



# Compliance Alert

## October 15 Deadline for Medicare Part D Notice of Creditable Coverage

*September 25, 2019*

*By: Brian Gilmore, Lead Benefits Counsel, VP*

With the October 15 start of the Medicare open enrollment period looming comes the annual reminder that the Part D Notice of Creditable Coverage (the “Notice”) is due to employees by the same date. The purpose of the Notice is to inform employees whether their employer-sponsored group health plan’s prescription drug coverage is at least as rich as a Medicare Part D plan.

### Who Must Receive the Notice of Creditable Coverage?

Technically, employers must provide the Notice only to “Part D eligible individuals” who are enrolled or seeking to enroll in the employer’s prescription drug coverage. This includes all individuals enrolled in Medicare Part A or Part B who live in the service area of a Part D plan.

As a practical matter, employers will not know which employees, spouses, or dependents are enrolled in Part A or Part B, and they will not know which individuals are seeking to enroll in the employer’s plan. Therefore, employers generally provide the Notice to all employees.

**ABD Bottom Line: It’s usually more work than it’s worth to try to target the Notice to only Part D eligible individuals. Provide it to all employees annually to be safe.**

### Where Are the Model Notices?

[CMS posts model versions](#) of the Notice of Creditable Coverage and the Notice of Non-Creditable Coverage in English and Spanish.

Note that CMS has not updated the model Notices since 2011.

## How To Provide

Paper delivery by hand or first-class mail is one option. Alternatively, [CMS states](#) that electronic delivery is permitted to “plan participants who have the ability to access electronic documents at their regular place of work if they have access to the plan sponsor’s electronic information system on a daily basis as part of their work duties.”

This electronic distribution standard for the Notice is nearly identical to the [ERISA electronic disclosure safe harbor](#).

## Combining With Other Materials

Employers may also provide the Notice with other materials, including open enrollment materials or other required annual notices (e.g., CHIP, WHCRA), as long as the Notice is “prominent and conspicuous.”

If the Notice is not on the first page of any such materials, the first page should include a separate box that is bolded or offset on the first page and prominently references the Notice in at least 14-point font.

CMS provides [the following model first-page box language](#):

***If you (and/or your dependents) have Medicare or will become eligible for Medicare in the next 12 months, a Federal law gives you more choices about your prescription drug coverage. Please see page xx for more details.***

## Why the Notice Matters: The Late Enrollment Penalty

One unusual aspect of the Notice requirements is that there are no specific penalties for an employer’s failure to provide them. However, Part D eligible individuals who fail to maintain creditable coverage for a period of 63 continuous days or more will face a late enrollment penalty when they eventually enroll in Part D.

The Part D premium may go up by at least 1% of the Medicare base beneficiary premium for every month without creditable coverage (e.g., permanent 19% Part D premium increase for 19-month gap in creditable coverage).

**ABD Bottom Line: Employees enrolled in *creditable* coverage need the Notice so they can prove they maintained creditable coverage when later enrolling in Part D.**

**Employees enrolled in *non-creditable* coverage need the Notice to be informed of the late enrollment penalty if they do not choose to enroll in a Part D plan during the Medicare open enrollment period (or a different employer-sponsored plan option that provides creditable coverage).**

## One Other Part D Disclosure Requirement

Keep in mind that there is also a requirement to [disclose to CMS within 60 days of the beginning of the plan year](#) whether the plan provides creditable coverage.

For employers with a calendar year health plan, this filing deadline will be March 1, 2020.

### Where Can I Find More Employer-Related Medicare Information?

See our ABD Office Hours webinar [Medicare for Employers: The Top Five Issues for Group Health Plans](#) for full details on:

- The Medicare Secondary Payer Rules
- How COBRA Interacts with Medicare
- Medicare Special Enrollment Periods for Retiring Employees
- **The Part D Notice of Creditable Coverage Requirements**
- How and When Medicare Affects HSA Eligibility

See also our Medicare-related ABD FAST summaries:

- [Medicare Considerations for Retiring Employees](#)
- [Medicare Secondary Payer Prohibition of Employer Opt-Out Incentives](#)

For employee-facing materials, see our [Medicare Resources Guide for Employees](#).

### Links to Required Annual Notices

Many employers prefer to provide employees with online access to the annual notice materials. Here is a sample email that employers can use for that purpose:

#### **2020 Health Plan Annual Notices**

*The Company is required by applicable law to provide you with certain notices each year that inform you of your rights and our responsibilities with respect to the Company's health plan (the "Plan").*

*Please carefully review the information contained below and share it with your covered dependents. We suggest you keep this information with your Summary Plan Description ("SPD") for future reference.*

#### **[Company's Plan Provides Part D Creditable Coverage]**

- [Medicare Part D Notice of Creditable Coverage](#)
- [Children's Health Insurance Program \(CHIP\) Notice](#)
- [Women's Health and Cancer Rights Act \(WHCRA\) Notice](#)
- [Notice of HIPAA Enrollment Rights](#)
- [Patient Protections Notice](#)
- [ADA Notice Regarding Wellness Program](#)

[Company's Plan **DOES NOT** Provide Part D Creditable Coverage]

- [Medicare Part D Notice of Non-Creditable Coverage](#)
- [Children's Health Insurance Program \(CHIP\) Notice](#)
- [Women's Health and Cancer Rights Act \(WHCRA\) Notice](#)
- [Notice of HIPAA Enrollment Rights](#)
- [Patient Protections Notice](#)
- [ADA Notice Regarding Wellness Program](#)

*In the event of a conflict between the official Plan Document and these legal notices, the SPD, or any other communication related to the Plan, the official Plan Document will govern.*

*If you have any questions or would like to obtain a paper version of these notices, please contact the HR Department.*

*Disclaimer: The intent of this analysis is to provide the recipient with general information regarding the status of, and/or potential concerns related to, the recipient's current employee benefits issues. This analysis does not necessarily fully address the recipient's specific issue, and it should not be construed as, nor is it intended to provide, legal advice. Furthermore, this message does not establish an attorney-client relationship. Questions regarding specific issues should be addressed to the person(s) who provide legal advice to the recipient regarding employee benefits issues (e.g., the recipient's general counsel or an attorney hired by the recipient who specializes in employee benefits law).*