



Compliance Services Alert

Feb. 11, 2021

Reminder: Calendar year health plans must complete online CMS disclosure by March 1, 2021

For several years, health plan sponsors have been required to complete an annual online disclosure form with the Centers for Medicare and Medicaid Services (CMS), reflecting whether the prescription drug coverage offered under the sponsor's plan(s) is "creditable" (at least as good as Medicare Part D's prescription drug benefit) or "noncreditable" (not as good).

The plan sponsor must complete the disclosure within 60 days after the beginning of the plan year. Sponsors of insured plans may choose to file within 60 days after the beginning of the insurance contract year, but whatever approach is adopted, it should be used consistently.

A CMS filing is also required within 30 days of termination of a prescription drug plan and for any change in a plan's creditable coverage status. Some plans (described below) are exempt from the filing requirement.

Instructions related to the online filing discuss the types of information required, including an estimate of the total number of Part D eligible individuals, the number of prescription drug options, and which options are creditable or noncreditable. Click to access the [instructions](#).

Click to access the [online portal](#) used to complete this annual submission.

The website suggests the plan sponsor print a copy of the confirmation page for its records. In the past, CMS provided confirmation after the form was submitted. Some employers have reported they have not received that confirmation; thus, printing a copy is important.

Plans covering employers in a controlled group

Special rules apply to a plan covering more than one employer within the same controlled group of companies. Generally, a controlled group consists of employers that have at least 80% common stock ownership. For plans that cover multiple subsidiaries (divisions, lines of business, operating units, control groups, etc.) all covered under the same type of coverage, the Federal Tax Identification Number (also known as the Employer

Identification Number, or EIN) for the parent company may be used when completing the entity's EIN information for the entire company.

Plans exempt from the filing process

Employer plans that do not offer drug coverage to any Medicare-enrolled employee, retiree or dependent at the beginning of the plan year are exempt from filing. Similarly, employers who qualified for the Medicare Part D retiree drug subsidy are exempt from filing with CMS, but only with respect to the individuals and plan options for which they claimed the subsidy. If an employer offers prescription drug coverage to any Medicare-enrolled retirees or dependents not claimed under the subsidy, the employer must complete an online disclosure for plan options covering such individuals.

Lockton comment: As the exemptions are limited, plan sponsors should complete the CMS filing to the best of their ability, even if they suspect, but are not sure, that their plan is exempt from filing.

Companion to the annual Part D disclosure

Plan sponsors must at least annually issue to their Medicare-enrolled employees, retirees and dependents a notice apprising them whether the drug coverage under the sponsors' plans is creditable or noncreditable.

Notices are required in the following cases:

- Prior to the annual Part D enrollment window, which opens each Oct. 15
- Prior to the individual's personal "initial enrollment period" for Part D
- Prior to enrollment in the employer's plan
- When the plan ceases to provide drug coverage or the creditable nature of the drug coverage becomes noncreditable, or vice versa
- Upon request

Lockton comment: For purposes of the first and second bullets above, a plan need only supply the notice once every 12 months. For that reason, Lockton Compliance Services believes it is wise to include the creditable or noncreditable coverage notices in the client's initial and annual enrollment packets. Doing so takes care of the first three bullets above. Because most plans don't know who their Medicare-enrolled members are, particularly with regard to dependents, Lockton has long recommended distributing the notices to all enrolled employees and retirees.

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