

Federal Legislative Brief

Medicare Part-D: Annual Notice: 2011 Notices Due No Later Than October 15 – 2010-20



The Patient Protection and Affordable Care Act of 2010 (PPACA) strikes again! As a part of this landmark legislation, Plan Sponsors with group health plans which include prescription drug benefits now must provide the annual Part-D Creditable Coverage Notice by October 15, 2011. Previously Plan Sponsors were to provide the notice no later than November 15, the first day of the Medicare Part-D open enrollment period. PPACA changed the Part-D open enrollment to be the period between October 15, 2011 and December 7, 2011. In addition, the Center for Medicare and Medicaid Services (CMS) published [new model notices](#) in early April, reflecting this change in open enrollment dates. The purpose of this Memorandum is to discuss the ramifications of these two events.

Background

1. The Notice Obligation. Plan Sponsors of all health plans (regardless of the number of individuals covered by the plan) which contain prescription drug benefits inside or adjunct to that health plan must provide an annual notice regarding the creditable or non-creditable status of the prescription drug benefit. Additionally, Plan Sponsors must provide the same Medicare Part-D Notice:

- Prior to an individual's Initial Enrollment Period (IEP) for Part-D;
- Prior to the effective date of coverage for any Medicare-eligible individual that joins the plan;
- Upon the request by the individual.

Prior CMS guidance clarifies that "prior to" means that the individual must have received the Disclosure Notice within the past twelve months. So, plans that issue the Part-D Notice at the time of policy renewals usually do not need to provide another notice.

2. Creditable Coverage. If the plan being offered meets "creditable coverage standards", then Medicare beneficiaries may keep the Plan Sponsor's coverage in lieu of electing Medicare Part-D coverage. To be "creditable" the benefit must be the actuarial equivalent to or better than the standard set forth below:

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| Standard Benefit Design Parameters | 2012 |
|--|------------|
| Deductible | \$320 |
| Initial Coverage Limit | \$2,930 |
| Out-of-pocket Threshold | \$4,700 |
| Total Covered Part-D Spending at OOP Threshold for Non-applicable Beneficiaries | \$6,657.50 |
| Estimated Total Covered Part-D Spending at OOP Threshold for Applicable Beneficiaries | \$6,730.39 |
| Minimum Cost Sharing in Catastrophic Coverage Portion of the Benefits: | |
| Generic Preferred Multi-Source Drug | \$2.50 |
| Other | \$6.50 |

- 3. Delivering the Notice by Mail.** Plan Sponsors may mail the notice as a standalone mailing or choose to incorporate the notice into other documents or disclosures, so long as there is prominent first-page, 14-point reference to the incorporated notice language.
- 4. Electronic Delivery.** Plan Sponsors may also deliver the notice electronically to plan participants who have the ability to access the Plan Sponsor's electronic information system on a daily basis as a part of their work duties. Plan Sponsors should inform participants that they are to share the electronic notice with all family members who are covered under the group health plan.
- 5. Recipients.** Plan Sponsors should provide the notice to all health plan participants or Part-D eligible individuals who apply for the Plan's drug coverage as well as to COBRA beneficiaries. As we stated above, Plan Sponsors need only to provide a single notice to a participant with covered dependents, unless the sponsor records contain a separate address for other family members.
- 6. Notice Content.** Plan Sponsors have the option of using the sample notices or producing their own notices which contain all of the necessary elements, as described in the recently revised model notices. CMS provides the model notices in both English and Spanish. There is no regulation requiring plan Sponsors to use the Spanish versions at present.
- 7. Online Disclosure.** Plan Sponsors must complete [online disclosure](#) each year no later than 60 days from the beginning of a plan year (contract year or renewal year) within 30 days following termination of a drug plan, or within 30 days after any change in creditable coverage status.

Discussion

- 1. Notice Timing: Calendar Year Plans.** It is our understanding that many Plan Sponsors distribute their annual Part-D Notices around the time they complete their online disclosure filing. This means calendar year Plan Sponsors most likely provided this year's (2011) notice prior to April 1, 2011 using the model notice originally published in 2009 which shows open enrollment beginning November 15, 2011 and ending on December 31, 2011 rather than beginning on October 15 and ending on December 7, 2011. We note that CMS has been silent so far on whether Plan Sponsors must issue revised notices.

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- 2. Notice Timing: Fiscal year Plans.** It is important to note that the notices published in early April 2011 are model notices. Additionally, Plan Sponsors have the right to provide whatever notice they want as long as the content meets CMS standards. On a side by side basis, the 2009 model notices and the 2011 model notices are the same, but for the open enrollment periods.

Plan Sponsors who have yet to provide Part-D Notices should use the April 2011 version or script their own Notice capturing the full content of the April 2011 model notices. Plan Sponsors of fiscal year plans who already may have sent out the September 2009 version of the notice may consider providing a supplemental notice announcing the change in the open enrollment period. However, as we note above, CMS has provided no guidance requiring revised notices.

- 3. Preparing the Notices.** Historically the annual Part-D Notices require Plan Sponsors to tailor the notice content to the particular plan being offered. Sponsors may wish to consult with their benefits advisors during the process of preparing the 2011 notice to assure its accuracy.

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