



# Federal Legislative Brief

## Medicare Part-D: Annual Notice Action Required by November 15<sup>th</sup> - 2008-21

Medicare Part-D regulations require all health care Plan Sponsors whose plans contain prescription drug coverage, to distribute an Annual Notice to plan participants who are or who might be eligible for Medicare Part-D coverage or have covered family members who may be eligible.

On June 15, 2008 the Centers for Medicare and Medicaid Services (CMS) released updated notices and additional regulatory guidance. The purpose of this memorandum is to assist Plan Sponsors in meeting the Part-D Notice requirements.

### Discussion

- The Annual Notice:** CMS has provided new sample notices for creditable coverage, non-creditable coverage and personalized disclosure notices. Plan Sponsors must determine whether the prescription drug benefit they offer is considered creditable or not creditable, and distribute the appropriate notice by November 15, 2008. Each Plan Sponsor will need to add specific content to these notices. Please refer to our Attachment A and B for the sample notices. Plan Sponsors have the option of using the sample notices or producing their own notices which contain all of the necessary elements, as described in the updated guidance. This guidance is available on the CMS website: [http://www.cms.hhs.gov/CreditableCoverage/09\\_CCafterJune15.asp#TopOfPage](http://www.cms.hhs.gov/CreditableCoverage/09_CCafterJune15.asp#TopOfPage)
- Delivering the Notice by Mail.** Plan Sponsors may mail the notice as a stand alone mailing or choose to incorporate the notice into other documents or disclosures, so long as there is prominent first-page, 14-point reference to the incorporated notice language.
- Electronic Delivery.** Plan Sponsors may also deliver the notice electronically to plan participants who have the ability to access the Plan Sponsor's electronic information system on a daily basis as a part of their work duties. Plan Sponsors should inform participants that they are to share the electronic notice with all family members who are covered under the group health plan.
- Recipients.** Plan Sponsors should provide the notice to all health plan participants including COBRA beneficiaries. As we stated above, Plan Sponsors need only to provide a single notice to a participant with covered dependents, unless the sponsor records contain a separate address for other family members.
- The Deadline.** November 15, 2008! Medicare beneficiaries begin an open enrollment period on that date. To assist them in electing prescription drug coverage, they must know the status (creditable / non-creditable) of their current coverage. This requirement applies whether the plan coverage is primary or secondary.

# Medicare Part-D Annual Notice: Action Required by November 15<sup>th</sup>

If for some reason, a Plan Sponsor does not meet this deadline, it is critical to distribute the notice as soon as possible thereafter.

For a more detailed discussion of the Medicare Part-D notice and coverage requirements, please refer to my Legislative Updates of June 12, 2006 (2006-6) and September 19, 2005 (2005-12) or go to the CMS website:

<http://www.cms.hhs.gov>.

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## Important Notice From [Insert Name of Entity] About Your Prescription Drug Coverage and Medicare

Please read this notice carefully and keep it where you can find it. This notice has information about your current prescription drug coverage with [Insert Name of Entity] and about your options under Medicare's prescription drug coverage. This information can help you decide whether or not you want to join a Medicare drug plan. Information about where you can get help to make decisions about your prescription drug coverage is at the end of this notice.

There are three important things you need to know about your current coverage and Medicare's prescription drug coverage:

1. Medicare prescription drug coverage became available in 2006 to everyone with Medicare. You can get this coverage if you join a Medicare Prescription Drug Plan or join a Medicare Advantage Plan (like an HMO or PPO) that offers prescription drug coverage. All Medicare drug plans provide at least a standard level of coverage set by Medicare. Some plans may also offer more coverage for a higher monthly premium.
2. [Insert Name of Entity] has determined that the prescription drug coverage offered by the [Insert Name of Plan] is, on average for all plan participants, NOT expected to pay out as much as standard Medicare prescription drug coverage pays. Therefore, your coverage is considered **Non-Creditable Coverage**. This is important because, most likely, you will get more help with your drug costs if you join a Medicare drug plan, than if you only have prescription drug coverage from the [Insert Name of Plan]. This also is important because it may mean that you may pay a higher premium (a penalty) if you do not join a Medicare drug plan when you first become eligible.
3. You can keep your current coverage from [Insert Name of Plan]. However, because your coverage is non-creditable, you have decisions to make about Medicare prescription drug coverage that may affect how much you pay for that coverage, depending on if and when you join a drug plan. When you make your decision, you should compare your current coverage, including what drugs are covered, with the coverage and cost of the plans offering Medicare prescription drug coverage in your area. Read this notice carefully - it explains your options.

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### When Can You Join A Medicare Drug Plan?

You can join a Medicare drug plan when you first become eligible for Medicare and each year from November 15<sup>th</sup> through December 31<sup>st</sup>.

CMS Form 10182-NC

Updated June 15, 2008

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0938-0990. The time required to complete this information collection is estimated to average 8 hours per response initially, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: CMS, 7500 Security Boulevard, Attn: PRA Reports Clearance Officer, Mail Stop C4-26-05, Baltimore, Maryland 21244-1850.

**[INSERT IF EMPLOYER/UNION SPONSORED GROUP PLAN:** However, if you decide to drop your current coverage with [Insert Name of Entity], since it is employer/union sponsored group coverage, you will be eligible for a two (2) month Special Enrollment Period (SEP) to join a Medicare drug plan; however you also may pay a higher premium (a penalty) because you did not have creditable coverage under [Insert Name of Plan.]

**[INSERT IF PREVIOUS COVERAGE PROVIDED BY THE ENTITY WAS CREDITABLE COVERAGE:** Since you are losing creditable prescription drug coverage under the [Insert Name of Plan], you are also eligible for a two (2) month Special Enrollment Period (SEP) to join a Medicare drug plan.]

## **When Will You Pay A Higher Premium (Penalty) To Join A Medicare Drug Plan?**

Since the coverage under [Insert Name of Plan] is not creditable, depending on how long you go without creditable prescription drug coverage, you may pay a penalty to join a Medicare drug plan. Starting with the end of the last month that you were first eligible to join a Medicare drug plan but didn't join, if you go 63 continuous days or longer without prescription drug coverage that's creditable, your monthly premium may go up by at least 1% of the Medicare base beneficiary premium per month for every month that you did not have that coverage. For example, if you go nineteen months without creditable coverage, your premium may consistently be at least 19% higher than the Medicare base beneficiary premium. You may have to pay this higher premium (penalty) as long as you have Medicare prescription drug coverage. In addition, you may have to wait until the following November to join.

## **What Happens To Your Current Coverage If You Decide to Join A Medicare Drug Plan?**

If you decide to join a Medicare drug plan, your current [Insert Name of Entity] coverage will [or will not] be affected. [The entity providing the Disclosure Notice should insert an explanation of the prescription drug coverage plan provisions/options under the particular entity's plan that Medicare eligible individuals have available to them when they become eligible for Medicare Part D (e.g., they can keep this coverage if they elect part D and this plan will coordinate with Part D coverage; for those individuals who elect Part D coverage, coverage under the entity's plan will end for the individual and all covered dependents, etc.). [See pages 9 - 11 of the CMS Disclosure of Creditable Coverage To Medicare Part D Eligible Individuals Guidance (available at <http://www.cms.hhs.gov/CreditableCoverage/>), which outlines the prescription drug plan provisions/options that Medicare eligible individuals may have available to them when they become eligible for Medicare Part D.]

If you do decide to join a Medicare drug plan and drop your current [Insert Name of Entity] coverage, be aware that you and your dependents will [or will not] [Medigap issuers must insert “will not”] be able to get this coverage back.

### **For More Information About This Notice Or Your Current Prescription Drug Coverage...**

Contact the person listed below for further information. [or call [Insert Alternative Contact] at [(XXX) XXX-XXXX]. **NOTE:** You’ll get this notice each year. You will also get it before the next period you can join a Medicare drug plan and if this coverage through [Insert Name of Entity] changes. You also may request a copy of this notice at any time.

### **For More Information About Your Options Under Medicare Prescription Drug Coverage...**

More detailed information about Medicare plans that offer prescription drug coverage is in the “Medicare & You” handbook. You’ll get a copy of the handbook in the mail every year from Medicare. You may also be contacted directly by Medicare drug plans. For more information about Medicare prescription drug coverage:

- Visit [www.medicare.gov](http://www.medicare.gov)
- Call your State Health Insurance Assistance Program (see the inside back cover of your copy of the “Medicare & You” handbook for their telephone number) for personalized help
- Call 1-800-MEDICARE (1-800-633-4227). TTY users should call 1-877-486-2048.

If you have limited income and resources, extra help paying for Medicare prescription drug coverage is available. For information about this extra help, visit Social Security on the web at [www.socialsecurity.gov](http://www.socialsecurity.gov), or call them at 1-800-772-1213 (TTY 1-800-325-0778).

Date:	[Insert <u>MM/DD/YY</u> ]
Name of Entity/Sender:	[Insert Name of Entity]
Contact--Position/Office:	[Insert Position/Office]
Address:	[Insert Street Address, City, State & Zip Code of Entity]
Phone Number:	[Insert Entity Phone Number]

## **Important Notice from [Insert Name of Entity] About Your Prescription Drug Coverage and Medicare**

**Please read this notice carefully and keep it where you can find it. This notice has information about your current prescription drug coverage with [Insert Name of Entity] and about your options under Medicare's prescription drug coverage. This information can help you decide whether or not you want to join a Medicare drug plan. If you are considering joining, you should compare your current coverage, including which drugs are covered at what cost, with the coverage and costs of the plans offering Medicare prescription drug coverage in your area. Information about where you can get help to make decisions about your prescription drug coverage is at the end of this notice.**

**There are two important things you need to know about your current coverage and Medicare's prescription drug coverage:**

- 1. Medicare prescription drug coverage became available in 2006 to everyone with Medicare. You can get this coverage if you join a Medicare Prescription Drug Plan or join a Medicare Advantage Plan (like an HMO or PPO) that offers prescription drug coverage. All Medicare drug plans provide at least a standard level of coverage set by Medicare. Some plans may also offer more coverage for a higher monthly premium.**
- 2. [Insert Name of Entity] has determined that the prescription drug coverage offered by the [Insert Name of Plan] is, on average for all plan participants, expected to pay out as much as standard Medicare prescription drug coverage pays and is therefore considered Creditable Coverage. Because your existing coverage is Creditable Coverage, you can keep this coverage and not pay a higher premium (a penalty) if you later decide to join a Medicare drug plan.**

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### **When Can You Join A Medicare Drug Plan?**

You can join a Medicare drug plan when you first become eligible for Medicare and each year from November 15<sup>th</sup> through December 31<sup>st</sup>.

However, if you lose your current creditable prescription drug coverage, through no fault of your own, you will also be eligible for a two (2) month Special Enrollment Period (SEP) to join a Medicare drug plan.

## What Happens To Your Current Coverage If You Decide to Join A Medicare Drug Plan?

If you decide to join a Medicare drug plan, your current [Insert Name of Entity] coverage will [or will not] be affected. [The entity providing the Disclosure Notice should insert an explanation of the prescription drug coverage plan provisions/options under the particular entity's plan that Medicare eligible individuals have available to them when they become eligible for Medicare Part D (e.g., they can keep this coverage if they elect part D and this plan will coordinate with Part D coverage; for those individuals who elect Part D coverage, coverage under the entity's plan will end for the individual and all covered dependents, etc.). See pages 7- 9 of the CMS Disclosure of Creditable Coverage To Medicare Part D Eligible Individuals Guidance (available at <http://www.cms.hhs.gov/CreditableCoverage/>), which outlines the prescription drug plan provisions/options that Medicare eligible individuals may have available to them when they become eligible for Medicare Part D.]

If you do decide to join a Medicare drug plan and drop your current [Insert Name of Entity] coverage, be aware that you and your dependents will [or will not] [Medigap issuers must insert "will not "] be able to get this coverage back.

## When Will You Pay A Higher Premium (Penalty) To Join A Medicare Drug Plan?

You should also know that if you drop or lose your current coverage with [Insert Name of Entity] and don't join a Medicare drug plan within 63 continuous days after your current coverage ends, you may pay a higher premium (a penalty) to join a Medicare drug plan later.

If you go 63 continuous days or longer without creditable prescription drug coverage, your monthly premium may go up by at least 1% of the Medicare base beneficiary premium per month for every month that you did not have that coverage. For example, if you go nineteen months without creditable coverage, your premium may consistently be at least 19% higher than the Medicare base beneficiary premium. You may have to pay this higher premium (a penalty) as long as you have Medicare prescription drug coverage. In addition, you may have to wait until the following November to join.

## For More Information About This Notice Or Your Current Prescription Drug Coverage...

Contact the person listed below for further information [or call [Insert Alternative Contact] at [(XXX) XXX-XXXX]. **NOTE:** You'll get this notice each year. You will also get it before the next period you can join a Medicare drug plan, and if this coverage through [Insert Name of Entity] changes. You also may request a copy of this notice at any time.

CMS Form 10182-CC

Updated June 15, 2008

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For more information about Medicare prescription drug coverage:

- Visit [www.medicare.gov](http://www.medicare.gov)
- Call your State Health Insurance Assistance Program (see the inside back cover of your copy of the “Medicare & You” handbook for their telephone number) for personalized help
- Call 1-800-MEDICARE (1-800-633-4227). TTY users should call 1-877-486-2048.

If you have limited income and resources, extra help paying for Medicare prescription drug coverage is available. For information about this extra help, visit Social Security on the web at [www.socialsecurity.gov](http://www.socialsecurity.gov), or call them at 1-800-772-1213 (TTY 1-800-325-0778).

**Remember: Keep this Creditable Coverage notice. If you decide to join one of the Medicare drug plans, you may be required to provide a copy of this notice when you join to show whether or not you have maintained creditable coverage and, therefore, whether or not you are required to pay a higher premium (a penalty).**

Date:	[Insert <u>MM/DD/YY</u> ]
Name of Entity/Sender:	[Insert Name of Entity]
Contact--Position/Office:	[Insert Position/Office]
Address:	[Insert Street Address, City, State & Zip Code of Entity]
Phone Number:	[Insert Entity Phone Number]