

Legislative Brief

Medicare Part D: Disclosures to CMS

February 2019

Reminder: Medicare Part D Disclosures Due to CMS by March 1, 2019 for Calendar Year Plans

SUMMARY:

- Employers with health plans that provide prescription drug coverage to individuals who are eligible for Medicare Part D are subject to certain disclosure requirements.
- Plan sponsors must complete an online disclosure form with CMS within **60 days after the start of the plan year**, or March 1, 2019, for calendar year plans.

Overview

Group health plan sponsors are required to complete an online disclosure form with the Centers for Medicare & Medicaid Services (CMS) on an annual basis and at other select times, indicating whether the plan's prescription drug coverage is creditable or non-creditable.

The plan sponsor must complete the online disclosure within 60 days after the beginning of the plan year. For calendar year health plans, the deadline for the annual online disclosure is **March 1, 2019**.

This disclosure requirement applies when an employer-sponsored group health plan provides prescription drug coverage to individuals who are eligible for coverage under Medicare Part D.

Action to be Taken

- **Determine if the CMS reporting requirements apply:** To determine if the CMS reporting requirement applies, an employer should verify whether its group health plan covers any Medicare-eligible individuals (including active employees, disabled employees, COBRA participants, retirees, and their covered spouses and dependents) at the start of each plan year. Note: 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.
- **If you are an employer required to report to CMS:** Determine whether your prescription drug coverage is creditable or non-creditable. Contact your Client Executive if you need assistance. You should also visit CMS' Creditable Coverage [website](#), which includes links to the online [disclosure form](#) and related [instructions](#).
- **If you are an employer not required to report to CMS:** If the group health plan you offer does not offer prescription drug benefits to any Medicare-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.

Medicare Part D 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.

A group health plan's prescription drug coverage is considered creditable if its actuarial value equals or exceeds the actuarial value of the Medicare Part D prescription drug coverage. In general, this actuarial determination measures whether the expected amount of paid claims under the group health plan's prescription drug coverage is at least as much as the expected amount of paid claims under the Medicare Part D prescription drug benefit. The determination of creditable coverage does not require an attestation by a qualified actuary, except when the plan sponsor is electing the Retiree Drug Subsidy for the group health plan.

Timing of Disclosures to CMS

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.

Online Disclosure Method

Plan sponsors are required to use the online disclosure form on the CMS Creditable Coverage [Web page](#). 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.

Disclosures to Individuals

In addition to the annual disclosure to CMS, group health plan sponsors must disclose to individuals who are eligible for Medicare Part D whether the plan’s prescription drug coverage is creditable. 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 October 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 October 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](#).

Employee benefit laws have many complex requirements for employers and health plans. Please contact Kapnick Insurance Group with any questions about how you can prepare for any of these requirements. This Kapnick Insurance Group Update is not intended to be exhaustive nor should any discussion or opinions be construed as legal or tax advice. The information contained in this communication is intended to provide general information regarding the above topic, and is based on general information available at the time it was prepared. Readers should contact their tax and/or legal counsel for advice that is appropriate to their specific circumstances. This information cannot be used by any taxpayer to avoid tax penalties.

Issued by the Compliance Center of Excellence at Kapnick Insurance Group (02.2019)