

Benefits **BULLETIN**



Medicare Part D Notice of Creditable (or Non-Creditable) Coverage

● **September 18, 2024** ●

In 2003, the Medicare Modernization Act (MMA) was signed into law. Under the MMA, plan sponsors (generally employers) of group health plans providing prescription drug coverage must provide a notice to Medicare Part D eligible individuals. The purpose of the notice is to inform these individuals of the plan's creditable or non-creditable status, as defined in the MMA, and explain what happens to their coverage and future enrollment rights if they elect Medicare Part D.

Under the MMA, group health plan sponsors are required to provide a notice to individuals informing them of the plan's creditable or non-creditable status. The notice must also provide information on what happens to their group coverage and the impact on their future eligibility if they decide to enroll in Part D coverage. This notice will be proof of prior coverage that can prevent a late penalty assessment.

Recent Changes to Medicare Part D

Recent changes imposed by The Inflation Reduction Act (IRA) to Medicare Part D plans may impact the creditable coverage status of employer-sponsored prescription drug coverage beginning in 2025. The IRA capped the Medicare Part D annual out-of-pocket costs at \$2,000 for individuals with Part D starting in 2025, which is a significant reduction from the \$8,000 out-of-pocket limit in 2024. The IRA also removed what is known as the Medicare Part D "donut hole" - a coverage gap for enrollees when their Medicare Part D prescription drug plans reach the limits on what the plan will cover for drugs. During this gap phase, enrollees will no longer have to pay 25% of the cost for prescription drugs.

Due to change in the maximum out-of-pocket amount, some plans that had creditable coverage may no longer meet the creditable coverage standard. Traditional health plans (those not considered high deductible health plans – HDHPs) will likely still be determined to have creditable coverage. On the other hand, HDHPs and some uncommon plan designs may

be affected and be determined non-creditable. Plan sponsors might consider hiring a third party (like an actuary) to perform a thorough analysis. Before getting started, plan sponsors should contact their insurance carrier or TPA to inquire if they have already determined the plan is creditable or non-creditable. It is common for carriers to perform this analysis annually on all of their standard plan offerings. TPAs typically charge an additional fee for this service.

While there is no requirement that plan sponsors offer a plan with creditable coverage, it is important that Medicare Part D individuals are informed of the status of the employer's prescription drug coverage, so they have to the chance to enroll in Part D to avoid a gap in creditable coverage.

Notice Requirements

Below is a summary of what plan sponsors need to know to complete their Medicare Part D Notice requirements.

Who must provide the notice? The notice must be furnished by group health plan sponsors. While plan sponsors are ultimately responsible for the notice, they can hire a third party (like a TPA or insurance carrier) to fulfill this obligation on their behalf.

Which group health plans must comply with the requirement? The notice requirement applies to all group health plans providing prescription drug coverage (whether the plan is fully insured or self-funded). There are no exemptions for government or church plans.

Who is entitled to receive the notice? Plan sponsors are required to issue notices to all individuals who are eligible for Medicare Part D, including active employees (and their dependents), COBRA participants and retirees. Determining who is Medicare Part D-eligible can be challenging for plan sponsors, particularly in the case of disabled dependents. *As a result, most plan sponsors choose to provide the notice to all employees to facilitate compliance.*

When are the notices required to be sent? The notices must be distributed:

- Before an individual's initial enrollment period for Part D;
- Before the effective date of coverage for any Medicare Part D-eligible individual who joins an employer plan;
- Before October 15th each year for all Medicare Part D-eligible individuals covered under the prescription drug plan;
- Whenever prescription drug coverage ends or creditable coverage status changes; and

- Upon the individual's request.

How can the notices be delivered? The notices can be provided by paper delivery by hand, first class mail or electronically (only for participants who utilize a computer as an essential part of their work duties).

Important Note: It is common for plan sponsors to deliver the notice annually to all plan participants by including it in their open enrollment materials. This method is permitted under the MAA so long as distribution has occurred within the 12 months preceding the October 15 deadline. The notice must be “prominent and conspicuous.” In other words, if the notice is not provided on the first page of the enrollment materials, it must be referenced. CMS provided [model reference language](#) (see the top of page 13) plan sponsors can use to satisfy this requirement.

What information must be included in the notice? CMS has issued model notices for disclosing whether coverage is creditable or non-creditable. Once the plan sponsor makes this determination, the applicable notice should be used ([Model Creditable Coverage Disclosure Notice](#) or [Model Non-Creditable Coverage Disclosure Notice](#), as appropriate).

Determining Whether a Prescription Drug Plan is Creditable

A prescription drug plan is creditable if the actuarial value of the coverage equals or exceeds the actuarial value of standard prescription drug coverage under the Medicare Part D program. Under the simplified determination method, a prescription drug plan is deemed creditable when it:

- Provides coverage for brand and generic prescriptions;
- Provides reasonable access to retail providers;
- Is designed to pay, on average, at least 60% of participants’ prescription drug costs; and
- Satisfies at least one of the minimum coverage standards outlined in the [simplified determination method](#).

Plans that do not qualify under the simplified determination method are required to make an actuarial determination. For plan sponsors that receive the RDS, the simplified determination method is not an option. However, for prescription drug plans that do not receive the RDS, this method is permitted. For more information on how the creditability status is calculated for RDS plans, visit [CMS.gov - Overview of Retiree Drug Subsidy Option](#).

Due to the significant changes made to Medicare Part D by the IRA, CMS initially stated in their Draft Part D Redesign Program Instructions that the use of the simplified determination method would no longer be valid. However, in the [Final Part D Redesign Program Instructions](#), CMS continued to permit the use of the simplified determination method for 2025. In future guidance, CMS will reevaluate the continued use of the simplified determination method for 2026.

Penalty for Noncompliance

Fortunately, there is no penalty for plan sponsors who fail to issue these notices to individuals or to disclose the plan's creditable status to CMS (described below). However, this failure could adversely impact plan participants resulting in missed enrollment periods and late enrollment penalties. For more information, [visit Medicare.gov - Part D Late Enrollment Penalty](#).

CMS Reporting

In addition to the individual notices, plan sponsors are also required to electronically disclose the prescription drug plan's creditable or non-creditable status to CMS. This disclosure is required on:

- An annual basis within 60 days after the beginning of each plan year (for calendar year plans, the deadline will be March 1st each year);
- Within 30 days following the termination of the prescription drug plan; and
- Within 30 days following a creditable coverage status change.

Plan sponsors can satisfy this requirement by completing an [online disclosure form](#). To aide plan sponsors, CMS has posted [guidance and instructions](#). Reviewing these before starting the online form will help plan sponsors gather the information needed.

Plan sponsors receiving the RDS are not required to file any RDS-plans with CMS. Instead, CMS receives the necessary information to satisfy this requirement during the RDS application process. For the plan sponsors offering additional plan options that do not receive the RDS, they will need to disclose these plans to CMS using the online notice form.

Employer Actions

- (1) Determine Creditable Status:** Employers should confirm whether their health plans' prescription drug coverage is creditable or non-creditable, including annual

discussions with their insurance carrier, TPA, or trusted advisors.

- (2) **Communication:** Plan sponsors might consider providing additional communications to employees with any non-creditable coverage notice to ensure that Part D eligible individuals are well-informed of their plan's creditable status to avoid any gaps in coverage.
- (3) **Prepare Early:** The notice to individuals and the disclosure to CMS can easily be missed during and after the busy open enrollment season. Plan sponsors should prepare early by selecting target dates for completing each step and assigning the project to someone internally or hiring a third party. Lastly, plan sponsors should consider adding this requirement to their calendar as a reoccurring event to help prevent missing deadlines.

ADDITIONAL RESOURCES

[What is Creditable Coverage?](#)

[Entities Required to Provide Disclosure](#)

[Overview of Creditable Coverage Issues for Plan Sponsors](#)

[Treatment of Account-Based Health Arrangements under the Medicare Modernization Act](#)

[Employers/Unions & Medigap Issuers Guidance - Which Notice of Creditable Coverage to Provide?](#)

[42 CFR § 423.56 - Procedures to determine and document creditable status of prescription drug coverage](#)

[How Part D Works with Other Insurance](#)

[Final Part D Redesign Program Instructions](#)