

# Medicare Notice Requirements

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### Background and Definition:

Employers that offer group health insurance benefits to Medicare-eligible individuals generally must comply with 3 key Medicare requirements:

- Medicare Part D Notice Requirements
- Medicare Secondary Payer Requirement
- Medicare Nondiscrimination Requirements

### Target Audience

All Medicare Part D-eligible individuals who are covered under (or who apply for coverage under) the plan's Rx Coverage must receive a Medicare Part D notice. Medicare Part D-eligible individuals could be active employees, disabled employees, qualified beneficiaries receiving COBRA coverage, and retirees. Additionally, any of their covered spouses and dependents also are Medicare Part D-eligible. Employers typically do not have accurate information on spouse and dependents, so the best practice is to issue notices to all individuals eligible for the Rx Coverage.

Generally, one Medicare Part D notice will suffice for a covered Medicare beneficiary and all their dependents and spouse. But where an employer knows that any Medicare-eligible spouse or dependent resides at a different address, the employer must send separate notice to that last-known address.

### Notice Timing

Medicare enrollment starts annually on October 15, which requires employers to issue notices prior to that date or October 14. Medicare rules also require employers that offer Rx Coverage to issue Medicare Part D Notices at other intervals.

- Prior to an individual's initial enrollment period for Medicare Part D;
- Before the Rx Coverage effective date for any Medicare-eligible individual who joins the plan during the year; and
- Upon a Medicare Part D-eligible individual's request.

Many employers and plan sponsors include the Medicare Part D notice in their new hire materials, in order to avoid missing the notice deadlines.

### Notice Delivery

Employers can send Medicare Part D notices separately or include them with other plan materials. Employers can opt to send the notices along with open enrollment materials, but that will work only if the open enrollment period begins before October 15. Further, if an employer chooses to send Medicare Part D notices with other plan materials, CMS mandates that the Medicare Part D notice be the first page of the materials. CMS allows employers to send Medicare Part D notices electronically. Employers choosing electronic delivery must be sure to:

- Prepare and provide electronic materials according to otherwise applicable requirements;
- Notify each recipient of the significance of the document; and
- State that a paper version is available on request.

If a plan sponsor opts to issue Medicare Part D notices under DOL electronic disclosure rules, the sponsor must inform plan participants that they must give a copy of the disclosure to their Medicare-eligible dependents covered under the group health plan providing Rx Coverage. Many employers choose to use regular mail to avoid the extra administrative burdens imposed by the electronic disclosure rules.

## Notice Content

The information in the Medicare Part D notice pertains to the upcoming calendar year of coverage not the current year. Thus, a Medicare Part D notice issued in 2021 will describe the Rx Coverage available for 2022. Medicare Part D notices must:

- State that the plan sponsor has deemed the relevant Rx Coverage to be creditable or not;
- Explain what it means for coverage to be creditable or non-creditable;
- Describe the beneficiary's right to a notice;
- List the coverage options available to beneficiaries including the option to enroll in Medicare Part D during Medicare's regular annual enrollment period; and
- Provide details as to why creditable coverage is important and how an individual could still be subject to higher Medicare Part D premiums if they later have a break in creditable coverage of 63 or more continuous days before enrolling in a Medicare Part D plan.

Employers do not have to use the model notices to fulfill their notice duties, but they must include the above-listed items if they choose to create their own notices. Be aware that employers cannot use the model notices as-is; they will require employer-specific modifications.

## Submit Medicare Part D Notice to CMS

Regulations also require group health plan sponsors with Part D eligible individuals to submit a similar notice to the Centers for Medicare and Medicaid Services ("CMS"). Specifically, employers must electronically file these notices each year through the form supplied on the CMS website within 60 days following the first day of the plan year. The online process is composed of the following three step process:

- Enter the Disclosure Information;
- Verify and Submit Disclosure Information; and
- Receive Submission Confirmation.

The Disclosure to CMS Form requires employers to provide detailed information to CMS including, the name of the entity offering coverage, whether the entity has any subsidiaries, the number of benefit options offered, the creditable coverage status of the options offered, the period covered by the Disclosure to CMS Form, the estimated number of Part D eligible individuals, the date of the notice of creditable coverage, and any change in creditable coverage status. A copy of the confirmation should be kept with other group health documents.

## Medicare Nondiscrimination Requirements

Medicare-eligible employees are generally protected against discrimination in group health insurance benefits in two ways:

- Employers with 20 or more employees are required by law to offer workers and their spouses who are age 65 or older the same health benefits that are offered to younger employees.
- Employers are prohibited from encouraging or offering incentives to individuals who are eligible for, or already enrolled in, Medicare to elect enrollment in Medicare instead of enrolling in the group health plan. However, the Equal Employment Opportunity Commission (EEOC) has stated that offering Medicare eligible employees a choice between remaining on the group health insurance coverage or the reimbursement of Medicare Part B premiums is generally lawful as long as the choice creates an advantageous option available only to the Medicare-eligible employees.

## Where Can I go if I Have Questions or Want More Information on Medicare Part D?

If you need further information on Medicare Part D or Medicare in general, go to [www.cms.gov](http://www.cms.gov), call 1-800-MEDICARE (1-800-633-4227), or reach them by mail at Medicare Contact Center Operations PO Box 1270 Lawrence, KS 66044.