know whether a group health plan's prescription drug coverage is creditable or non-creditable.

Sponsors of plans that provide prescription drug coverage must furnish Part D eligible individuals with a notice disclosing the creditable or non-creditable status of their coverage before the beginning of the Medicare Part D annual enrollment period and at certain other times. (See our September 23, 2010 [For Your Information](#).) Plan sponsors must also disclose to CMS, on an annual basis and at certain other times, whether the coverage they provide is creditable or non-creditable. The deadline for this year's disclosure to CMS by calendar year plans is approaching.

Creditable Coverage Disclosures to CMS

A plan sponsor generally must disclose creditable coverage status to CMS no later than 60 days after the beginning of *each* plan year – i.e., this is March 1, 2011 for calendar year plans. Disclosure is made online using the “Disclosure to CMS Form” available on the CMS [website](#). An entity that does not offer outpatient prescription drug benefits to any Part D eligible individual on the first day of its plan year is not required to complete the CMS disclosure form for that plan year. A sponsor that contracts directly with Medicare as a Part D plan or that contracts with a Part D plan to provide qualified prescription drug coverage is also exempt from the disclosure to CMS requirement.

In addition to the annual disclosure, sponsors must also submit a new disclosure form to CMS within 30 days after any change in the creditable coverage status of a prescription drug plan. This includes a change in the coverage

offered so that it is no longer creditable or the termination of a creditable coverage option. A new disclosure form must also be provided to CMS within 30 days after the termination of the prescription drug plan.

Information Needed to Complete the Disclosure

In preparing the disclosure to CMS, plan sponsors need to –

- identify the number of prescription drug options they offer to Medicare eligible individuals. This is the total number of benefit options they offer, excluding any benefit options they are claiming under the retiree drug subsidy (RDS) program (i.e., benefit options for which the plan sponsor is expected to collect the subsidy). For example, a plan sponsor with an HMO, PPO and indemnity option available under its plan would identify three prescription drug options.
- determine the number of benefit options offered that are creditable coverage and how many are non-creditable.
- estimate the total number of Part D eligible individuals expected to have coverage under the plan at the start of the plan year (or if both creditable and non-creditable coverage options are offered, estimate the total number of Part D eligible individuals expected to enroll in each coverage category). This includes Part D eligible active employees, retirees or disabled individuals and any of their Part D eligible dependents, as well as any individuals on COBRA who are Part D eligible. The estimate should not include any Part D eligible individuals being claimed under the RDS program. If a plan sponsor provides retiree prescription drug coverage, it will have to be able to provide a similar estimate of Part D eligible individuals who have retiree coverage at the start of the plan year. [**Note:** Individuals who will be or become Part D eligible after the start of the plan year should not be included in the count for that year, but they must be provided a notice of creditable or non-creditable coverage prior to their initial enrollment period for Part D.]
- disclose the most recent calendar date on which the required notices of creditable or non-creditable coverage were provided.

Conclusion

Plan sponsors should review the instructions carefully before completing the Disclosure to CMS Form to make certain that they have all necessary information.

Buck's consultants would be pleased to help you determine whether your prescription drug coverage qualifies as creditable or non-creditable and provide you with any assistance you may need to complete the submission to CMS by the deadline or to provide notices of creditable coverage to Part D eligible individuals.

This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.