

MEDICARE PART D NOTICES – TO MEDICARE ELIGIBLE PARTICIPANTS

Distribution required prior to October 15th each calendar year and when a Medicare eligible participant joins the plan

Companies that sponsor a prescription drug plan are required to distribute a form called the Medicare Part D Notice each year. This notice is required to be distributed to individuals that are eligible for Medicare Part D and informs those eligible for Medicare Part D whether the prescription drug coverage their group health plan offers is creditable or non-creditable. This requirement has been in place since 2006 when prescription drug coverage became available as part of the Medicare Prescription Drug Improvement and Modernization Act of 2003. Health plan sponsors are also required to report on whether their plan offers prescription drug coverage that is creditable or non-creditable to Centers for Medicare & Medicaid Services (CMS) on an annual basis. This requirement is met through the completion of the Online Disclosure to CMS form. This **online** disclosure must be completed no later than 60 days from the beginning of the plan year and also within 30 days after a prescription drug plan is terminated or after a prescription drug plan has a change in its creditable coverage status. This disclosure to CMS must be completed regardless of whether the group health plan is primary or secondary to Medicare. The online tool must be used. More **information** regarding the requirements can be found on the CMS.gov website.

Creditable coverage means that the prescription drug coverage under the group health plan equals or exceeds the value of the standard prescription drug coverage under Medicare Part D based on actuarial value. There are two ways in which a plan can determine whether the coverage provided is creditable or non-creditable. There is the Creditable Coverage Simplified Determination and the use of an Actuarial to make the determination. Guidance on using the Creditable Coverage Simplified Determination can be found on the **CMS website**. If the company has more than one plan and the plans differ in whether they offer creditable or non-creditable prescription drug coverage, different notices must be distributed for each plan.

Completing the form is a relatively simple process. It is a four-page document. It is noted where to add company information and plan information. CMS has posted model notices on their website. A company is not required to use the model notices, but must include specific information if creating their own disclosure.

The company that sponsors the health plan may not know which of its participants are eligible for Medicare Part D, so to simplify distribution of the notices, most companies will distribute to all plan participants. The form can be distributed in printed form either through first class mail or by providing a copy of the notice to the employee. It is acceptable for companies to provide the notice in the open enrollment packets distributed to all employees provided it would be received prior to October 15 each year. If the employer knows that a dependent does not reside at the same address as the employee, a separate notice must be sent to the dependent. Some employers include the notice in a new hire packet provided to each employee when employment begins. The notice may also be provided electronically but the Department of Labor (DOL) rules must be followed for electronic disclosure.

Frequently Asked Questions:

What is Medicare Part D?

This is optional Medicare Drug coverage that must provide a standard level of coverage for prescriptions. This coverage level is set by Medicare. The coverage is sold by private insurance companies and HMO's.

What is Creditable Coverage?

Coverage is considered creditable if its actuarial value equals or exceeds the actuarial value of standard prescription drug coverage under the Medicare prescription drug benefit. In general, this actuarial equivalence test measures whether the expected amount of paid claims under the plan sponsor's prescription drug coverage is at least equal to the expected amount of paid claims under standard prescription drug coverage under Medicare.

How does a plan know whether the prescription drug coverage under the plan is creditable or non-creditable?

If the plan is fully insured, the carrier will confirm whether the prescription drug coverage is creditable or non-creditable. If the plan is self-funded the plan actuary will determine the status of the plan. There is also the **Creditable Coverage Simplified Determination** that plans can use to determine whether or not the prescription coverage is creditable.

When must the Medicare Part D Notice be distributed?

Prior to October 15th each calendar year. The reason for the October 14th deadline is for Medicare eligible individuals to receive the notice before the annual enrollment period for those wishing to enroll in Medicare Part D. Open enrollment generally runs from October 15th through December 7th each year.

To whom must the Medicare Part D Notice be distributed? The law requires that the Medicare Part D Notice be distributed to all plan participants (covered by the plan or eligible to be covered by the plan) eligible

for Medicare Part D. As a matter of convenience, it is probably best to distribute to all plan participants as the sponsor may not know which plan participants, which will include dependents on the plan, are eligible. It must be distributed to Medicare-eligible employees and dependents, regardless of whether they are actively employed, disabled employees on Medicare, retirees on the health plan and COBRA participants. Plan sponsors should also provide a Medicare Part D notice to Medicare eligible participants at the time they enroll on the plan.

If it is known that a dependent of a participant that is eligible for Medicare Part D lives at a different address from where the notice for the participant was mailed, a separate notice must be sent to that dependent.

What entities are required to provide the Medicare Part D Notice?

- ▶ Group Health Plans
- ▶ Health Insurance Issuers
- ▶ State Sponsored Plans
- ▶ Indian Health Services, Tribe or Tribal Organizations and Urban Indian Organizations
- ▶ Medicare Supplement (Medigap) Insurers
- ▶ Other Entities/Programs

All of the above are required to distribute the notice no matter how many employees the company has and no matter what type of plan the group has (fully-insured or self-insured).

There are exemptions to the disclosure requirement. If the group health plan does not offer prescription drug benefits, then no disclosure is required. A plan sponsor approved for retiree drug subsidy is also exempt.

For more information go to: **Entities required to provide disclosure to all Medicare Eligible Individual**

Why do the Medicare-eligible participants on the plan need the information provided on the Medicare Part D notice?

Each year Medicare eligible participants are given the opportunity, during an open enrollment period, to elect to purchase Medicare Part D coverage. If the participant does not elect Medicare Part D during the open enrollment period and does not maintain creditable coverage for a period of 63 days or longer they will be assessed a late enrollment penalty if they later enroll in Part D.

Where can I find the required Medicare Part D Notice? Both a notice for plans with creditable coverage and one for plans with non-creditable coverage can be found on the **CMS website**. An employer is not required to use the model notice, but if creating a notice it must meet CMS content standards.

The notices are available in both English and Spanish.

Are penalties imposed to employers/plan sponsors who do not distribute the Medicare Part D Notice? No, however it can be detrimental to employees, retirees and COBRA participants who are also eligible for Medicare Part D and do not have the appropriate information to determine whether or not to enroll in Part D. If coverage is non-creditable the participant will likely want to enroll in Medicare Part D either when first eligible to enroll or during the annual open enrollment period. If they do not enroll at that time the cost to enroll can increase.

When is an individual eligible for Medicare Part D? Either when the individual is entitled to Medicare Part A or is enrolled in Medicare Part B and when the individual lives in the service area of a Medicare Part D plan.

What is Medicare Part D? This is optional Medicare Drug coverage that must provide a standard level of coverage for prescriptions. This coverage is set by Medicare.

What are the options for distribution of the Medicare Part D notice? The notice can be provided to participants in hard copy or electronically provided that certain rules are followed.

If the group health plan does not provide prescription drug coverage, does a Medicare Part D notice need to be distributed to participants?

No

If the company provides the notice during open enrollment is it required to be provided again just prior to October 15?

No, provided the open enrollment period is prior to the October 14th deadline, an additional notice is not required by the law.

Under Medicare Secondary Payer rules, does it matter whether Medicare is primary or secondary in relation to notice distribution?

No, the notice must be provided to all regardless of whether Medicare is primary or secondary payer. Note: Generally, Medicare is primary when the employer has less than 20 employees and secondary when more than 20 employees.

What are the DOL's rules for electronic distribution of documents such as the Medicare Part D disclosure?

The DOL requires that employees must have the ability to access electronic documents as part of their typical duties. Because dependents do not have access to an employee's email, if the employer is going to distribute the notice electronically, they must add a note that the notice must be provided to dependents. Notices can be provided electronically to non-work email address if the email address is valid and the participant agrees to electronic receipt. Employees must always be given the option to receive a hard copy of the disclosure.

An employer can distribute documents such as the Medicare Part D Notice electronically through the myHRWS portal. The portal allows employers to distribute electronically following the DOL guidelines. Employees will be required to opt-in to electronic receipt of the document and will then acknowledge receipt. This provides the employer with a record of their distribution and receipt be employees.

A tutorial on how to use the electronic distribution on the myHRWS portal can be found by clicking “Click [here](#) for Site Tutorials” on the myHRWS home page and then selecting the tutorial entitled Distribute Documents to Employee(s)

The screenshot shows the myHRWS Customer Portal interface. At the top, there is a navigation bar with a search bar and a user profile. Below the navigation bar, there is a banner area with links to "Click here for COVID-19 Pandemic Resources", "Click here for Site Tutorials", and "Click here for the HRWS Video Vault". The main content area is divided into several sections: "Latest News", "Legislative Updates", "Compliance Overview", "Posters and Forms", and "Calendar of Events". A blue arrow points from the text in the previous block to the "Click here for Site Tutorials" link in the banner. Below the "Calendar of Events" section, there is a "Site Tutorials" section with a table of tutorials. A blue arrow points from the text in the previous block to the "Distribute Documents to Employee(s)" tutorial in the table.

Title	Topics
Manage My Account - Primary Contact	Account
Primary Contact Functions	User
Add an Employee Group	Client Employees
Inactivate a Client User - Primary Contact	User
Add or Edit Welfare Benefit Plans	Welfare Benefit Plans
Manage My Account - Client	Account
Employee Portal - Client Users	Account
Manage Calendar - Client	Calendar
Add Employee to Employee Group	Client Employees
Reset Password from Login Page	User
Manage Documents Client Account	Documents
Create Calendar Event - Client	Calendar
Employee Management	Client Employees
Distribute Documents to Employee(s)	Documents
Resend Distributed Document	Documents
Employee Documents	Documents
ACA Employee Pay Period File Upload	ACA
Replace or Append ACA Pay Period Employee File	ACA
LMS Management	Learning Management System
Upload and Distribute (or stream) Video	Documents

MEDICARE PART D SAMPLE NOTICE WITH INSTRUCTIONS FOR COMPLETION

(REPRODUCTION of CMS Model Notice)

Employer/Plan Sponsor will complete the highlighted areas before distributing to employees

Please read this notice carefully and keep it where you can find it. This notice has information about your current prescription drug coverage with [Insert Name of Entity]¹ and about your options under Medicare's prescription drug coverage. This information can help you decide whether or not you want to join a Medicare drug plan. If you are considering joining, you should compare your current coverage, including which drugs are covered at what cost, with the coverage and costs of the plans offering Medicare prescription drug coverage in your area. Information about where you can get help to make decisions about your prescription drug coverage is at the end of this notice.

There are two important things you need to know about your current coverage and Medicare's prescription drug coverage:

1. Medicare prescription drug coverage became available in 2006 to everyone with Medicare. You can get this coverage if you join a Medicare Prescription Drug Plan or join a Medicare Advantage Plan (like an HMO or PPO) that offers prescription drug coverage. All Medicare drug plans provide at least a standard level of coverage set by Medicare. Some plans may also offer more coverage for a higher monthly premium.
2. [Insert Name of Entity]¹ has determined that the prescription drug coverage offered by the [Insert Name of Plan]² is, on average for all plan participants, expected to pay out as much as standard Medicare prescription drug coverage pays and is therefore considered Creditable Coverage. Because your existing coverage is Creditable Coverage, you can keep this coverage and not pay a higher premium (a penalty) if you later decide to join a Medicare drug plan.

When Can You Join A Medicare Drug Plan?

You can join a Medicare drug plan when you first become eligible for Medicare and each year from October 15th to December 7th.

However, if you lose your current creditable prescription drug coverage, through no fault of your own, you will also be eligible for a two (2) month Special Enrollment Period (SEP) to join a Medicare drug plan.

What Happens To Your Current Coverage If You Decide to Join A Medicare Drug Plan?

If you decide to join a Medicare drug plan, your current [Insert Name of Entity]¹ coverage will [or will not]^{3A} be affected. [The entity providing the Disclosure Notice should insert an explanation of the prescription drug coverage plan provisions/options under the particular entity's plan that Medicare eligible individuals have available to them when they become eligible for Medicare Part D (e.g., they can keep this coverage if they elect part D and this plan

will coordinate with Part D coverage; for those individuals who elect Part D coverage, coverage under the entity's plan will end for the individual and all covered dependents, etc.). See pages 7- 9 of the CMS Disclosure of Creditable Coverage To Medicare Part D Eligible Individuals Guidance (**Creditable Coverage**), which outlines the prescription drug plan provisions/options that Medicare eligible individuals may have available to them when they become eligible for Medicare Part D.] ⁴

If you do decide to join a Medicare drug plan and drop your current [Insert Name of Entity] ¹ coverage, be aware that you and your dependents will [or will not] ^{3B} [Medigap issuers must insert "will not "] be able to get this coverage back.

When Will You Pay A Higher Premium (Penalty) To Join A Medicare Drug Plan?

You should also know that if you drop or lose your current coverage with [Insert Name of Entity] ¹ and don't join a Medicare drug plan within 63 continuous days after your current coverage ends, you may pay a higher premium (a penalty) to join a Medicare drug plan later.

If you go 63 continuous days or longer without creditable prescription drug coverage, your monthly premium may go up by at least 1% of the Medicare base beneficiary premium per month for every month that you did not have that coverage. For example, if you go nineteen months without creditable coverage, your premium may consistently be at least 19% higher than the Medicare base beneficiary premium. You may have to pay this higher premium (a penalty) as long as you have Medicare prescription drug coverage. In addition, you may have to wait until the following October to join.

For More Information About This Notice Or Your Current Prescription Drug Coverage...

Contact the person listed below for further information [or call [Insert Alternative Contact] ⁵ at [(XXX) XXX-XXXX] ⁶ .

NOTE: You'll get this notice each year. You will also get it before the next period you can join a Medicare drug plan, and if this coverage through [Insert Name of Entity] ¹ changes. You also may request a copy of this notice at any time.

For More Information About Your Options Under Medicare Prescription Drug Coverage...

More detailed information about Medicare plans that offer prescription drug coverage is in the "Medicare & You" handbook. You'll get a copy of the handbook in the mail every year from Medicare. You may also be contacted directly by Medicare drug plans.

For more information about Medicare prescription drug coverage:

- ▶ Visit Medicare.Gov
- ▶ Call your State Health Insurance Assistance Program (see the inside back cover of your copy of the "Medicare & You" handbook for their telephone number) for personalized help
- ▶ Call 1-800-MEDICARE (1-800-633-4227). TTY users should call 1-877-486-2048.

If you have limited income and resources, extra help paying for Medicare prescription drug coverage is available. For information about this extra help, visit www.socialsecurity.gov or call them at 1-800-772-1213 (TTY 1-800-325-0778).

Remember: Keep this Creditable Coverage notice. If you decide to join one of the Medicare drug plans, you may be required to provide a copy of this notice when you join to show whether or not you have maintained creditable coverage and, therefore, whether or not you are required to pay a higher premium (a penalty).

[Optional Insert - Entities can choose to insert the following information box if they choose to provide a personalized disclosure notice.]

Medicare Eligible Individual's Name: [Insert Full Name of Medicare Eligible Individual] Individual's DOB or unique Member ID: [Insert Individual's Date of Birth], or [Member ID]

The individual stated above has been covered under **creditable** prescription drug coverage for the following date ranges that occurred after May 15, 2006:

From: [Insert MM/DD/YY] To: [Insert MM/DD/YY]

From: [Insert MM/DD/YY] To: [Insert MM/DD/YY]

Date: [Insert MM/DD/YY] ⁷

Name of Entity/Sender: [Insert Name of Entity] ⁸

Contact--Position/Office: [Insert Position/Office] ⁹

Address: [Insert Street Address, City, State & Zip Code of Entity] ¹⁰

Phone Number: [Insert Entity Phone Number] ¹¹

CMS Form 10182-CC

Updated April 1, 2011

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0938-0990. The time required to complete this information collection is estimated to average 8 hours per response initially, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: CMS, 7500 Security Boulevard, Attn: PRA Reports Clearance Officer, Mail Stop C4-26-05, Baltimore, Maryland 21244-1850.

HRWS is pleased to assist our broker partners and their clients in completing the Medicare Part D Notice to ensure compliance with the law. Plans differ and HRWS is not involved in plan design, therefore cannot answer all of the questions. Below is a list of the blanks that must be populated by the plan sponsor and ideas on what should be included. The information provided is not a legal opinion on how to populate the fields nor does HRWS endorse the examples provided. The responsibility ultimately rests with the plan sponsor. As with most forms of this nature, keep careful documentation of why responses were provided in order to be able to show a good faith attempt was made.

LIST OF ITEMS TO BE COMPLETED BY THE EMPLOYER PRIOR TO DISTRIBUTION

1 - Insert Name of Entity

Fill in with name of Company offering prescription drug benefit

2 - Insert Name of Plan

Fill in with name of the Plan for the Company offering a prescription drug benefit. For example, the name of the carrier, Kaiser, BlueCross Blue Shield

3A - Will or will not

HRWS cannot make this determination. The Company offering the prescription drug benefit will need to determine whether the participant's coverage in the group plan will or will not be affected if they join a Medicare drug plan. In a fully insured plan the carrier may be helpful in answering this question. The plan documents may also contain information regarding the answer to this question.

Generally, under Medicare Secondary Payer Rules, the employee is allowed to remain on the group health plan even when they elect Medicare.

Below are some **examples** of how other companies have filled in this blank. Again, HRWS does not endorse these responses.

3B - Will or will not

HRWS cannot make this determination. The Company offering the prescription drug benefit will need to determine whether the participant's coverage in the group plan will or will not be affected if they join a Medicare drug plan. In a fully insured plan the carrier may be helpful in answering this question. The plan documents may also contain information regarding the answer to this question.

Typically, an employee and their dependents may not be able to rejoin the group health plan unless there is an open enrollment or the employee experiences a qualifying event.

Below are some **examples** of how other companies have filled in this blank. Again, HRWS does not endorse these responses.

4 - Insert an explanation

HRWS cannot create this description, as this is based on the specific plan provisions.

An explanation that is seen in the notice is that the employee has the right to be covered under both the group prescription drug plan and a Medicare Part D.

The group prescription drug plan may be a part of the group health plan and therefore prescription drug coverage may not be able to be elected independently of the health plan.

It is a good idea when creating this description to consult with the prescription drug carrier or the plan documents to determine any special provisions.

Below are some **examples** of how other companies have filled in this blank. Again, HRWS does not endorse these responses.

EXAMPLES:

If you decide to join a Medicare drug plan, your current (Company) coverage will not be affected. However, enrollment in Medicare will make you ineligible to put money into a Health Savings Account. If you do decide to join a Medicare drug plan and drop your current (Company) coverage, be aware that you and your dependents will not be able to get this coverage back until the next open enrollment or you experience a qualifying life event.

Enrollees of the (Company) Medical plan are automatically enrolled in prescription drug coverage. It is not possible to enroll in (Company) Medical coverage and decline or waive the prescription drug portion of the coverage. If you decide to join a Medicare drug plan, you are not required to drop your current (Company) Medical plan coverage. If you elect part D coverage in addition to your (Company) Medical coverage, the pharmacy benefits you are eligible for under your (Company) Medical will coordinate with your Part D coverage. If you do decide to join a Medicare drug plan and drop your current (Company) Medical plan coverage, be aware that you and your dependents will be able to get this coverage back during annual enrollment or following a qualified change of status event.

If you drop your current prescription drug coverage and enroll in Medicare prescription drug coverage, you may enroll back into (Company) benefit plan during the open enrollment period under the (Company) benefit plan.

If you are eligible for Medicare and do decide to enroll in a Medicare prescription drug plan and drop your employer's group health plan prescription drug coverage, be aware that you and your dependents may not be able to get this coverage back.

For Medicare eligible, active working individuals enrolled in the (Company) group health insurance program, if you decide to join a Medicare drug plan independent of the (Company), your current (Company) prescription drug coverage will not be affected. You can remain enrolled in the (Company) plan and prescription drug coverage through the (Company) programs will be primary to Medicare Part D. There will be no reduction in your monthly premium if you enroll in another Medicare part D plan. The (Company) benefit plan design doesn't allow you to drop prescription drug coverage and maintain medical coverage separately. If you do decide to drop your current (Company) group health insurance coverage, be aware that you and your dependents may not be able to get this coverage back. Refer to the health benefits materials for more information on re-enrolling in the (Company) plan and the impact Medicare Part D has on your coverage.

5 - Insert Alternative Contact

Indicate name of the person at the Company the participant should contact for further information

6 - [(XXX) XXX-XXXX]

Indicate telephone number of the person at the Company the participant should contact for further information

7 - [Insert MM/DD/YY]

Fill in with the date the notice is being prepared by the Company

8 - [Insert Name of Entity]

Fill in with name of Company offering prescription drug benefit

9 - [Insert Position/Office]

Fill in with the position/office of the person preparing the notice

10 - [Insert Street Address, City, State & Zip Code of Entity]

Fill in with the street address, city, state & zip code of the Company

11 - [Insert Entity Phone Number]

Fill in with the phone number of the Company

Optional Inset (page 3) -

This area is completed if the Company chooses to provide a personalized disclosure statement to each participant, if not used, take this section out of the document