Employee Benefits Alert

Willis

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Medicare Prescription Drug Annual Requirements

About this time last year, plan sponsors were preparing to send prescription drug disclosure notices for the first time. The *Medicare Prescription Drug, Improvement, and Modernization Act of 2003* (MMA) mandated this notice duty in order to inform Part D eligible individuals about the creditable or non-creditable status of the sponsor's prescription drug coverage. *All* plan sponsors, not just those sponsoring retiree plans, must comply with this requirement.

Annual Requirement

Notice distribution is an annual requirement. The disclosure notices have to be distributed prior to every November 15th, the beginning of Medicare's Part D Annual Coordinated Election Period. The term "prior to" means within the twelve month period prior to November 15th. This "prior to" definition allows non-calendar year plans to distribute notices every year with their open enrollment cycle and not be tied to a November 15th schedule.

Plan sponsors sending disclosure notices should take the following steps:

- Determine creditable status
- Update the disclosure notices as needed (be sure to use the notice formats currently in effect)
- Distribute the notices
- Report the status to the Centers for Medicare and Medicaid Services (CMS) within 60 days after the first day of the plan year (for reporting purposes, the plan year is the renewal or contract year)

Disclosure Notices

CMS issued revised model notices for use on or after May 15, 2006. (For details about these revisions, please see *Willis EB Alert* #66.) These notices and guidance are available on the CMS website at www.cms.hhs.gov/creditablecoverage/. A member of Willis' Legal & Research Group recently attended a CMS seminar in which CMS stated that the personalized notice, which contains specific information about an individual's periods of creditable coverage, is *optional*. Plans may, but are not required to, provide personalized notices. However, if a plan does provide personalized notices, those notices may replace the generic notice.

On September 22, 2006 CMS published in the *Federal Register* a request for comments on updated creditable coverage model notices (available at the website above, click on the May 2006 notices link on the left side and click on the PRA Listing under Related Links.) The changes are being proposed in response to comments received on the previous model notices. *As a result, plan sponsors can continue to provide creditable coverage disclosures using the May 2006 model disclosure notices and guidance, or they can use the updated notices and guidance. The new creditable coverage notices will be mandatory once CMS finalizes and releases its guidance.*

The September 2006 guidance confirms that the simplified determination test remains the same and clarifies that the personalized notice is optional. Some of the data elements in the personalized notice were changed, but the changes in the generic disclosure notices are more stylistic than content-related. Given the few changes, the timing of the release of the new notices, and the fact that the materials are not finalized, it is the Willis Legal & Research Group's recommendation that plan sponsors continue using the May 2006 notice format.

Plan sponsors should stay cognizant of the purpose of the notice. Accurate and sufficiently meaningful information must be communicated to Part D eligible individuals to enable recipients to make informed decisions. This often goes beyond the creditable/non-creditable status of the plan. Sponsors should pay particular attention to explain plan eligibility implications if the individual decides to enroll in Medicare's prescription drug benefit. Current wording should be reviewed to ensure the notice remains accurate.

Notice Distribution

The disclosure notice is required to be distributed to all Part D eligible individuals (enrolled in Medicare Part A or B) covered under the plan. The plan sponsor, however, often does not know which employees or dependents are covered by Medicare due to age, disability, or end stage renal disease. Therefore, Willis' Legal & Research Group recommends distribution to *all* plan participants. Mass distribution of the notice produces added advantages. Specifically, CMS considers plans utilizing the "mass distribution" to have automatically satisfied:

- The annual notice requirement; and
- The requirement to provide the notice prior to an individual's Initial Enrollment Period that occurs during the year.

Distribution deadlines, as well as RDS subsidy application deadlines, are summarized in the chart shown below.

The government provides flexibility in the manner of distributing the notices. CMS guidance suggests mailing the materials — but does not preclude employers from using other methods. Disclosure notices may be distributed with other materials as long as a reference to the disclosure notice is prominently displayed on the first page of the other materials. In addition, the sponsor may provide a single notice to the Medicare beneficiary and all dependents covered under the plan — unless the sponsor has knowledge that they reside at different addresses (in which case separate deliveries are required).

Although electronic distribution of the notice is technically permitted, there are a number of difficult and burdensome requirements that must first be satisfied before sending the information in this manner.

Creditable Status Determination

An employer or union applying for the drug subsidy payment must obtain an actuarial "attestation of equivalency." For plan sponsors not claiming the subsidy, the simplified determination test described below may be used to determine whether the prescription drug coverage is creditable or not.

> *Note*: Testing is required for each benefit option offered by a plan. A benefit option is a particular design, category of benefits, or cost-sharing arrangement offered within a group health plan.

Simplified Determination Test

A prescription drug plan is creditable if it:

I. Provides coverage for brand and generic prescriptions;

II. Provides reasonable access to retail providers and reasonable access to mail order service (only if the prescription drug plan includes a mail order component);

III. Is designed to pay (on average) at least 60 percent of participants' prescription drug expenses; and

IV. Satisfies (a) or (b) below; however, a plan with integrated health coverage (defined below) must satisfy item (c) instead:

   (a) The prescription drug coverage has no annual benefit maximum or a maximum annual benefit payable by the plan of at least $25,000; or

   (b) The prescription drug coverage has an actuarial expectation that the amount payable by the plan will be at least $2,000 per Medicare eligible individual.

   (c) For plans that have integrated health coverage, the integrated health plan has no more than a $250 deductible per year; has a maximum annual benefit payable by the plan of at least $25,000; and has no less than a $1,000,000 lifetime combined benefit maximum.

Integrated Plan Definition

CMS added a definition of "integrated plan" with guidance published last April. An integrated plan is any plan of benefits offered to a Medicare eligible individual under which the prescription drug benefit is combined with other coverage offered by the entity (such as medical, dental, vision, etc.) and the plan contains *all* of the following plan provisions:

- A combined plan year deductible for all benefits under the plan;
- A combined annual benefit maximum for all benefits under the plan; and
- A combined lifetime benefit maximum for all benefits under the plan.

This definition means that certain high deductible health plans are not integrated plans (for example, a high deductible health plan with a combined deductible and lifetime maximum that does not provide for a combined annual benefit maximum is not an integrated plan). Therefore, these plans *may* be creditable as long as the rest of the test (including the requirement that the plan is expected to pay at least 60 percent of prescription drug claims) is satisfied. Insurers and third party administrators should provide plan sponsors with this data.

Reporting to CMS

Entities that currently provide prescription drug coverage to any Part D eligible individuals are required to report creditable status to CMS. The disclosure is required whether the entity's coverage pays primary or secondary to Medicare. Entities that contract with Medicare directly as a Part D plan, or that contract with a Part D plan to provide qualified prescription drug coverage, are not required to report the status to CMS since these are Medicare plans.

A sponsor that has been approved for the retiree drug subsidy is exempt from reporting the creditable status — but only with respect to those retirees for whom the sponsor is claiming the subsidy. Subsidy-approved sponsors must report the status to CMS regarding other Part D eligible individuals covered by the retiree plan, but not subsidy-eligible (such as individuals who enroll in Medicare Part D but for whom the plan is still providing prescription drug benefits).

Reporting is due within 60 days after the first day of the plan year (for purposes of this reporting, the plan year is the renewal or contract year) and may be performed electronically through the following website: www.cms.hhs.gov/creditablecoverage/. *For 2007 calendar year plans, the reporting deadline is March 2, 2007.* (See *Willis EB Alert #57* for additional information on reporting requirements.)

Creditable Coverage Disclosure Notices and Subsidy Application Deadlines		
Creditable Coverage Disclosure Notices		
Event	**Disclosure Notice to Individual**	**Reporting to CMS**
Part D Annual Coordinated Election Period (begins every November 15th)*	Prior to (within past 12 months) every November 15th	Within 60 days after first day of plan year (defined as the renewal or contract year) **Example:** PY is 1/1/07-12/31/07; reporting deadline is March 2, 2007
Individual's Initial Enrollment Period (IEP) for Part D*	Prior to (within past 12 months) individual's IEP	
Effective date of coverage in sponsor's plan	Prior to (within past 12 months) Part D eligible individual's enrollment effective date in sponsor's plan	
Termination of prescription drug coverage	When coverage ends	Within 30 days after termination of prescription drug plan
Change in creditable status	When status changes	Within 30 days after any change in creditable status
Upon request	When requested	
Website	www.cms.hhs.gov/creditablecoverage/	
* If a disclosure notice is provided to all plan participants, CMS considers this requirement met for the year.		
Subsidy Application		
Event	**Apply/Report Through RDS center**	
Applying for subsidy payment	Apply no later than 90 days prior to beginning of plan year (must apply *each* year for which a subsidy payment is requested). **Example:** October 2nd is the deadline for calendar year plans	
Material change	Actuary must review and re-determine creditable status. If status changes, the sponsor must notify RDS no later than 90 days prior to implementation	
Website	www.rds.cms.hhs.gov	

U.S. Benefit Office Locations

Anchorage, AK (907) 562-2266	Atlanta, GA (404) 224-5000	Austin, TX (800) 861-9851	Baltimore, MD (410) 527-1200
Birmingham, AL (205) 871-3871	Boise, ID (208) 340-0645	Boston, MA (617) 437-6900	Cary, NC (919) 459-3000
Charlotte, NC (704) 376-9161	Chicago, IL (312) 621-4700	Cincinnati, OH (513) 762-7661	Cleveland, OH (216) 861-9100
Columbus, OH (614) 766-8900	Dallas, TX (972) 385-9800	Denver, CO (303) 218-4020	Detroit, MI (248) 735-7580
Eugene, OR (541) 687-2222	Farmington, CT (860) 284-6137	Florham Park, NJ (973) 410-1022	Ft. Worth, TX (817) 335-2115
Grand Rapids, MI (616) 954-7829	Greenville, SC (864) 232-9999	Houston, TX (713) 625-1023	Jacksonville, FL (904) 355-4600
Knoxville, TN (865) 588-8101	Las Vegas, NV (702) 562-4335	Long Island, NY (516) 941-0260	Los Angeles, CA (213) 607-6300
Louisville, KY (502) 499-1891	Memphis, TN (901) 248-3100	Miami, FL (305) 373-8460	Milwaukee, WI (414) 271-9800
Minneapolis, MN (763) 302-7100	Mobile, AL (251) 433-0441	Mountain View, CA (650) 944-7000	Naples, FL (239) 514-2542
Nashville, TN (615) 872-3700	New Orleans, LA (504) 581-6151	New York, NY (212) 344-8888	Omaha, NE (402) 778-4851
Orlando, FL (407) 805-3005	Philadelphia, PA (610) 964-8700	Phoenix, AZ (602) 787-6000	Pittsburgh, PA (412) 586-1400
Portland, OR (503) 224-4155	Roswell, NM (505) 317-3397	St. Louis, MO (314) 721-8400	San Diego, CA (858) 678-2000
San Francisco, CA (415) 981-0600	San Juan, PR (787) 725-5880	Seattle, WA (206) 386-7400	Spokane, WA (206) 386-7400
Tampa, FL (813) 281-2095	Washington, DC (301) 530-5050	Wilmington, DE (302) 477-9640	

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