



Holme Roberts
& Owen LLP

Attorneys at Law

Arlen Brammer
Partner
arlen.brammer@hro.com

Christine M. Daly
Senior Associate
christine.daly@hro.com

Carolyn E. Daniels
Partner
carolyn.daniels@hro.com

Denise Pino Erwin
Partner
denise.erwin@hro.com

Jonathan A. Marks
Senior Associate
jonathan.marks@hro.com

David T. Mitzner
Partner
david.mitzner@hro.com

Francisco Palao-Ricketts
Associate
francisco.palao@hro.com

Denver
303.861.7000

Boulder
303.444.5955

Colorado Springs
719.473.3800

Los Angeles
213.892.4925

Salt Lake City
801.521.5800

San Francisco
415.268.2000

www.hro.com

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HRO Alert

ALL GROUP HEALTH PLANS OFFERING PRESCRIPTION DRUG BENEFITS MUST TAKE ACTION BEFORE NOVEMBER 15TH

The Medicare Prescription Drug Improvement and Modernization Act of 2003 (the "Act") changes several features of Medicare and adds a new prescription drug benefit ("Medicare Part D"). Beginning November 15, 2005, Medicare-eligible Individuals can enroll for coverage in a Medicare Part D prescription drug plan, even if they are covered under a group health plan with a prescription drug benefit. If a Medicare-eligible Individual chooses not to enroll in Medicare Part D before the end of his or her initial enrollment period, the individual may be required to pay a higher premium on a permanent basis if he or she subsequently enrolls in Medicare Part D. The higher premium can be avoided if the individual can show that he or she was covered under "creditable" prescription drug coverage for the required periods.

To enable Medicare-eligible Individuals to make informed decisions regarding enrollment in Medicare Part D, a new notice requirement applies to all group health plans that provide prescription drug coverage. The new Medicare Part D notices must be issued to all Medicare-eligible Individuals to advise them whether coverage under the plan is "creditable coverage." For this purpose, "Medicare-eligible Individuals" entitled to the notice include any active, disabled, or retired employees or their dependents who are enrolled, or in the process of enrolling, in the group health plan's prescription drug coverage if:

- They are entitled to benefits under Medicare Part A or are enrolled in Medicare Part B; and
- They live in the service area of a Medicare Part D Plan.

By now, most employers are familiar with the subsidy also provided by the Act which is available for plans that offer prescription drug coverage for retirees if the plan provides coverage that is at least actuarially equivalent to the Medicare Part D benefit and the plan satisfies certain other requirements. **Many employers are under the mistaken impression that, like the subsidy, this notice requirement only applies to plans that cover retirees. In actuality, this notice requirement applies to any group health plan that provides prescription drug coverage to Medicare-eligible Individuals. As a result, most employer's group health plans are subject to the notice requirement. Please read on to determine what action needs to be taken prior to November 15th with respect to your group health plans.** A detailed description of the subsidy available under the Act is not within the scope of this Alert. If you are interested in finding out more about the subsidy please contact any member of the HRO Employee Benefits Team for details.

The deadline to apply for the subsidy has been extended from September 30, 2005, to October 31, 2005. This automatic extension applies to all plan sponsors. The Centers for Medicare & Medicaid Services ("CMS") still urges plan sponsors to submit their applications as early as possible.

WHAT PLANS ARE SUBJECT TO THE NOTICE REQUIREMENT?

All group health plans that provide prescription drug coverage must provide notice regarding Medicare Part D creditable coverage to Medicare-eligible Individuals whether or not the plan offers retiree drug coverage and whether or not the plan is primary or secondary to Medicare. The requirement applies to private employer plans, government plans, collectively bargained plans and church plans, regardless of the size of the plan or the employer. "Prescription drug coverage" is not expressly defined; however, it appears to include any group health plan providing any prescription drug benefit. This includes major medical plans offering prescription drug benefits and may potentially include dental plans, vision plans, and employee assistance programs ("EAPs"). Plans do not need to provide creditable coverage notices if they do not offer prescription drug coverage.

Special rules apply to account-based medical plans. Generally, health FSAs, HSAs and Archer MSAs are not required to provide notices. On the other hand, HRAs that offer prescription drug coverage are required to provide notices. High deductible plans offered in conjunction with HRAs, HSAs, and Archer MSAs must also provide notices of creditable coverage if they cover prescription drugs.

WHAT IS A NOTICE OF CREDITABLE COVERAGE?

A notice of creditable coverage explains whether the plan sponsor's prescription drug coverage is "creditable coverage" for purposes of Medicare Part D. Prescription drug coverage is treated as "creditable coverage" if its actuarial value is equal to or greater than the standard prescription drug benefit under Medicare Part D. Actuarial equivalence for each benefit option is determined using generally accepted actuarial principles in accordance with guidelines provided by CMS. A design-based safe harbor is available for plans not applying for the federal retiree health plan subsidy. To qualify for the safe-harbor, a plan must:

- Provide coverage for both brand and generic drugs;
- Provide reasonable access to retail providers;
- Be designed to pay at least 60 percent of participants' drug expenses on average; and
- Meet additional requirements that vary based on whether prescription drugs are "integrated" with other benefits.

If coverage under the plan is creditable coverage, the notice must explain that prescription drug coverage under the group health plan is actuarially equivalent to Medicare Part D, and explain the meaning of creditable coverage and why it is important to the participant. If the prescription drug coverage is not creditable, the notice must include:

- A statement that prescription drug coverage under the plan is not creditable under Medicare Part D;
- An explanation of the meaning of creditable coverage;
- A description of the periods during the year in which the individual may enroll in a Medicare Part D prescription drug plan; and
- An explanation that creditable coverage is important, because an individual may be subject to a late enrollment penalty if he or she does not have creditable coverage and he or she does not enroll during the enrollment period.

WHEN IS THE NOTICE REQUIRED?

Group health plans must distribute a notice of creditable coverage to Medicare-eligible Individuals before the beginning of the enrollment period. The enrollment period for Medicare Part D is from November 15, 2005, to May 15, 2006. In addition, plans must provide a notice of creditable coverage to Medicare-eligible Individuals within 12 months of:

- An individual's initial enrollment period in a Medicare Part D plan;
- The effective date of enrollment in the plan's prescription drug coverage; and
- The annual enrollment period for Medicare Part D that begins on November 15 of each year.

A notice of creditable coverage must also be issued to Medicare-eligible Individuals upon any change that affects whether the coverage is creditable coverage and upon request. Finally, plans must provide notice to CMS annually and upon any change that affects whether coverage is creditable. Additional guidance is expected regarding the CMS notice requirement.

WHAT SHOULD PLANS DO IMMEDIATELY?

As soon as possible, plan sponsors should:

- Evaluate all group health plans (including medical plans, dental plans, vision plans, and EAPs) and determine if they offer prescription drug coverage.
- Determine if Medicare-eligible Individuals are being covered under any of the group health plans offering prescription drug coverage.
- Determine if your plans meet the design-based safe harbor for creditable coverage, and arrange for actuarial analysis, if necessary.
- Contact your TPA or insurance carrier, if applicable, and determine whether (and at what cost) it will assist in determining actuarial equivalence or delivering the notice of creditable coverage.
- Contact your health and welfare benefits counsel to draft your notice of creditable coverage and to provide other assistance or advice with respect to compliance with these requirements.

- Develop policies and procedures for notice delivery at all required times, including a method of delivery and a list of recipients.
- Determine how to document that notices have been provided.
- Deliver initial notices before November 15, 2005.

As you can see, compliance with Medicare Part D's notice rules requires several steps. As a result, we recommend beginning the process as soon as possible.

If you have questions or would like our assistance with respect to any of the issues addressed in this Alert, please contact any member of the HRO Employee Benefits Team listed on the first page by telephone at (303) 861-7000 or by email at the addresses listed herein.

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1700 Lincoln Street, Suite 4100 • Denver, Colorado 80203-4541
tel 303-861-7000 • fax 303-861-0200 • www.hro.com