GBS Health & Benefits Compliance

Medicare Part D Creditable Coverage

Employers that sponsor a group health plan with prescription drug coverage are required to determine whether that prescription drug coverage is creditable or non-creditable. A plan's prescription drug coverage is considered creditable if its actuarial value equals or exceeds the actuarial value of standard Medicare Part D prescription drug coverage. Employers have no requirement to offer creditable coverage and may offer coverage that is non-creditable, but they do have certain disclosure requirements that must be followed. Compliance with these disclosure requirements are also an important step to help Medicare-eligible employees avoid Medicare Part D enrollment penalties.

This summary first addresses the timing and general rules surrounding the Medicare Part D creditable coverage disclosure requirements. Second, the summary addresses the impact of non-creditable coverage on Medicare-eligible employees. Third, the summary addresses important recent changes to the process and methodology of determining whether prescription drug coverage is creditable or non-creditable. The last section outlines what this means for employers and next steps.

Creditable Coverage Disclosure Requirements

For each offered group health plan that includes prescription drug coverage, an employer has two annual disclosure tasks: 1) online disclosure to CMS, and 2) notice to Medicare-eligible individuals.

1) Employers must disclose to CMS whether the plan is creditable or non-creditable.
   - This is completed online within:
     - 60 days after the beginning of each plan year
     - 30 days after any change in creditable status of the prescription drug plan
   - For additional information and the online submission form, see the Disclosure to CMS Form page at https://www.cms.gov/medicare/employers-plan-sponsors/creditable-coverage/disclosure-form.

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2) Employers must provide the ***Medicare Part D Notice of Creditable (or Non-Creditable) Coverage*** to all Medicare-eligible individuals who are enrolled or seeking to enroll in the employer's group health plan.

   › Most employers distribute this notice to ALL eligible employees at open enrollment and with enrollment materials for newly hired and/or newly eligible employees.

      • This is because it can be difficult to identify which employees are Medicare eligible, especially when an individual's eligibility for Medicare is based on a factor other than age, such as disability or end-stage renal disease.

   › In addition to providing notice at the above-mentioned times, should provide the notice again to employees sometime between October 1 and October 14.

      • Medicare open enrollment typically runs each year between October 15 and December 7, so the timing of this notice (immediately prior to this event) can be particularly helpful to Medicare-eligible employees.

   › Additional important information

      • Employers are not required to offer prescription drug coverage that is creditable. Employers can offer either (or both) creditable and non-creditable coverage.

         ○ If an employer offers both, it must provide both notices and clearly indicate which plans are creditable and which plans are non-creditable

         ○ This notice is typically based on the current group health plan if provided just prior to Medicare open enrollment and is typically based on the upcoming group health plan if provided at employer's open enrollment. To avoid confusion, and depending on the month the plan year starts, an employer may consider providing both current plan year and upcoming plan year notices with clear identification of the plan year for each.

      • If a creditable plan changes to a non-creditable plan mid-year due to design changes or if creditable status occurs at renewal, an employer must notify Medicare-eligible employees within 30 days.

         ○ Notice of this plan change triggers a Medicare Special Enrollment Period that gives individuals 60 days to enroll in a Medicare Part D plan (or Medicare Advantage Plan with prescription drug coverage).

Impact of Non-Creditable Coverage on Medicare Eligible Employees

After an individual becomes eligible for Medicare, they are not required to enroll in Medicare, but they are required to enroll in some form of creditable prescription drug coverage in order to avoid potentially significant Medicare Part D late enrollment penalties. An individual could enroll in just a Medicare Part D plan and not Medicare A, B or C to fulfill this requirement. Alternatively, an individual could enroll in an employer's prescription drug plan that is creditable, or in another plan offered in the private market.

If after becoming eligible for Medicare, a Medicare-eligible individual is not enrolled in creditable prescription drug coverage for more than 62 days, they will be subject to a lifetime late enrollment penalty. This penalty is added to their Medicare Part D premium (when they later enroll) and increases the longer they go without creditable coverage. The penalty can result in higher out-of-pocket costs for the individual over their lifetime.

Intent: The intent of these rules is to encourage individuals to enroll in prescription drug coverage when they first become eligible. This helps prevent adverse selection, where only individuals who need significant medication would enroll in Medicare, which could drive up costs for everyone.

Penalties: Penalties (higher monthly costs) are based on an extra 1% for each month (that's 12% a year) and also, depending on income, a higher premium. For more information see https://www.medicare.gov/basics/costs/medicare-costs/avoid-penalties

If a Medicare-eligible individual experiences either: 1) a loss of creditable coverage, or 2) notification that prescription coverage in which they are enrolled is no longer creditable, it triggers a 60-day Medicare Special Enrollment Period. To avoid late enrollment penalties, an individual should (within these 60 days) enroll in a Medicare Part D prescription or some other creditable prescription drug plan. This is the reason it is important for employers to notify employees whether its prescription drug coverage is creditable or non-creditable, and the reason it is important for Medicare-eligible individuals to pay attention to this notice.

Recent Changes to the Process of Determining Whether Coverage is Creditable or Non-Creditable

Employer compliance with Medicare Part D Creditable Coverage rules is garnering more attention recently due a provision in the 2022 ***Inflation Reduction Act (IRA)*** that impacts the richness of Medicare Part D plans, and in turn, impacts whether employer sponsored prescription drug plans meet creditability. The associated IRA regulations also impact the methodology for determining creditability starting January 2025.

Before the Inflation Reduction Act (IRA)

Under existing CMS guidance that applies through 2024, there are specific allowed methods to determine whether prescription drug coverage is creditable: 1) the simplified method, and 2) actuarial determinations. For employers offering multiple plan options (for example: a PPO, an HDHP, and/or an HMO), the creditable coverage status must be determined separately for each plan option.

The **actuarial determinations** are generally implemented by an actuary, usually at an extra, sometimes significant, cost to employers. Note the actuarial method is required for an employer sponsored retiree plan that participates in the Retiree Drug Subsidy (RDS).

The **simplified method** is a less complex approach and is intended to allow determination without a full actuarial analysis. Most employers use this method.

- In past, employers that sponsored an ***insured group health plan*** could typically rely on its insurer to apply an approved method and determine whether each offered plan is creditable or non-creditable.
  - For example, as a first step, an employer would ask their carrier whether the plan's coverage is creditable, and carriers would usually provide these determinations.
  - An employer would then ensure that it:
    - Disclosed each plan's status online to CMS, and
    - Provided notice of each plan's status to all Medicare-eligible employees
- In past, employers that sponsored a ***self/level funded plan*** would generally need to make the creditable or non-creditable determination itself by using either of the approved methods. Most employers in this situation took advantage of the simplified method.
  - For example, as a first step, an employer would ask its TPA/PBM whether the prescription drug coverage is creditable.
  - If the TPA/PBM did not provide that confirmation, an employer would then typically make the determination itself by applying the simplified method.
    - Note that actual application of the simplified method varied. Although this method is simplified compared to an actuarial determination, it generally is not as simple a process as the name suggests.
      - This is because some of the design requirements require additional criteria and calculations. As a result, rather than apply these calculations, some employers would compare their plan to other otherwise identical insured plans that were already determined to be creditable or non-creditable.
    - Instructions for the simplified method and the factors that are considered under this method are found on the CMS website.

Vendors have emerged that will analyze, for a relatively low fee, each prescription drug plan using its own a calculator based on the "simplified method". *For more details on this option, please contact your GBS team.*

Alternatively, some "simplified method" calculators created by insurers exist online and may be used by employers that wish to have a self-service option.

Changes due to the Inflation Reduction Act (IRA)

The IRA made several changes that impact the structure of the standard Medicare Part D drug benefit. The changes, including (but not limited to) the federal government's new ability to negotiate drug pricing for Medicare Part D, **increase overall the richness (or the actuarial value) of Medicare Part D plans**. For example, the changes provide a cap of $2,000.00 on out-of-pocket spending, beginning in 2025 (down from $8,000.00 in 2024).

These upgrades to Medicare Part D prescription drug plans, in turn, impact the creditable coverage status of prescription drug plans offered with an employer's group health plan. That means, beginning in 2025, some (but not all) prescription drug plans sponsored by employers that in past were creditable plans will now be non-creditable plans. This may come as a surprise to certain employers who are used to their plans meeting creditable status each year. However, offering some plans that are non-creditable will be the new normal, particularly because High Deductible Health Plans (HDHPs) will now likely be non-creditable.

After the IRA passed, CMS issued **draft** regulations and instructions applicable to the creditability provisions. More recently, CMS issued **final** regulations and instructions, entitled *Calendar Year 2025 Part D Redesign Program Instructions*.

- Draft Instructions
  - The **draft** instructions explain that the previously available simplified method to determine whether a plan is creditable or non-creditable will no longer be available. This leaves only the more complex and costly actuarial method to assess the actuarial value.
- Final Instructions
  - In the **final** instructions, CMS acknowledged receiving numerous comments from stake holders expressing concern that, because the Part D benefit changes in the IRA will increase the actuarial value of the Part D benefit, this in turn means some employer sponsored prescription drug coverage that has been creditable prior to 2025 may no longer meet the requirements.
    - For 2025 plans, CMS pivoted from the draft instructions and clarified that it will continue to permit the use of the simplified method to determine creditability.
    - For 2026 and beyond, CMS will reevaluate the continued use of the existing creditable coverage simplified determination methodology or establish a revised methodology.

What this Means for Employers

Employers are not required to provide a plan that offers creditable coverage. If a plan is changing from creditable to non-creditable status, employers need to notify both CMS and employees. Employers must inform CMS annually of the creditable status of their plans within 60 days after the beginning of the plan year. Employers must also report to CMS and to employees within 30 days if a plan's status changes. To assist employees and help them avoid late enrollment penalties, employers should also disclose the plan's status to employees just prior to Medicare open enrollment in October.

Medicare Part D plan designs are richer starting 2025. This changes the creditability threshold for employer sponsored prescription drug plans and will cause some plans to lose creditability status, starting with plans that begin on or after January 1, 2025. Note that 2024 non-calendar year plans that overlap with some 2025 months should not be affected because the determination is based on the actuarial value of defined standard prescription drug coverage under Part D *in effect at the start of such plan year*. See https://www.ecfr.gov/current/title-42/chapter-IV/subchapter-B/part-423/subpart-B/section-423.56

To start the process, employers should reach out to their carrier/TPA/PBM to learn if it will confirm (for each employer's plan) the creditability status. If this service is not offered, the employer will need to work with an actuary or with a simplified method calculator. After receiving or determining creditability status, it would next make the required disclosures.

- For example, if an employer is preparing for its **January 1, 2025 plan year**, and if a plan's status will be changing from creditable to non-creditable starting with this new plan year, the employer must disclose the plan's new status within 30 days (by January 31, 2025).
- Instead of providing a new disclosure by January 31, 2025 as required, which is just a couple of months after the annual open enrollment period where several notices are already provided, an employer could consider providing the 2025 notice in the 2025 plan year open enrollment materials during fall of 2024 as well as the additional helpful communications. For example, notice could include:
  - The 2024 plan year Medicare Part D Notice
  - The 2025 plan year Medicare Part D Notice
  - An additional communication explaining the notices spanning both plan years, the impact of the plan's loss of creditable status, and information to help Medicare-eligible (and soon to be eligible) employees understand the importance of making an educated and timely decision about whether to enroll in Medicare Part D during the Medicare special enrollment period (due to the change in creditable status).
    - With this communication, keep in mind the Medicare Secondary Payer (MSP) rules which prohibit employers from suggesting or encouraging employees to drop employer coverage in favor of enrolling in Medicare.

Next Steps

1) First, employers should gain a foundational understanding of timing and the general disclosure and notice obligations. These rules have not changed.
2) Second, employers should understand the appropriate process to determine whether its prescription drug coverage is creditable or non-creditable. In other words, as in past years, employers still need to know whether each of its prescription drug coverage is creditable or non-creditable.
3) Third, employers must understand the impact the Inflation Reduction Act (IRA) has on Medicare Part D (prescription drug plans) and in turn, the impact on employer sponsored prescription drug plans. In sum, and starting with 2025:

- Medicare Part D plans are now richer plans.
  - To be a creditable prescription drug plan, an employer plan must be at least as rich as Medicare Part D prescription drug plan.
  - Because Medicare Part D is now richer, some plans that in past were creditable will now not meet the threshold and will be non-creditable.
  - It will be common for an employer to offer both creditable and non-credible plans.
- Creditability Determination
  - If an employer does not have confirmation from its carrier/TPA/PBM that a plan is creditable or non-creditable, it must ensure that determination is completed by using an actuarial service or using the simplified method. Guessing is not an option.
    - Remember, the simplified method is no longer an option according to proposed regulations. However, based on final regulations, for the 2025 year at least, the current simplified method will be allowed.
      - For a relatively low per plan fee, an employer can engage a vendor to analyze each plan using the vendor's simplified method calculator
      - Some "simplified method" calculators created by insurers exist online and may be used by employers that wish to have a self-service option
    - In some cases, an employer may need to start using actuarial services to confirm creditability. If a carrier/TPA/PBM offers a special negotiated rate with a vendor for these services, it would be valuable to consider this option.
- Creditability Disclosure
  - Employers must annually provide notice of each offered prescription drug plan to CMS through the online portal.
  - Employers must annually provide notice of each prescription drug plan to Medicare-eligible employees. For convenience, this is usually given to all employees.
  - If a plan's status is changing from creditable to non-creditable based on the new Part D benefit design requirements, employers should:
    - Provide the notice of non-creditable coverage within 30 days of change.
    - Consider creating/providing a special employee communication explaining the change and how it impacts Medicare-eligible employees
      - For this communication, keep in mind the Medicare Secondary Payer (MSP) rules which prohibit employers from suggesting or encouraging employees to drop employer coverage in favor o enrolling in Medicare
    - If this notice was not provided close to Medicare open enrollment (typically starts October 15), provide the notice of creditability status again sometime between October 1 and October 14.

- Remember:
  - Medicare eligible employees have a 60-day Special Enrollment period starting with that latter of: (1) a loss of creditable coverage or (2) notification that coverage is no longer creditable.
  - Medicare eligible employees should determine if they should enroll in Part D (or some other prescription drug coverage that is creditable) to avoid a future Medicare late enrollment penalty.

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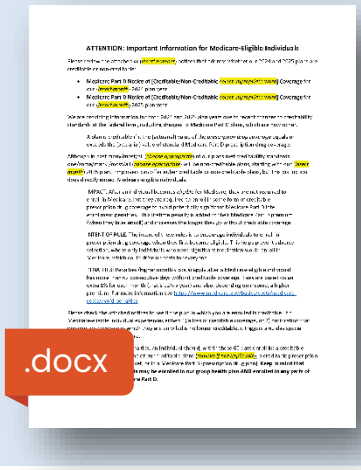
Employee Communication Template

GBS has prepared an editable template to help you communicate important changes regarding creditable coverage to your employees.

Click the link below to download and personalize the document for your company's needs.

Employee Communication Template >



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