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Medicare Part D creditable coverage disclosures due to CMS March 1, 2023

Group health plan sponsors that provide prescription drug coverage to individuals eligible for Medicare Part D must disclose to CMS whether that coverage is “creditable” or “non-creditable.” The disclosure is required even if prescription drug coverage is only offered to active employees and not retirees. Calendar year plans must submit their disclosure by March 1, 2023.

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Background

Individuals who fail to enroll in Medicare Part D prescription drug coverage when first eligible may be subject to late enrollment penalties if they go 63 consecutive days or longer without creditable prescription drug coverage. Prescription drug coverage is “creditable” when it is at least actuarially equivalent to Medicare Part D prescription drug coverage. Because of this potential penalty, 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. (See our [September 19, 2022 FYI](#).) Plan sponsors 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. 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 submission deadline for this year’s disclosure to CMS by calendar year plans is approaching.

Creditable coverage disclosures to CMS

Plan sponsors generally must disclose creditable coverage status to CMS within 60 days after the beginning of each plan year. Disclosure is made using the Disclosure to CMS Form on the 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. Plan sponsors that contract directly with Medicare as a Part D plan or that contract with a Part D plan

Is disclosure required if employer doesn't offer retiree coverage?

All Part D-eligible individuals covered under an employer's prescription drug plan — regardless of whether the coverage is primary or secondary to Medicare Part D — should be included in the disclosure. "Part D-eligible individuals" are generally age 65 and older, or under age 65, disabled and include active employees and their dependents, COBRA participants and their dependents, and retirees and their dependents. Even employers without retiree coverage may need to file the disclosure.

to provide qualified prescription drug coverage are also exempt from the CMS disclosure requirement for individuals who participate in the Part D plan. In addition to the annual disclosure, plan sponsors must submit a new disclosure form to CMS within 30 days following any change in the creditable coverage status of a prescription drug plan. This includes both a change in the coverage offered so that it is no longer creditable (or non-creditable) and the termination of a creditable coverage option. A new disclosure form must also be submitted to CMS within 30 days after the termination of a prescription drug plan.

Buck comment. The disclosure requirement applies to all plan sponsors that provide prescription drug coverage to Part D-eligible individuals, even those that do not make prescription drug coverage available to retirees.

Calendar year plans must submit this year's disclosure to CMS by March 1, 2023.

Information needed to complete disclosure

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

- Identify the number of prescription drug options offered to Medicare-eligible individuals. This is the total number of benefit options offered, excluding any benefit options the plan sponsor is claiming under the retiree drug subsidy (RDS) program (i.e., benefit options for which the plan sponsor is expected to collect the subsidy) or that are employer group waiver plans (EGWPs). For example, a plan sponsor with a PPO and an indemnity option covering actives and an option for retirees for which it is receiving RDS would report two prescription drug options.
- Determine the number of benefit options offered that are creditable coverage and the number that 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, disabled individuals and any of their Part D-eligible dependents, and any individuals on COBRA who are Part D eligible. The estimate

Why doesn't the disclosure requirement apply to EGWPs or retiree plans where the employer is receiving RDS payments?

EGWPs are exempt from the disclosure requirement because an EGWP is Medicare Part D coverage. An employer participating in the RDS program must have already certified to CMS that its drug coverage is creditable.

should not include any Part D-eligible retirees being claimed under the RDS program or retirees in an EGWP (because that coverage is Medicare Part D coverage).

Buck comment. Individuals who will become Part D eligible after the start of the plan year should not be included in the count for that year. However, they must be provided a notice of creditable or non-creditable coverage prior to their initial Part D enrollment period.

- Provide the most recent calendar date on which the required notices of creditable or non-creditable coverage were provided.

In closing

Plan sponsors should review the instructions carefully before completing the Disclosure to CMS Form to make sure they have all necessary information. Calendar year plans should report the information by March 1, 2023.

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