

## **Final Reminder** **Health Plan Annual Medicare Part-D Creditable Coverage Notices Due November 15, 2007** **Plans Also Must Provide Required Disclosures To Medicare**

**November 15, 2007** is the deadline for group health plans providing prescription drug coverage to send the annually-required notification to Medicare-eligible participants whether the plan's prescription drug coverage is "creditable coverage" ("Creditable Coverage") for purposes of the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (the "MMA") "Part D" prescription drug coverage program. Medicare-eligible individuals enrolled in group health plans generally need to know this information to decide whether they should enroll in Medicare Part D coverage and to decide which Medicare Part D plan, if any, in which to enroll for the upcoming year.

The MMA generally mandates that covered employer-sponsored group health plans send the MMA-required notice to all Medicare Part D-eligible individuals covered under, or who apply for, enrollment in a group health plan providing prescription drug coverage at each of 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 also separately must provide certain notifications concerning the Creditable Coverage status of the group health plan to the Centers for Medicare & Medicaid Services ("CMS") annually and at certain other times.

The required creditable coverage notification is in addition to the group health plan's separate responsibility to notify and offer active employees and active dependent spouses enrolling in Medicare the opportunity to elect for their Medicare coverage to be primary to group health plan coverage by electing to disenroll from their employer's group health plan. Where a Medicare enrolled employee makes this election, the group health plan also generally will be required to send COBRA notices to dependents losing eligibility for dependent coverage due to the decision by the employee to opt out of the health plan.

The Creditable Coverage notification requirement generally applies to all group health plans not otherwise specifically excluded from coverage even those that do not provide retiree coverage. The MMA requires notification to Medicare Part D-eligible employees and dependents, regardless of whether the member is enrolled under active or retired coverage or whether the group health plan coverage is primary or secondary to Medicare.

A group health plan must determine if its prescription drug coverage is "Creditable Coverage" in accordance with rules contained in the Medicare Part D regulations. These regulations generally specify that prescription drug coverage qualifies as Creditable Coverage if the actuarial value of the coverage equals or exceeds the actuarial value of the Part D prescription drug coverage, as demonstrated through the use of generally accepted actuarial principles in accordance with CMS actuarial guidelines. 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 standard Medicare prescription drug benefit. In lieu of an actuarial assessment, the Medicare Part D regulations alternatively allow group health plans to rely upon a safe harbor rule. Under this safe harbor, group health plans offering prescription drug coverage qualify as providing Creditable Coverage without an actuarial assessment if the standards of the safe harbor rule are met.

In addition to providing the required Medicare Part D Creditable Coverage Notice to participants, a covered group health plan

also generally must provide a "Disclosure Notice" to CMS informing it whether the applicable group health plan provides Medicare Part D Creditable Coverage on an annual basis, and upon any change that affects whether the drug coverage is creditable. For plan years that end in 2007 and beyond, the Disclosure Notice must be provided at each of the following times:

- 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 the prescription drug plan; and
- Within 30 days after any change in the Creditable Coverage status of the prescription drug plan.

Group health plans and other entities required to provide the Disclosure Notice must provide the Disclosure Notice to CMS by completing the disclosure form on the CMS Creditable Coverage Disclosure Web Page at <http://www.cms.hhs.gov/creditablecoverage>.

In addition to the Medicare Part D notice requirements, group health plans also are required to provide various other annual and other notifications by ERISA, the Health Insurance Portability & Accountability Act, and various other laws. If you have questions or would like additional information about the implications of the MMA on your group health plans or other health or employee benefit plan requirements, please contact Cynthia Stamer at 972.419.7188 or [cstamer@gpm-law.com](mailto:cstamer@gpm-law.com).

## Other Information & Resources

If you have questions or concerns about the matters discussed in this publication or other employee benefit, compensation or human resources matters, wish to obtain information about arranging for training or presentations by Ms. Stamer, wish to suggest a topic for a future program or publication, or wish to request other information or materials, 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](mailto:cstamer@gpm-law.com). You also can register to receive future updates and information about upcoming programs, access other publications by Ms. Stamer and other helpful resources or additional information about Ms. Stamer and/or Glast, Phillips & Murray, P.C., at [CynthiaStamer.com](http://CynthiaStamer.com) or by contacting Ms. Stamer directors. We hope that this information is useful to you. If you or someone else you know would like to receive future Alerts or other information about developments, publications or programs, please be sure that we have your current contact information – including your preferred e-mail. Interested persons can register or update their contact information by providing that information to us through registration on our website at [www.cynthiastamer.com](http://www.cynthiastamer.com) or via telephone, fax or e-mail.

## About Cynthia Marcotte Stamer

Board Certified In Labor and Employment Law by the Texas Board of Legal Specialization, attorney Cynthia Marcotte Stamer has more than 20 years experience helping employers and business leaders, health plan fiduciaries and administrators, insurers and others design, implement, administer and defend health and other employee benefit and compensation, insurance and other human resources practices, policies and strategies. Chair of the American Bar Association (ABA) Health Law Section Managed Care & Insurance Interest Group, and Vice Chair of both the ABA Real Property, Probate & Trust Section Employee Benefits & Compensation Group and the ABA TIPS Worker's Compensation Committee, Ms. Stamer is recognized for her innovative leadership in developing consumer driven health care, absence and performance management, safety and other innovative, legally compliant programs, practices and products for employer, employee benefit, and insurance clients.

Recognized in the International Who's Who of Professionals and bearing the Martindale Hubble AV-Rating, Ms. Stamer is a highly regarded legal advisor and consultant, author and speaker, who regularly conducts management and other training on a wide range of employee benefit, human resources and internal controls, and other related risk management matters. Ms Stamer is the author of 100s of publications on a host of human resources and related issues. Her writings have appeared in a variety of other publications, including works published by the American Bar Association, Aspen Publishers, BNA, the American Health Lawyers Association, and Government Institutes, Inc. and others. For a listing of some of these publications, see [cynthiastamer.com](http://cynthiastamer.com). Her insights on human resources risk management matters also have been quoted in The Wall Street Journal, various publications of The Bureau of National Affairs and Aspen Publishing, the Dallas Morning News, Spencer Publications, Health Leaders, Business Insurance, the Dallas and Houston Business Journals and a host of other publications. She also serves in leadership positions in numerous human resources, corporate compliance, and other professional and civic organizations..

## IMPORTANT NOTICES REGARDING THIS COMMUNICATION

This publication is provided by Cynthia Marcotte Stamer, P.C. for general informational and educational purposes to clients and other interested persons. Neither its distribution to any party nor any statement or information it contains is intended to or shall be construed as establishing an attorney-client relationship or to constitute legal advice. Readers also are cautioned that the information in this publication may not apply to all situations. Consequently, readers must not rely upon this publication or information it contains as a substitute for competent individualized legal advice about the specific circumstances of the reader. If you have received this publication in error or do not wish to receive these in the future, please notify us of your preferences to the attention of Ms. Stamer via email, fax, regular mail or telephone.

**REMINDER ABOUT ELECTRONIC COMMUNICATION SECURITY:** E-mail and other electronic communication are not secure unless appropriate encryption methods are used. Therefore, they may present heightened risks of security breaches of the communication. Electronic communications also generally are subject to discovery on the same terms as other communications. Please consider carefully these concerns before communicating by e-mail or other electronic means. If you wish for us to communicate with you by means other than e-mail or wish for us to arrange for encryption of our e-mail communications, please contact us at 972.419.7188.

**IMPORTANT NOTICE REGARDING TRANSMISSIONS OF PROTECTED HEALTH INFORMATION:** Protected Health Information (PHI) is individually identifiable health information. Any PHI contained in this e-mail is intended only for the intended recipient and is disseminated subject to the understanding that all requirements of HIPAA and other applicable laws for this disclosure have been met. If this communication contains PHI, you are receiving this information subject to the obligation to maintain it in a secure and confidential manner. Re-disclosure without additional consent or as permitted by law is prohibited. Unauthorized re-disclosure or failure to maintain confidentiality could subject you to penalties as described in state/federal law. If you are not the intended recipient, you are hereby notified that any disclosure, copying or distribution of this information is strictly prohibited. If you have received this message in error, please notify the sender immediately to arrange for return or destruction.

**ANTISPAM NOTICE:** Pursuant to the CAN-SPAM Act this communication may be considered an advertisement or solicitation. If you would prefer not to receive future marketing and promotional mailings or to provide other directions about the tailoring of messages directed to your attention, please contact us via email to [cstamer@gpm-law.com](mailto:cstamer@gpm-law.com) or via postal mail to Cynthia Marcotte Stamer, Member, Glast, Phillips, & Murray, P.C., 2200 One Galleria Tower, 13355 Noel Road, L.B. 48, Dallas, Texas, 75240, Attention: Cynthia Marcotte Stamer, P.C.

**CIRCULAR 230 NOTICE:** The following disclaimer is included to comply with and in response to U.S. Treasury Department Circular 230 Regulations. ANY STATEMENTS CONTAINED HEREIN ARE NOT INTENDED OR WRITTEN BY THE WRITER TO BE USED, AND NOTHING CONTAINED HEREIN CAN BE USED BY YOU OR ANY OTHER PERSON, FOR THE PURPOSE OF (1) AVOIDING PENALTIES THAT MAY BE IMPOSED UNDER FEDERAL TAX LAW, OR (2) PROMOTING, MARKETING OR RECOMMENDING TO ANOTHER PARTY ANY TAX-RELATED TRANSACTION OR MATTER ADDRESSED HEREIN