

## EMPLOYER GROUP HEALTH PLANS -- The Hidden Effects of the Medicare Prescription Drug Improvement and Modernization Act's Regulations

### Notice to Medicare Eligible Participants

All group health plans that offer prescription drug coverage must provide a notice (the "Notice") to all individuals who are eligible for Medicare Part D prescription drug benefits. The regulations (the "Regulations") issued earlier this year by the Center for Medicare and Medicaid Services ("CMS") regarding the retiree prescription drug subsidy (the "Subsidy") require that the Notice be provided not only by employers with retiree health plans, whether or not they intend to seek the Subsidy,<sup>1</sup> but also by employers with only active employee plans that provide prescription drug coverage to persons eligible for Medicare Part D prescription drug benefits.

The Notice must be provided by November 15, 2005 (the date individuals are first eligible to enroll for the Medicare Part D prescription drug benefit), or earlier, by the effective date of an individual's enrollment for the prescription drug coverage under the plan, and must be provided annually thereafter. The Notice must also be provided upon the request of an individual. Individuals potentially effected include dependents or employees who are eligible for Medicare by reason of age, disability or end-stage renal disease. In addition, on or before November 15 of each year a similar notice must be sent to CMS. Plans may consider including the Notice with their plan's open enrollment period if this information is provided before November 15.

The Notice must explain whether the prescription drug coverage under the plan is "creditable prescription drug coverage." This creditable coverage operates similarly to creditable coverage under a group health plan under the HIPAA portability provisions. If an individual has creditable coverage and does not have a 63 day break in such coverage, then when that individual enrolls in Medicare's coverage, he or she will not be charged the late enrollment penalty.

Prescription drug coverage is "creditable" if the actuarial value of the coverage equals or exceeds the actuarial value of standard Medicare prescription drug coverage, without regard to whether the employer or employee/retiree pays the premium for the coverage. In guidance posted to the CMS website on May 26, 2005, a four part test is established to determine if a plan's prescription drug coverage is deemed to be creditable coverage for Part D purposes. This four part test can be used only if the employer is not applying for the prescription drug subsidy. The four requirements which must be met are as follows:

1. coverage must be provided for brand and generic prescriptions;
2. the coverage must provide reasonable access to retail providers and, optionally, to mail order providers;
3. the coverage must be designed to pay on average at least 60% of the participants' prescription drug expenses;  
and

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<sup>1</sup> Employers intending to seek the Subsidy for the 2006 plan year must submit an application for the Subsidy by September 30, 2005. Failure to provide the Notice will result in the plan receiving no Subsidy for the year.

4. the coverage must satisfy (a), (b) or (c) below; however, if it is not standalone prescription drug coverage, but is integrated with medical or dental coverage, then it must satisfy (c) below:
  - (a) it has no annual benefit maximum or a maximum annual benefit of at least \$25,000; or
  - (b) it has an actuarially expected amount payable of at least \$2,000 per Medicare eligible individual in 2006; or
  - (c) if integrated with a health plan, it has no more than a \$250 deductible per year, has no annual benefit maximum or a maximum annual benefit of at least \$25,000, and has no less than a \$1,000,000 lifetime combined benefit maximum.

If an employer cannot use the four part test, or if a plan is not deemed actuarially equivalent under the four part test, an actuary must make the determination of actuarial equivalence under the Regulations. If the plan is not actuarially equivalent, the Notice must indicate that the plan's prescription drug coverage is not creditable coverage, and, if applicable, the employer would not be eligible for the Subsidy. Model Notices are available on the CMS website at [www.cms.hhs.gov/medicarereform/CCguidances.asp](http://www.cms.hhs.gov/medicarereform/CCguidances.asp).

#### Other Issues to be Addressed By Employers Seeking the Subsidy

Employers planning to apply for the Subsidy should address several other issues prior to the September 30 deadline for filing the application for the Subsidy:

1. Consider entering into a voluntary data sharing agreement with the CMS to avoid identifying on their plan's application those individuals who will be enrolled in the prescription drug coverage but who will not be enrolled in Medicare Part D or one of the other Medicare prescription drug alternatives.
2. Review the agreements with its pharmacy benefit manager to determine how administrative costs, dispensing costs and rebates are accounted for under the agreement and if the employer will be able to obtain the details to determine the allowable retiree prescription drug costs under such agreements.

If you have any questions regarding the Subsidy or the Notice, please contact any of the undersigned members of the Employee Benefits/Executive Compensation Practice Group.

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