

Benefits BRIEF

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Medicare Part D Notice of Creditable (or Non-Creditable) Coverage

• August 2021 •

In 2003, the Medicare Modernization Act (MMA) was signed into law. Under the MMA, plan sponsors (generally employers) of group health plans providing prescription drug coverage must provide a notice to Medicare Part D eligible individuals. The purpose of the notice is to inform these individuals of the plan's creditable or non-creditable status, as defined in the MMA, and explain what happens to their coverage and future enrollment rights if they elect Medicare Part D.

The Basics

What is Medicare Part D, and why is the creditable or non-creditable disclosure notice important? Medicare consists of different coverage options for specific health services. For example, Medicare Part A includes coverage for hospital services, while Medicare Part B generally covers doctor services and outpatient care. While Part A and B cover various health services, Medicare Part D provides coverage for prescription drugs.

Generally, Part D coverage is available to all individuals that are already enrolled in Medicare. The monthly premium for this coverage is determined on an individual basis. While many factors impact the cost, one of them is within an individual's control. A late enrollment penalty is assessed when an individual fails to enroll during their initial eligibility period *and* wasn't enrolled in other creditable prescription drug coverage, like one offered through an employer. Once this penalty is applied, it is typically permanent.

So, how does an individual prove they had other creditable coverage in order to avoid the late enrollment penalty? Under the MMA, group health plan sponsors (employers) are required to provide a notice to individuals informing them of the plan's creditable or non-creditable status. The notice must also provide information on what happens to their group coverage and the impact on their future eligibility if they decide to enroll in Part D coverage. This notice will be

proof of prior coverage that can prevent a late penalty assessment. For further details on the penalty and enrollment process, visit [Medicare.gov - Drug coverage \(Part D\)](https://www.medicare.gov/drug-coverage-part-d).

Notice Requirements

Below is a summary of what plan sponsors need to know to complete their Medicare Part D notice requirements.

- **Who must provide the notice?** The notice must be furnished by group health plan sponsors (employers). While plan sponsors are ultimately responsible for the notice, they can hire a third party (like a TPA or insurance carrier) to fulfill this obligation on their behalf.
- **Which group health plans must comply with the requirement?** The notice requirement applies to all group health plans providing prescription drug coverage (regardless if the plan is insured or self-funded). There is no exemption for government or church plans. For plans that receive the Retiree Drug Subsidy (RDS), this notice requirement, doesn't apply. For more information the RDS, visit [CMS.gov - Employer & Union Retiree Drug Subsidy](https://www.cms.gov/medicare/eligibility/retiree-drug-subsidy).
- **Who is entitled to receive the notice?** Plan sponsors are required to issue notices to all individuals who are eligible for Medicare. These participants include:
 - Medicare-eligible actively working individuals and their dependents;
 - Medicare-eligible COBRA individuals and their dependents;
 - Medicare-eligible disabled individuals covered under the prescription drug plan; and
 - Any retirees (and their dependents) enrolled in the group health plan.

Determining who is Medicare-eligible can be challenging for plan sponsors, particularly in the case of disabled dependents. *As a result, most plan sponsors choose to provide the notice to all employees to facilitate compliance.*

- **When are the notices required to be sent?** The notices must be distributed:
 - Before an individual's initial enrollment period for Part D;
 - Before the effective date of coverage for any Medicare-eligible individual who joins an employer plan;
 - Before October 15th each year for all Medicare-eligible individuals covered under the prescription drug plan;

- Whenever prescription drug coverage ends or creditable coverage status changes; and
- Upon the individual's request.
- **How can the notices be delivered?** The notices can be provided by:
 - Paper delivery by hand
 - First-class mail
 - Electronically (only for participants who utilize a computer as an essential part of their work duties – reference [ERISA electronic disclosure safe harbor](#))

Important Note: It is common for plan sponsors to deliver the notice annually to all plan participants by including it in their open enrollment materials. This method is permitted under the MAA so long as distribution has occurred within the 12 months preceding the October 15 deadline. Additionally, it is important to point out that the notice must be “prominent and conspicuous.” In other words, if the notice isn’t provided on the first page of the enrollment materials, it must be referenced. CMS provided [model language](#) plan sponsors can use to satisfy this requirement.

- **What information must be included in the notice?** CMS has issued model notices for disclosing whether coverage is creditable or non-creditable. Once the plan sponsor makes this determination, the applicable notice should be used ([Model Creditable Coverage Disclosure Notice](#) or [Model Non-Creditable Coverage Disclosure Notice](#), as appropriate).

Determining Whether a Prescription Drug Plan is Creditable

Generally, a prescription drug plan is deemed creditable when it:

- Provides coverage for brand and generic prescriptions;
- Provides reasonable access to retail providers;
- It is generally designed to pay, on average, at least 60% of participants’ prescription drug costs; and
- It satisfies at least one of the minimum coverage standards outlined in the [simplified determination method](#).

For plan sponsors that receive the RDS, the simplified determination method for their RDS-plans is not an option. However, if they offer other prescription drug plans that don’t receive

the RDS, this method is permitted. For more information on how the creditability status is calculated for RDS-plans, visit [CMS.gov - Overview of Retiree Drug Subsidy Option](https://www.cms.gov/medicare/eligibility/eligibility-general/eligibility-general-2018/medicare-eligibility-general-2018-retiree-drug-subsidy-option).

Often, traditional health plans (those not considered high deductible health plans – HDHPs) are determined to be creditable coverage. On the other hand, HDHPs and some uncommon plan designs have been determined as non-creditable. Plan sponsors of these plans might consider hiring a third party (like an actuary) to perform a thorough analysis. Before getting started, plan sponsors should contact their insurance carrier or TPA to inquire if they have already determined the plan is creditable or non-creditable. It is common for carriers to perform this analysis annually on all of their standard plan offerings. As for TPAs, it is likely they will charge an additional fee for this service.

Penalty for Noncompliance

Fortunately, there is no penalty for plan sponsors who failed to issue the notices to individuals or disclose the plan creditability status to CMS (described in the next section). However, this failure by the plan sponsor could adversely impact their plan participants resulting in missed enrollment periods, inability to reenroll the group plan, and late enrollment penalties. For more information, visit [Medicare.gov - Part D Late Enrollment Penalty](https://www.medicare.gov/medicare-plans/medicare-plans-101/medicare-plans-101-late-enrollment-penalty).

CMS Reporting

In addition to the individual notices, plan sponsors are also required to electronically disclose the prescription drug plan's creditable or non-creditable status to CMS. This disclosure is required on:

- An annual basis within 60 days after the beginning of each plan year (for calendar year plans, the deadline will be March 1st each year);
- Within 30 days following the termination of the prescription drug plan; and
- Within 30 days following a creditable coverage status change.

Plan sponsors can satisfy this requirement by completing an [online disclosure form](#). To aide plan sponsors, CMS has posted [guidance and instructions](#). Reviewing these before starting the online form will help plan sponsors gather the information needed.

Plan sponsors receiving the RDS, are not required to file any RDS-plans with CMS. Instead, CMS receives the necessary information to satisfy this requirement during the RDS application process. For the plan sponsors offering additional plan options that don't receive the RDS, they will need to disclose these plans to CMS using the online notice form.

Employer Actions

- ✓ **Determine Credibility Status:** Employers should confirm whether their health plans' prescription drug coverage is creditable or non-creditable by discussing it early with their insurance carrier, TPA, or trusted advisors.
- ✓ **Decide Preferred Delivery Method:** Plan sponsors have flexibility in the method they use to deliver their notices, as outlined earlier in this Brief. Which option to use should be based on the plan sponsor's business culture and employee base. Deciding ahead of time will help prevent delivery delays.
- ✓ **Prepare Early:** The notice to individuals and the disclosure to CMS can easily be missed during and after the busy open enrollment season. Plan sponsors should prepare early by selecting target dates for completing each step and assigning the project to someone internally or hiring a third party. Lastly, plan sponsors should consider adding this requirement to their calendar as a reoccurring event to help prevent missing deadlines.

ADDITIONAL RESOURCES

[What is Creditable Coverage?](#)

[Entities Required to Provide Disclosure](#)

[Overview of Creditable Coverage Issues for Plan Sponsors](#)

[Treatment of Account-Based Health Arrangements under the Medicare Modernization Act](#)

[Employers/Unions & Medigap Issuers Guidance - Which Notice of Creditable Coverage to Provide?](#)

[42 CFR § 423.56 - Procedures to determine and document creditable status of prescription drug coverage](#)

[How Part D Works With Other Insurance](#)