

Brought to you by: Liberty Insurance Agency

## Medicare Part D – Prescription Drug Benefit

Effective Jan. 1, 2006, the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA) added a voluntary outpatient prescription drug benefit to the Medicare program, known as Medicare Part D. Employers with group health plans that provide prescription drug coverage to Medicare Part D eligible individuals are subject to disclosure requirements under Medicare Part D.

Medicare Part D requires employers to disclose whether their prescription drug coverage is “creditable” to the Centers for Medicare and Medicaid Services (CMS) and to Medicare Part D eligible individuals. These disclosures must be made on an annual basis and at certain other designated times.

In addition, the MMA created a subsidy to encourage employers with retiree prescription drug plans to maintain this coverage even after the Medicare Part D program became effective.

---

## LINKS AND RESOURCES

- For general information on the Medicare Part D program, including covered benefits, see the Medicare Part D [webpage](#).
- Visit CMS’ creditable coverage [webpage](#) for information about creditable coverage disclosure notices.
- More information about the retiree drug subsidy is available on CMS’ Retiree Drug Subsidy [webpage](#).

---

## Medicare Part D Benefits

Medicare beneficiaries may purchase prescription drug coverage by joining a Medicare Prescription Drug Plan or a Medicare Advantage Plan that includes Medicare drug coverage. The monthly premium and drug coverage varies according to the plan in which the Medicare beneficiary enrolls.

Under the Medicare Part D Program:

- The Medicare beneficiary pays an annual deductible of no more than \$480 for 2022 (\$445 for 2021), plus 25 percent of prescription drug costs between the annual deductible and the **initial coverage limit** (\$4,130 for 2021 and \$4,430 for 2022).
- Where the Medicare beneficiary’s out-of-pocket expenses reach the **catastrophic coverage threshold** (\$6,550 for 2021 and \$7,050 for 2022), the Medicare beneficiary pays the greater of a 5 percent coinsurance or a copayment of \$3.70 for generic drugs (\$3.95 for 2022) or \$9.20 for any other prescription drug (\$9.85 for 2022).

Medicare beneficiaries with limited income and resources may qualify for Medicare subsidies to help pay prescription drug costs. In addition, the ACA requires high-income individuals to pay higher Medicare Part D premiums, similar to the Medicare Part B program.

Medicare beneficiaries who are not covered by creditable prescription drug coverage and who choose not to enroll in Medicare Part D before the end of their initial enrollment period may be required to pay higher premiums if they enroll in Medicare Part D at a later date.

## Employer Requirements

Employers with group health plans that cover Medicare Part D eligible individuals are required to address a number of issues related to Medicare Part D, regardless of whether they provide retiree coverage. Medicare Part D eligible individuals include those people who are entitled to Medicare benefits under Part A or who are enrolled in Medicare Part B.

---

**Annual Disclosure Requirements:** Employers with group health plans that provide prescription drug coverage to individuals who are eligible for coverage under Medicare Part D must comply with certain annual disclosure requirements. Each year, Medicare Part D requires group health plan sponsors to disclose to individuals who are eligible for Medicare Part D and to CMS whether their prescription drug coverage is creditable.

---

Also, plan sponsors should expect to receive requests for information from their enrollees regarding Part D plan coordination, since Part D plans are required to coordinate benefits with other health plans that provide prescription drug coverage to Medicare-eligible individuals.

## Disclosures to Individuals

Employers that offer prescription drug coverage to active or retired employees who are eligible for Medicare, or their spouses/dependents, must notify each Part D eligible individual who is enrolled in or seeks to enroll in this coverage whether the coverage qualifies as creditable coverage under the Part D rules. If the coverage is not creditable, the notice must explain that there are limits on when the individual may enroll in a Part D plan during a year, and that he or she may be subject to a lifetime late enrollment penalty under Part D.

Coverage is creditable if the actuarial value of the coverage equals or exceeds the actuarial value of standard prescription drug coverage under Medicare Part D. In general, the actuarial equivalence test measures whether the expected amount of paid claims under the plan sponsor's prescription drug coverage is at least as much as the expected amount of paid claims under the standard Part D benefit. Plans with multiple benefit options must apply the actuarial value test for each benefit option. The determination of creditable coverage does not require an attestation by a qualified actuary, unless the plan sponsor is electing the Retiree Drug Subsidy.

At a minimum, creditable coverage disclosure notices must be provided to individuals at the following times:

1. Prior to the Medicare Part D annual coordinated election period—beginning Oct. 15 through Dec. 7 of each year
2. Prior to an individual's initial enrollment period for Part D
3. Prior to the effective date of coverage for any Medicare-eligible individual who joins the plan
4. Whenever prescription drug coverage ends or changes so that it is no longer creditable or becomes creditable
5. Upon a beneficiary's request

If the creditable coverage disclosure notice is provided to all plan participants annually, before Oct. 15 of each year, items (1) and (2) above will be satisfied. "Prior to," as used above, means the individual must have been provided with the notice within the past 12 months. In addition to providing the notice each year before Oct. 15, plan sponsors should consider including the notice in plan enrollment materials provided to new hires.

CMS has provided model disclosure notices for plan sponsors to use when disclosing their creditable coverage status to Medicare beneficiaries. The model disclosure notices are available on CMS' [website](#).

## Disclosure to CMS

Group health plan sponsors are required to disclose to CMS whether their prescription drug coverage is creditable or non-creditable. This disclosure is required regardless of whether the health plan's coverage is primary or secondary to Medicare.

If an employer's group health plan does not offer prescription drug benefits to any Medicare Part D eligible individuals as of the beginning of the plan year, the group health plan is not required to submit the online disclosure form to CMS for that plan year.

Also, a plan sponsor who has been approved for the Retiree Drug Subsidy is exempt from filing the CMS disclosure notice with respect to those qualified covered retirees for whom the sponsor is claiming the Retiree Drug Subsidy.

The disclosure must be made to CMS on an annual basis and whenever any change occurs that affects whether the coverage is creditable. More specifically, the Medicare Part D disclosure notice must be provided within the following time frames:

- Within 60 days after the beginning date of the plan year for which the entity is providing the disclosure to CMS;
- Within 30 days after the termination of a plan's prescription drug coverage; and
- Within 30 days after any change in the plan's creditable coverage status.

Plan sponsors are required to use the online disclosure form on the CMS Creditable Coverage [webpage](#). This is the sole method for compliance with the disclosure requirement, unless the entity does not have Internet access.

The disclosure form lists the required data fields that must be completed in order to generate the disclosure notice to CMS, such as types of coverage, number of options offered, creditable coverage status, period covered by the disclosure notice, number of Part D-eligible individuals covered, date the creditable coverage disclosure notice is provided to Part D-eligible individuals, and change in creditable coverage status.

CMS has also provided instructions for detailed descriptions of these data fields and guidance on how to complete the form.

## Retiree Drug Subsidy

The Medicare Part D program includes an employer subsidy designed to encourage employers to provide prescription drug coverage to Medicare-eligible retirees even though Medicare Part D is available. The Retiree Drug Subsidy (RDS) is available to certain employers that sponsor group health plans covering retirees who are entitled to enroll in Part D but elect not to do so. To participate in the RDS program, eligible employers must submit an application to CMS prior to the beginning of the plan year.

In general, the RDS is equal to 28 percent of each qualifying covered retiree's costs for prescription drugs otherwise covered by Medicare Part D that are attributable to costs between the cost threshold and cost limit. Employer requirements to be eligible for the RDS include the following:

- The employer must provide coverage of retiree health care costs, including prescription drugs, under a group health plan;
- The plan's retiree prescription drug coverage must be creditable coverage (notices of creditable coverage must be provided); and
- The employer must submit an attestation that the actuarial value of the plan's retiree prescription drug coverage is at least equal to the actuarial value of the defined standard prescription drug coverage under Part D.

Employers receiving RDS payments do not pay federal income tax on the subsidy payments. Additional information about the RDS program is available from CMS through its RDS [webpage](#).

---

This Compliance Overview is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice. ©2005-2021 Zywave, Inc. All rights reserved.