

GROUP HEALTH PLAN SPONSORS REMINDED TO SUBMIT REQUIRED MEDICARE PART D ONLINE DISCLOSURE NOTICE

March 1, 2008 Deadline For Calendar Year Plans

February 18, 2008

Employers sponsoring a group health plan are reminded that federal law requires the on-line filing of an annual Disclosure Notice informing the Centers for Medicare & Medicaid Services (CMS) whether the plan provides Medicare Part D creditable coverage within 60 days after the beginning of the plan year for all post-2006 plan years.

This means that for group health plans operating on a calendar year basis, the annual Disclosure Notice required for the 2007 plan year must be submitted before **March 1, 2008**. Group health plans that do not operate on a calendar year basis will be required to file their required annual Disclosure Notice within the 60 day period beginning on the first day of that plan year.

The requirement to submit the annual disclosure notice is among the requirements applicable to group health plans under the implementing regulations for the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA) Part D prescription drug coverage program. These regulations mandate that for plan years that end in 2007 and beyond, a Disclosure Notice must be submitted 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.

The only way to submit the required Disclosure Notice is on line. Group health plans and other entities required to provide the Disclosure Notice must submit 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> by the applicable deadlines.

In addition to submitting required Disclosure Notices, group health plans and their sponsors also should mark a reminder of the deadline in November for their group health plan to send the annual notification to Medicare-eligible participants whether the plan's prescription drug coverage is creditable coverage presently required under the MMA implementing regulations. 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, to enroll in for the upcoming year.

Existing MMA implementing regulations generally mandate 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 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 annual Disclosure Notice and creditable coverage notification requirements generally apply to all group health plans not otherwise specifically excluded from coverage by the MMA Part D rules - 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. This Medicare Part D definition of creditable coverage is different than the definition of creditable coverage applicable for purposes of applying the special enrollment and pre-existing coverage mandates applicable to most group health plans under the portability mandates of the Health Insurance Portability & Accountability Act.

The Medicare Part D 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.

If you have any questions regarding this filing requirement, or if we may be of assistance with any other employee benefit or employment related matters, please do not hesitate to contact Cynthia Stamer at 972.419.7188.

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. Ms. Stamer is recognized for her work helping clients design and administer legally compliant employee benefit and human resources programs, practices and products for employer, employee benefit, and insurance and financial services industry 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, SHRM, World At Work, Government Institutes, Inc. and many others. For a listing of some of these publications and programs, see 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. For instance, she presently is 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, Continuing Education Liaison for the ABA Joint Committee on Employee Benefits, a member of the IRS TEGE Council, a member of the Editorial Advisory Board and contributing author of various publications, and as faculty member and planning committee member for numerous human resources related programs. She also has previously served as Region IV Chair and a National Consultants Forum Board Member for the

Society of Human Resources Management, Chair of the Dallas Bar Association Employee Benefits and Executive Compensation Section, and as a State Executive Board Member and Dallas Chapter Chair of the Texas Association of Business. For more details about Ms. Stamer's experience and other credentials, contact Ms. Stamer, information about workshops and other training, selected publications and other human resources related information, see CynthiaStamer.com or contact Ms. Stamer via telephone at 972.419.7188 or via e-mail at cstamer@solutionslawyer.net.

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