

Packet "C"

To be used when Prescription Drug coverage is provided to Medicare eligible Retirees AND the Plan is applying for the federal subsidy.

Employers that qualify for the prescription drug subsidy can receive government assistance covering approximately 28% of qualifying retiree prescription drug costs. Employers may only receive the subsidy with respect to retirees who decline Medicare Part D coverage.

Step 1: Identify Plans providing prescription drug benefits for Medicare eligible Retirees

For Plans with multiple benefit options the regulation requires that entities apply the actuarial value test separately for each benefit option.

For an employer benefit plan to be considered actuarially equivalent to Medicare Part D and thus eligible for the federal subsidy, both a gross benefit test and a net benefit test must be satisfied. Upon application for the employer subsidy, which is due October 31, 2005, an attestation of the actuarial equivalence must be provided by a qualified actuary. Employers should begin working with their actuary now to provide the necessary data for determining actuarial equivalence. Per CMS a Qualified Actuary is an actuary who is a member in good standing of the American Academy of Actuaries (AAA).

An employer whose benefit plan does not satisfy the actuarial equivalence requirement may consider a range of plan design alternatives, such as discontinuing direct employer coverage and subsidizing retiree premiums for commercially available prescription drug plans, or enhancing the benefits provided under the employer plan in order to pass equivalence.

The Medicare Part D regulations require annual attestation of the actuarial value of prescription drug coverage. This means that annually, or at such other intervals required by the Centers for Medicare & Medicaid Services (CMS), a plan sponsor, in order to receive a federal subsidy under Medicare Part D, must file certain actuarial documents with CMS.

CMS approval of the analysis is not required but it is required that the supporting documentation be available for both the "gross value test" and the "net value test".

Step 2: Distribute Creditable Coverage Disclosure Notices

A) For employers that are seeking subsidies, the Notice of creditable coverage is an especially important communication. Not only is it a precondition for receiving a subsidy, but it also could be the first communication to retirees advising them **not** to enroll in any other Medicare-qualified prescription drug plan. Such enrollment would cost the employer the subsidy for that individual. Although the Disclosure Notice does not have to be received by the participants until November 15, 2005, it is suggested that employers seeking the subsidy distribute the Notices as soon as possible.

B) Review the model notice for *initial* disclosure to determine what customization may be needed. CMS sample initial Disclosure Notice for "creditable" coverage is available on the EBC website.

- C) Since it is possible for the Plan to have a plan participant, particularly a dependent, who is eligible or may become eligible for Medicare Part D, it is recommended that the Disclosure Notice be sent to **all** plan participants (and those seeking to enroll). The entity may provide a single Disclosure Notice to the covered Medicare individual and to his/her Medicare eligible dependents covered under the Plan. However, the entity is required to provide a separate Disclosure Notice if it is known that any spouse/dependent that is Medicare eligible resides at a different address than the participant/employee.
- D) Subsequent Disclosure Notices must be provided to eligible individuals, at a minimum, at the following times:
- (1) Prior to the individual's initial enrollment in Medicare Part D;
 - (2) Prior to commencement of the Annual Coordinated Election Period (November 15-December 31) of each year;
 - (3) Prior to the effective date of enrollment in the prescription drug coverage;
 - (4) Whenever prescription drug coverage ends or changes so that it affects whether the coverage is "creditable"; and
 - (5) Upon request by the individual.

Recent guidance issued by CMS clarifies that if the Disclosure Notice is provided annually to all plan participants, items (1) and (2) will be met. According to CMS "prior to" means that the beneficiary must have been provided the Disclosure Notice within the past twelve months. CMS will provide model Disclosure Notices to be used after the initial Notice deadline of November 15, 2005.

Step 3: Application for Medicare Part D subsidy by Plan Sponsor

In addition to an attestation of actuarial equivalence, the annual application for a Medicare Part D subsidy must include certain information about both the plan and each qualifying covered retiree (the full name of the qualifying covered retiree enrolled in the prescription drug plan, as well as the full name of any Medicare-eligible spouse or dependents of that qualifying covered retiree). This application must include the following information:

- (1) the plan sponsor's employer identification number (EIN), if applicable;
- (2) the plan sponsor's name and address;
- (3) the name and email address for the contact person for the plan;
- (4) an actuarial attestation and supporting documentation for each qualified retiree prescription drug plan for which the sponsor seeks subsidy payments; and
- (5) for each qualifying covered retiree:

Beneficiary information required includes:

- ... health insurance claim (HIC) number;
- ... date of birth;
- ... sex;
- ... social security number; and
- ... relationship to the retiree employee. *42 CFR §423.884(b)(2)*

Please note that a Medicare-eligible spouse or dependent of an active employee is not taken into account for purposes of determining the federal subsidy payment because their coverage status is based on the employment status of another individual.

A plan sponsor may satisfy the requirement to provide retiree and beneficiary data by entering a voluntary data sharing agreement (VDSA) or other agreement with the CMS. Information about how to enter into a VDSA with CMS is available at <http://www.cms.hhs.gov/medicare/cob/>.

The plan sponsor also must include a signed sponsor agreement and any other information specified by CMS. *42 CFR §423.884(b)(2)(vii) and (viii)*. The application must provide the plan sponsor's acceptance of the terms and conditions of eligibility to receive a subsidy payment. Specifically, an authorized representative of the plan sponsor must:

- (1) agree to comply with all federal laws and regulations, as well as the terms and conditions of eligibility for a subsidy payment (including the rules on the audit of claims for subsidy payments and on combating fraud and abuse);
- (2) acknowledge that the information is being provided to obtain federal funds;
- (3) require that all subcontractors, including administrators, acknowledge that information provided in connection with the subcontract is being used to obtain federal funds; and
- (4) provide any other information required by CMS. *42 CFR §423.884(b)(3)*.

An authorized representative of the plan sponsor must sign the completed application and certify that the information contained in the application is true and accurate to the best of the sponsor's knowledge and belief. The signed application constitutes an agreement between CMS and the Plan sponsor. *42 CFR §423.884(b)(4)*.

The plan sponsor (or the plan administrator designated by the plan sponsor) must provide any updates to CMS of the information required to be included in the application in the manner specified by CMS on a monthly, quarterly, or annual basis. CMS compares the information provided by the plan sponsor with the beneficiary information in the Medicare Data Base (MDB) and then notifies the plan sponsor of the individuals determined to be qualifying covered retirees. *42 CFR §423.884(b)(7)*. Additional information is provided at the following websites:

For information for Employers and Unions about the Retiree Drug Subsidy (RDS):
<http://www.cms.hhs.gov/medicarerereform/pdbma/employer.asp>

For the main page about Medicare Reform:
<http://www.cms.hhs.gov/medicarerereform>

For a events scheduled by CMS to keep employers/Unions informed re RDS program:
<http://rds.cms.hhs.gov/events/default.htm>

For RDS e-newsletter and additional information on the subsidy:
<http://rds.cms.hhs.gov/news/enews/newsletter.htm>

Step 4: Document that the initial notices have been provided.

Step 5: Establish policies and procedures for providing notices to the Plan participants as indicated in Step 2, D and documenting their distribution.

Step 6: Establish policies and procedures for: (1) submitting an annual application for a Medicare Part D subsidy; (2) submitting an updated attestation when any change to the drug coverage materially affect the drug coverage's actuarial value; and (3) documenting and archiving all data used for Subsidy applications.

If you apply for the subsidy, please notify EBC ASAP so we can determine any changes required in our records to accommodate this process.

The Medicare Part D documents provided on the EBC website is for informational purposes only and does not contain or convey legal advice. For additional advice regarding the Medicare Part D legislation we recommend you consult your attorney or benefit adviser.