

H.R. & BENEFITS E-Alert

NOVEMBER 15, 2006 ANNUAL MEDICARE PART-D CREDITABLE COVERAGE DEADLINE

A FINAL REMINDER

November 10, 2006

Wednesday, November 15, 2006 is the deadline for group health plans providing prescription drug coverage to provide the annually-required notification to Medicare-eligible participants regarding whether the plan's prescription drug coverage is "creditable coverage" for purposes of the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (the "MMA") "Part D" prescription drug coverage program that took effect on January 1, 2006. Medicare eligible individuals generally need to know this information to decide whether they should enroll in Medicare Part D coverage and chose the Medicare Part D plan to enroll in for the upcoming year during the Enrollment Period that began this month.

The MMA generally mandates that covered group health plans provide the MMA-required notice to all Part D eligible individuals covered under, or who apply for, enrollment in a group health plan providing prescription drug coverage. Group health plan sponsors generally are required to provide the required notice at the following times:

- Before the Medicare Part D annual coordinated election period (November 15 - December 31) each year;
- Within the 12 months before an individual's Initial Enrollment Period for Medicare;
- Before the effective date of coverage for a Medicare eligible individual beginning participation in the group health plan;
- When the plan's prescription drug coverage ends or is no longer creditable; and
- Upon a beneficiary's request.

The group health plan must also provide this notice to CMS annually and when the prescription drug coverage is no longer creditable.

The notice generally is required for both active and retired employees and their dependents who are Medicare Part D eligible. Group health plans generally are required to provide the notification to Medicare eligible active and retired employees whether their prescription drug coverage is primary or secondary to Medicare. Furthermore, the notification is in addition to already existing responsibilities to notify and provide an opportunity to active employees and their dependent spouses to elect for Medicare to be primary to group health plan coverage by electing to disenroll in group health plan coverage when they become eligible for enrollment in Medicare.

The notification requirement generally applies to all group health plans not otherwise specifically excluded from coverage even those that do not provide retiree coverage. For instance, current regulations presently reflect that notification is not required for a health flexible spending plan offered as part of a cafeteria plan because the current regulations exempt benefits offered under those arrangements from the definition of "creditable coverage" under current Medicare Part D regulations.

Prescription drug coverage generally is "creditable" for purposes of the MMA only if the actuarial value of the coverage equals or exceeds the actuarial value of the Part D prescription drug coverage. Under the safe harbor provisions in recently released regulations, a health plan's prescription drug coverage also automatically qualifies as creditable if it:

- Covers both brand name and generic prescription drugs;
- Provides reasonable access to retail providers, and alternatively mail-order coverage;
- Is designed to pay at least 60 percent of the participants' prescription drug expenses (on average); and
- Its maximum annual benefits and actuarial expectations either:
 - For plans with separate prescription drug and medical coverage the plan either has no annual benefit maximum or an annual benefit maximum of at least \$25,000;
 - The plan expects to pay benefits equal to at least \$2,000 per Part D-eligible participant; or
 - For integrated prescription drug and medical coverage designed plans, the annual deductible is not higher than \$250, and the plan does not have an annual benefit maximum or has at least a \$1 million combined maximum lifetime benefit limit.

If the group health plan does not satisfy the safe harbor, the prescription drug coverage may still be creditable if the group health plan obtains an actuarial determination that the group health plan's prescription drug coverage equals or exceeds the coverage under Part D.

If you would have questions about these requirements or other health plan design or administration requirements, please contact: Cynthia Marcotte Stamer, P.C., Member, Glast, Phillips & Murray, P.C., 2200 One Galleria Tower, 13355 Noel Road, LB 48, Dallas, Texas 75240. Telephone (972) 419-7188. E-mail cstamer@gpm-law.com.

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