

# FYI<sup>®</sup>

## For Your Information<sup>®</sup>

### **Deadline for Medicare Part D creditable/non-creditable coverage notices is October 14, 2022**

Plan sponsors that offer prescription drug coverage must provide notices of creditable or non-creditable coverage to Medicare-enrolled individuals before each year's Medicare Part D annual enrollment period — this year, by October 14. The notice obligation is not limited to retirees and their dependents but also includes Medicare-enrolled active employees and their dependents and Medicare-enrolled COBRA participants and their dependents.

#### **Background**

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 requires group health plan sponsors that provide prescription drug coverage to inform individuals eligible for Medicare Part D whether the plan's coverage is "creditable" or "non-creditable." Prescription drug coverage is creditable when it is at least actuarially equivalent to Medicare's standard Part D coverage and non-creditable when it does not provide, on average, as much coverage as Medicare's standard Part D plan. The Centers for Medicare & Medicaid Services (CMS) has provided a [Creditable Coverage Simplified Determination](#) method that plan sponsors can use to determine if a plan provides creditable coverage.

Knowing if their prescription drug coverage is creditable allows individuals to make informed decisions about whether to remain in their current prescription drug plan or enroll in Medicare Part D during the Part D annual enrollment period. Individuals who do not enroll in

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#### **Who must receive the notice?**

The notice must be provided to all Medicare-enrolled individuals who are covered under, or eligible for, the sponsor's prescription drug plan, regardless of whether the plan pays primary or secondary to Medicare. Thus, the notice obligation is not limited to retirees and their dependents but also includes Medicare-enrolled active employees and their dependents and Medicare-enrolled COBRA participants and their dependents. As a practical matter, many plan sponsors provide the notice to all plan participants.

Medicare Part D during their initial enrollment period (IEP), and who subsequently go at least 63 consecutive days without creditable coverage (e.g., because they dropped their creditable coverage or have non-creditable coverage), generally will pay higher premiums if they enroll in a Medicare drug plan at a later date.

**Buck comment.** The Inflation Reduction Act of 2022 included significant improvements in the benefits provided by Medicare Part D, including the elimination of the beneficiary 5% coinsurance in the catastrophic phase in 2024 and a \$2,000 out-of-pocket maximum on beneficiary cost sharing in 2025. These improved benefits could make it more difficult for employer plans to satisfy creditable coverage. Guidance is needed from CMS on the impact of these benefit improvements on the determination of creditable coverage.

## Notice requirements

The Medicare Part D annual enrollment period runs from October 15 to December 7. Each year, before the enrollment period begins (i.e., by October 14), plan sponsors must notify Medicare-enrolled individuals whether their prescription drug coverage is creditable or non-creditable. The October 14 deadline applies to insured and self-funded plans, regardless of plan size, employer size or grandfathered status. Part D eligible individuals also must be given notice of the creditable or non-creditable status of their prescription drug coverage at the following times:

- Before an individual’s IEP for Part D
- Before the effective date of coverage for any Medicare-enrolled individual who joins an employer plan
- Whenever prescription drug coverage ends or creditable coverage status changes
- Upon the individual’s request

### Exception for EGWPs

Employers that provide prescription drug coverage through a Medicare Part D Employer Group Waiver Plan (EGWP) are not required to provide the creditable coverage notice to individuals eligible for the EGWP.

According to CMS, the requirement to provide the notice prior to an individual’s IEP will also be satisfied if the notice is provided to all plan participants each year before the beginning of the Medicare Part D annual enrollment period.

Model notices that can be used to satisfy creditable/non-creditable coverage disclosure requirements are available in both English and Spanish on the [CMS website](#). Plan sponsors that choose not to use the model notice must provide a disclosure that meets prescribed content standards. The required notices may be provided in annual enrollment materials, separate mailings, or electronically. Whether plan sponsors use the CMS model notices or other notices that meet prescribed standards, they must provide the required disclosures this year no later than October 14.

Plan sponsors may provide an electronic notice to plan participants who have regular work-related computer access to the sponsor’s electronic information system. However, plan sponsors using this disclosure method must inform participants that they are responsible for providing notices to any

Medicare-enrolled dependents covered under the group health plan. Electronic notice may also be provided to employees who do not have regular work-related computer access to the plan sponsor's electronic information system and to retirees or COBRA qualified beneficiaries, but only with a valid email address and their prior consent. Before individuals can effectively consent, they must be informed of the right to receive a paper copy, how to withdraw consent, how to update address information, and any hardware/software requirements to access and save the disclosure. In addition to emailing the notice to the individual, the sponsor must also post the notice (if not personalized) on its website.

**Don't forget the disclosure to CMS!**

Plan sponsors that provide prescription drug coverage to Medicare-enrolled individuals must also disclose to CMS annually whether the coverage is creditable or non-creditable. This disclosure must be made no more than 60 days after the beginning of each plan year. (See our [February 16, 2022 FYI](#).)

## In closing

Plan sponsors that offer prescription drug coverage must determine whether their drug plan's coverage satisfies CMS's creditable coverage standard and provide appropriate creditable/non-creditable coverage disclosures to Medicare-enrolled individuals, this year no later than October 14.

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