

Medicare D Compliance Requirements for Everyone

Many employers incorrectly assume they are exempt from the Medicare D disclosure requirements due by November 15, 2005. Under the Medicare Prescription Drug Improvement and Modernization Act of 2003, plan sponsors whose plans provide prescription drug coverage to Medicare-eligible active employees and dependents, as well as Medicare-eligible retirees and dependents are required to disclose both to their Medicare-eligible plan members and to the Centers for Medicare and Medicaid Services (CMS) whether their prescription plans qualify as "creditable" or "non-creditable" coverage. The confusion lies in the false assumption that these requirements apply only to plans with employees who are 65 years of age or older. However, Medicare benefits may also apply to individuals under the age of 65 who are suffering from disability or End Stage Renal Disease (ESRN). Employers may be unaware of dependents who fall into either of these categories. For this reason, we encourage all employers to take the necessary steps to meet this compliance requirement regardless of the age of your covered employees.

In Layman's Terms

Medicare D is a new level of prescription benefits available to Medicare eligible individuals. These individuals may sign up for Medicare D coverage between November 15, 2005 and May 15, 2006. Coverage becomes effective on the later of January 1, 2006 or the first of the month after the date of enrollment. Individuals will be able to sign up or make plan changes during an open enrollment between November 15 and December 31 each year thereafter. Any individual who fails to sign up when they are first eligible for this coverage will pay a penalty in the form of an increased premium should they enroll late. This is designed to discourage people from delaying enrollment until they need the coverage. This penalty can be avoided if the Medicare eligible people can show a certificate of "creditable" coverage verifying they were covered under an employer sponsored plan with coverage at least as good as Medicare D benefits. It is an employer's responsibility to provide their employees and dependents with this information so the employees can decide what they would like to do.

"Creditable" Defined

A creditable prescription plan in 2006 is one that has been actuarially certified to offer benefits that are at least equivalent to the 2006 Medicare D benefits described below:

- Annual deductible of \$250
- Plan pays 75% of the next \$2,000 in expenses
- Plan pays nothing for expenses between \$2,250 and \$5,100
- Plan pays 95% of expenses in excess of \$5,100

While actuarial certification is the responsibility of the plan sponsor, we have found that all of the medical insurers used by our clients have available certification charts explaining which of their plans are creditable. It is our belief that all of our clients, other than those offering an HSA, have creditable prescription plans. Prescription benefits under an HSA are generally going to be non-creditable. If you have any concerns over your creditable rating, contact your carrier for clarification. Not all insurers have provided this information to all clients. In many cases, the insurer has elected to try to determine which employers have Medicare eligible employees. As explained above, Medicare eligibility is not just a function of age.

Disclosure to Medicare Eligible Employees and Dependents

Employers may use either a "targeted" or "blanket" approach to disclosure. Under the targeted approach, it is up to the employer to determine which covered employees and dependents are Medicare eligible and to then provide these individuals with their creditable or non-creditable certificate. Again, because of the difficulty in making this determination, we are encouraging our clients to utilize the blanket approach, where all covered employees are given the notice. Attached you will find sample creditable and non-creditable notices. Sample notices are also available at the CMS website at www.cms.hhs.gov/medicarerereform/CCguidances.asp. However, modification of these samples is likely to be needed to explain the blanket notification approach rather than targeted; that dropping prescription only coverage is not possible without losing medical as well; and other changes. Our samples incorporate what we believe to be the necessary changes. There is still some customization needed to make the notice distinct to your business. Please contact Fredonna Smith at fredonna.smith@conestoga.biz if you need an editable Word version of the document. HSA clients should use the non-creditable notice for their HSA participants and the creditable version for others, assuming you believe their coverage is in fact creditable. Employers should distribute certificates to all employees who are covered under the medical plan by November 14, 2005 and annually thereafter. A revised annual notice will be available next year prior to the November 15th enrollment period.

Disclosure to CMS

The regulations require all plan sponsors to disclose to CMS whether their prescription drug coverage is creditable or non-creditable. The disclosure must be made to CMS on an annual basis, or upon any change that affects whether the coverage is creditable. Rules for making disclosures to CMS are not yet available and will be provided in future guidance.

Coordination of Benefits Issues

Should you have an employee who elects Medicare D, coordination of benefits may become an issue. Primary and secondary payer rules will apply. Generally a group plan is primary when the employer has more than 20 employees and the Medicare coverage is age-based; when the employer has more than 100 employees and the Medicare coverage is disability-based; or for the first 30 days when the Medicare eligibility is ESRD-based. CMS will use a "data match" program to enforce these rules, but details are still forthcoming.

Additional Information

- Questions about Medicare D: www.epog@cms.gov
- Part D Creditable Coverage: www.cms.hhs.gov/medicarerereform/credcovrg.asp
- Part D Coordination of Benefits: www.cms.hhs.gov/pdps/cobguidancefinal.pdf

The Conestoga Group is an insurance, investment and employee benefits broker and consulting firm based in Frazer, PA. Conestoga specializes in providing financial products and services to small businesses and their owner/executives and other employees. Founder and President Brad Palmer is an Investment Advisory Representative of Commonwealth Financial Network-a registered investment advisor and member firm of the NASD/SIPC. Brad can be reached at 610-889-9500 extension 101 or at brad.palmer@conestoga.biz.

NOTICE

These legislative descriptions are our interpretations of information provided to us by various legal and other resources as of 11/4/05. It is possible the information was presented incorrectly or that we have misunderstood the presentation. The purpose of this communication is to provide you with basic summary information on the subject matter and assist you in determining whether or not you may need to seek further legal or other assistance. This communication should not be construed as legal, tax, investment, or other advice and does not take into consideration any specific factors that may be unique to the reader's situation.

Important Notice from «Employer» 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 «Employer» and new prescription drug coverage available January 1, 2006 for people with Medicare. It also tells you where to find more information to help you make decisions about your prescription drug coverage. If you or your dependents are not yet eligible for Medicare, you need to do nothing at this time.

1. Starting January 1, 2006, new Medicare prescription drug coverage will be available to everyone with Medicare.
2. «Employer» has determined that the prescription drug coverage offered by our insurer, «Insurance Company» is, on average for all plan participants, expected to pay out as much as the standard Medicare prescription drug coverage will pay.
3. Read this notice carefully – it explains the options you have under Medicare prescription drug coverage, and can help you decide whether or not you want to enroll.

You may have heard about Medicare's new prescription drug coverage, and wondered how it would affect you. «Employer» has determined your prescription drug coverage with our insurer, «Insurance Company» is on average for all plan participants, expected to pay out as much as the standard Medicare prescription drug coverage will pay.

Starting January 1, 2006, prescription drug coverage will be available to everyone with Medicare through Medicare prescription drug plans. All Medicare prescription drug plans will provide at least a standard level of coverage set by Medicare. Some plans might also offer more coverage for a higher monthly premium.

Because your existing coverage is on average at least as good as standard Medicare prescription drug coverage, you can keep this coverage and not pay extra if you later decide to enroll in Medicare coverage.

People with Medicare can enroll in a Medicare prescription drug plan from November 15, 2005 through May 15, 2006. However, because you have existing prescription drug coverage that, on average is as good as Medicare coverage, you can choose to join a Medicare prescription drug plan later. Each year after that, you will have the opportunity to enroll in a Medicare prescription drug plan between November 15th through December 31st.

If you do decide to enroll in a Medicare prescription drug plan and drop your «Employer» prescription drug coverage, be aware that you may not be able to get this coverage back.

If you drop your coverage with «Employer» and enroll in a Medicare prescription drug plan, you may not be able to get this coverage back later. You should compare your current coverage, including which drugs are covered, with the coverage and cost of the plans offering Medicare prescription drug coverage in your area.

Consult your insurance benefit booklet or summary plan description for an explanation of your current prescription drug coverage with «Employer» through «Insurance Company».

Your current coverage also pays for other health expenses, in addition to prescription drugs. You will still be eligible to receive all of your current health and prescription drug benefits if you choose to enroll in a Medicare prescription drug plan. Coordination of Benefits provisions may apply. You will not be able to waive just your current prescription drug coverage with «Employer» through «Insurance Company».

You should also know that if you drop or lose your coverage with «Employer» and don't enroll in Medicare prescription drug coverage after your current coverage ends, you may pay more to enroll in Medicare prescription drug coverage later. If after May 15, 2006, you go 63 days or longer without prescription drug coverage that's at least as good as Medicare's prescription drug coverage, your monthly premium will go up at least 1% per month for every month after May 15, 2006 that you did not have that coverage. For example, if you go nineteen months without coverage, your premium will always be at least 19% higher than what most other people pay. You'll have to pay this higher premium as long as you have Medicare coverage. In addition, you may have to wait until next November to enroll.

For more information about this notice or your current prescription drug coverage...

Contact «First_Name» «Last_Name» at «Employer» for further information at «Business_Phone». NOTE: You may receive this notice at other times in the future such as before the next period you can enroll in Medicare prescription drug coverage, and if this coverage changes. You also may request a copy.

For more information about your options under Medicare prescription drug coverage ...

More detailed information about Medicare plans that offer prescription drug coverage is available in the "Medicare & You 2006" handbook from the Center for Medicare and Medicaid Services (CMS). If you are already enrolled, you will get a copy of the handbook in the mail from Medicare. You may also be contacted directly by Medicare prescription drug plans. You can also get more information about Medicare prescription drug plans from these places:

- Visit www.medicare.gov for personalized help,
- Call your State Health Insurance Assistance Program (see your copy of Medicare & You handbook for their telephone number)
- Call 1-800-MEDICARE (1-800-633-4227). TTY users should call 1-877-486-2048.

For people with limited income and resources, extra help paying for a Medicare prescription drug plan is available. Information about this extra help is available from the Social Security Administration (SSA). For more information about this extra help, visit SSA online at www.socialsecurity.gov or call them at 1-800-772-1213 (TTY 1-800-325-0778).

Remember: Keep this notice. If you enroll in one of the new plans approved by Medicare which offer prescription drug coverage after May 15, 2006, you may need to give a copy of this notice when you join to show that you are not required to pay a higher premium amount.

Date:	[Insert MM/DD/YY]
Name of Entity/Sender:	«Employer»
Contact – Position/Office:	«First_Name» «Last_Name», «Job_Title»
Address:	«Business_Address»
Phone Number	«Business_Phone»

Important Notice from «Employer» 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 «Employer» and new prescription drug coverage available soon for people with Medicare. It also tells you where to find more information to help you make decisions about your prescription drug coverage. If you or your dependents are not yet eligible for Medicare, you need to do nothing at this time.

1. Starting January 1, 2006, new Medicare prescription drug coverage will be available to everyone with Medicare.
2. «Employer» has determined that the prescription drug coverage offered in the plan with our insurer «Insurance Company» is, on average for all plan participants, NOT expected to pay out as much as the standard Medicare prescription drug coverage will pay. **This is important, because for most people, enrolling in Medicare prescription drug coverage before May 15, 2006 means you will get more assistance with drug costs.**
3. 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 enroll. Read this notice carefully – it explains your options.

You may have heard about Medicare's new prescription drug coverage, and wondered how it would affect you. Starting January 1, 2006, prescription drug coverage will be available to everyone with Medicare through Medicare prescription drug plans. All Medicare prescription drug coverage will provide at least a standard level of coverage set by Medicare. Some plans might also offer more coverage for a higher monthly premium.

You might want to consider enrolling in Medicare prescription drug coverage.

Because the coverage you have with our insurer «Insurance Company» is on average for all plan participants NOT expected to pay out as much as the standard Medicare prescription drug coverage will pay, you might want to consider enrolling in a Medicare prescription drug plan. You can first join between November 15, 2005 and May 15, 2006. **This is important, because if you do not get Medicare prescription drug coverage (or equivalent coverage) before May 15, 2006, you may have to pay a higher premium if you join later. You will pay that higher premium as long as you have Medicare prescription drug coverage.**

If you don't enroll in Medicare prescription drug coverage by May 15, 2006 and change your mind later, you may pay more.

If you wait until after May 15, 2006, to enroll, your monthly premium for a Medicare prescription drug plan could be much higher than it would have been if you had enrolled by May 15. If, after May 15, 2006, you go 63 days or longer without prescription drug coverage that is at least as good as Medicare's prescription drug coverage, your premium will go up at least 1% per month for every month after May 15, 2006 that you did not have that coverage. You will have to pay this higher premium as long as you have Medicare prescription drug coverage. For example, if you go nineteen months without coverage, your premium will always be at least 19% higher than what most other people pay.

If you don't enroll in a Medicare prescription drug plan by May 15, 2006, you may also have to wait to enroll

Generally, after May 15, 2006, you can only join a Medicare prescription drug plan between November 15 and December 31 of any year. This may mean the number of months you have to wait for coverage will be longer, which could make your premium higher.

Consult your insurance benefit booklet or summary plan description for an explanation of your current prescription drug coverage with «Employer» through «Insurance Company».

Your current coverage also pays for other health expenses, in addition to prescription drugs. You will still be eligible to receive all of your current health and prescription drug benefits if you choose to enroll in a Medicare prescription drug plan. Coordination of Benefits provisions may apply. You will not be able to waive just your current prescription drug coverage with «Employer» through «Insurance Company».

You need to make a decision. For more information about this notice or your current prescription drug coverage...

When you make your decision, you should also compare your current coverage, including which drugs are covered, with the coverage and cost of the plans offering Medicare prescription drug coverage in your area.

Contact «First Name» «Last Name» at our office for further information at «Business Phone». NOTE: You may receive this notice at other times in the future such before the next period you can enroll in Medicare prescription drug coverage, and if this coverage changes. You also may request a copy.

For more information about your options under Medicare prescription drug coverage...

More detailed information about Medicare plans that offer prescription drug coverage is available in the "Medicare & You 2006" handbook from the Center for Medicare and Medicaid Services (CMS). If you are already enrolled, you will get a copy of the handbook in the mail from Medicare. You may also be contacted directly by Medicare prescription drug plans. You can also get more information about Medicare prescription drug plans from these places:

- Visit www.medicare.gov for personalized help,
- Call your State Health Insurance Assistance Program (see your copy of Medicare & You handbook for their telephone number)
- Call 1-800-MEDICARE (1-800-633-4227). TTY users should call 1-877-486-2048.

For people with limited income and resources, extra help paying for a Medicare prescription drug plan is available. Information about this extra help is available from the Social Security Administration (SSA). For more information about this extra help, visit SSA online at www.socialsecurity.gov or call them at 1-800-772-1213 (TTY 1-800-325-0778).

Date:	[Insert MM/DD/YY]
Name of Entity/Sender:	«Employer»
Contact – Position/Office:	«First Name» «Last Name», «Job Title»
Address:	«Business Address»
Phone Number	«Business Phone»