

COMPLIANCE ALERT

Important Changes to Medicare Part D Rules Coming in 2025

July 30, 2024

Action Required:

- Plan sponsors should work with insurance carriers and other plan vendors to determine the plan's creditable status for 2025 and provide the Medicare Part D Notice well in advance of the October 15 open enrollment period for Medicare Part D for qualifying employees.

Beginning on January 1, 2025, rule changes introduced under [The Inflation Reduction Act of 2022](#) ("IRA") will affect the way employer-sponsored plans must comply with the Medicare Part D Program's "creditable coverage" rules and related notice requirements. These rule changes (referred to as the "Part D Redesign") may create confusion for Medicare-eligible employees and possible headaches for benefit managers and administrators. Employers and plan sponsors should take action to ensure that these changes are properly communicated to employees and plan participants.

What Should Employers and Plan Sponsors Do Next?

Employers and plan sponsors should work with their insurance carriers, TPAs and other plan vendors early to determine the plan's creditable status for 2025 and provide the Medicare Part D Notice informing employees of the plan's creditable status as far in advance as possible of the October 15 Medicare Part D open enrollment period. Waiting until a point in time that is too close to the October 15 start of the Part D open enrollment period may create significant stress and anxiety for employees who may be losing creditable coverage status on their plans. ■

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How did the IRA Change the Part D Creditable Coverage Rules for 2025?

With the goal of lowering prescription drug costs for Medicare beneficiaries, the IRA’s Part D Redesign (i) lowered the 2025 maximum out-of-pocket amount to \$2,000 (a \$6,000 reduction from 2024’s MOOP), and (ii) enhanced the Medicare Part D program’s benefits in several ways, including eliminating the Medicare Part D prescription drug “donut hole.” Given that the 2025 maximum out-of-pocket amount for creditable coverage has now been reduced to an amount that is lower than the 2025 minimum annual deductible for “family” tier coverage on HSA-compatible high deductible health plans (HDHPs), this will likely result in many HDHPs and other high deductible plans losing creditable coverage status in 2025.

Additionally, on April 1, 2024, the Centers for Medicare and Medicaid Services (CMS) published their [Final CY 2025 Part D Redesign Program Instructions](#) (the “Instructions”). The Instructions provide clear guidance for employers and plan sponsors on how to comply with the new Part D Redesign rules beginning in 2025 and for subsequent years. Notably, among other rule changes, the Instructions finalized the decision by CMS to, beginning in calendar year 2026, eliminate the “simplified determination” method (discussed below) for determining creditable coverage status.

What is Creditable Coverage and Why Does it Matter to Employers and Employees?

As background, an individual becomes Medicare eligible (including for Part D) when they reach the age of 65 or if they have certain severe medical conditions that may qualify them for Social Security Disability Insurance (SSDI). Such Part D-eligible individuals, who delay enrollment when first eligible, are required (in order to avoid a late enrollment penalty) to have “creditable coverage,” which is coverage that is expected to have an actuarial value that is equal to or greater than the actuarial value of standard Medicare Part D prescription drug coverage.

Creditable coverage can be offered from different sources (that is, outside of Medicare), such as an employer-sponsored group health plan or retiree plan (or a plan option on such plan). If the employer offers creditable coverage, Part D-eligible individuals can enroll in their employer’s plan to satisfy the Part D requirements. If the employer does not offer creditable coverage on any plan or plan option, Part D-eligible employees will need to obtain alternative coverage (for example, by enrolling in a Medicare Part D plan). If such individuals fail to maintain creditable coverage for at least 63 days after their initial enrollment period for Medicare prescription drug coverage (which begins on October 15 each year), they may then be assessed a late enrollment penalty.

How is Creditable Coverage Determined?

There are two methods that group health plans can use to determine creditable coverage status: (i) the “simplified determination” method, and (ii) the “actuarial value” determination method.

The first option, the simplified determination method, provides employers and plan sponsors with a more straightforward approach for determining creditable status that does not require any actuarial testing. This option’s requirements will depend on whether the prescription drug plan is integrated with other benefits (e.g., medical) or whether it is offered on a standalone basis. An integrated plan must (i) provide coverage for brand-name and generic prescriptions; (ii) provide reasonable access to retail providers; (iii) be designed to pay on average at least 60% of participants’ prescription drug expenses; (iv) have no more than a \$250 deductible per year; (v) have no annual benefit maximum or a maximum annual benefit payable by the plan of at least \$25,000; and (vi) have a lifetime combined benefit maximum limit of at least \$1 million.

While CMS initially proposed completely eliminating the simplified determination method for 2025, noting the substantial disruption for both employers and employees that would likely result CMS decided to keep this method as an available option for 2025.

The latter option, the actuarial determination method, utilizes actual claims experience and demographic data, that is, it requires

actuarial testing, and is typically more costly and time consuming.

How Does Creditable Coverage Notification and Reporting Work?

Employers are required to notify Medicare-eligible policyholders as to whether their prescription drug coverage is creditable coverage:

- i) annually, prior to October 15 each year;
- ii) prior to the effective date of coverage for Part D-eligible employees enrolling in the employer's group health plan;
- iii) upon termination of the prescription drug plan;
- iv) if the creditable coverage status changes; and
- v) upon request.

Neither the Instructions nor other applicable rules specify the timeframe for when the creditable coverage notices must be distributed if the creditable coverage status changes. However, because a change in the creditable status of the plan's prescription drug coverage may impact plan participants and their decision about Part D enrollment, it is recommended that the notice be distributed within 30 days of the change, if not earlier. Given that employers will not always know whether an individual is Medicare eligible, it is recommended that they distribute the notice to all employees.

In addition to distributing the creditable coverage notice, employers are required to report to CMS annually. This disclosure must be filed electronically with CMS (i) within 60 days of the start of the plan year, (ii) within 30 days after termination of the prescription drug plan, and (iii) within 30 days of any change of the creditable coverage status.

What are the Penalties for Noncompliance?

While there are no enforcement penalties if employers fail to comply with the Medicare Part D notice and filing requirements, an employer could potentially violate ERISA's fiduciary duties if it misrepresents to participants the plan's creditable status or fails to properly determine whether coverage is creditable. Failure to comply could also result in HR and employee relations issues.

More importantly, if an employer fails to provide the correct notice and notify employees of their creditability status, this could cause the employee to be subject to the late enrollment penalty (which is 1% of the national base beneficiary premium for each full month that the employee didn't have creditable coverage).

What Happens if Coverage Becomes Non-creditable in 2025? How Should Employers and Plan Sponsors Prepare for these Changes?

The impact of the rule changes above is that many HSA-compatible high deductible health plans (HDHPs) and other high deductible plans will become non-creditable in 2025. Accordingly, employees this year are likely to be faced with non-creditable plan options at open enrollment for 2025. Employers should review their plan options going into 2025 and determine how to proceed based on the plan options available. Below are recommendations for employers in each of these two scenarios:

Employer Offers Other Creditable Coverage Option(s): Most employers offer multiple medical plan options, and in most cases, there will be at least one non-HDHP plan option that is likely to retain its creditable status in 2025. In such cases, employers should clearly communicate which option(s) are still creditable in 2025.

Employer Does Not Offer Other Creditable Coverage Option(s): Where the employer no longer sponsors any creditable coverage option, and the employee does not have access to a creditable plan option through a spouse or domestic partner, employers should act more quickly to provide appropriate and clear notification of this since employees will need to act quickly to enroll in Part D to avoid a potential creditable coverage gap.

How Should Employers and Plan Sponsors Prepare for the Upcoming October 15 Medicare Part D Notice Deadline?

Employers should make a good faith effort to determine the plan's creditable status and provide the Notice as soon as possible in 2024. Waiting until a point in time that is too close to the October 15 start of the Part D open enrollment period will be problematic because it will create stress and anxiety for Medicare-eligible employees who will be losing creditable coverage. Such employees may also have difficulty completing their enrollment on the Medicare enrollment system within such a short period of time.

Additionally, it should be noted that in many cases employees making the move to Part D will be coming from a HDHP plan (or plan option) that lost creditable coverage status. Unfortunately, for employees who enroll in Part D six months or later after becoming eligible, they will be subject to a six-month retroactive enrollment that will result in such employees losing HSA eligibility for the six-

month retroactive period when they were enrolled in the HDHP and Medicare eligible. This may create the need for employees to work directly with their HSA financial institution or custodian to process a corrective distribution.

What Should Employers and Plan Sponsors Do Next?

As noted above, time is of the essence. Employers and plan sponsors should work with their insurance carriers, TPAs and other plan vendors early to determine the plan's creditable status for 2025 and provide the Medicare Part D Notice informing employees of the plan's creditable status as far in advance as possible of the October 15 Medicare Part D open enrollment period. Waiting until a point in time that is too close to the October 15 start of the Part D open enrollment period may create significant stress and anxiety for employees who may be losing creditable coverage status on their plans. ■

**If you have any additional questions,
please call your Corporate Synergies
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