



Medicare Part D Disclosure Reminder

January 2022

This Aon bulletin is a reminder of an **annual** disclosure requirement applicable to most employers that provide prescription drug coverage to individuals who are Medicare Part D-eligible. This disclosure is not new and should have occurred each year since 2006. The disclosure applies regardless of whether an employer provides retiree prescription drug benefits.

For 2022 calendar year plans, the disclosure must occur no later than **March 1, 2022**. The annual disclosure must occur for any employer that provides prescription drug coverage to anyone who is Medicare Part D-eligible.

An employer that has been approved for the retiree drug subsidy (RDS) is exempt from filing the notice with the Centers for Medicare and Medicaid Services (CMS) with respect to those qualified covered retirees for whom the employer is claiming the RDS. For this group, the employer's RDS application serves as the disclosure to CMS. As noted below, even if the employer is approved for RDS for some groups, the notice will be required for all groups other than those for which the employer is claiming the RDS. For example, an employer that applies for the RDS must still disclose this information for any active employee who is Medicare Part D-eligible.

How to Complete the Notification

An employer must provide the disclosure notice through the **Disclosure to CMS Form** on the CMS Creditable Coverage Disclosure Web page at: <http://www.cms.hhs.gov/creditablecoverage>.

CMS clarified that it is critical for an employer to maintain confirmation of this submission.

Who Must Complete the Notification

Generally, employers that sponsor drug coverage must submit the notification for each of their drug benefit options. The submission can be made by anyone who is employed by the employer or authorized by the employer to complete the disclosure. Therefore, it is appropriate for third parties to complete the disclosure, at an employer's request.

The notice does not apply to benefit options that are Medicare Part D plans, such as PDPs, MA-PDs, and EGWPs. In addition, as noted above, an employer that has been approved for the RDS is exempt from notification for those qualifying covered retirees for whom the employer is claiming the RDS.

Accordingly, employers generally will need to complete this submission for their:

- Active drug plans that cover Medicare Part D-eligible participants (e.g., end stage renal disease, disabled, or age 65 and over);
- Retiree drug plans that are not creditable; or

- Retiree drug plans that are creditable but for which the employer did not apply for the RDS (e.g., because the cost of applying for the RDS outweighed the RDS itself).

Special Note on Health Reimbursement Arrangements (HRAs) — If an HRA is offered to retirees as part of a "stand-alone retiree medical plan" (i.e., under the exemption for "legal" group health plans with fewer than two participants who are current employees on the first day of the plan year), an HRA may be provided to retirees without being integrated with a "traditional" group health plan. In this case, an employer-sponsored stand-alone, retiree-only HRA may be used to purchase coverage on the individual market or through a private exchange, where the individual market coverage or private exchange is not sponsored by the employer (and presumably is not part of any welfare plan for purposes of ERISA). A stand-alone HRA is a group health plan and must be reviewed to determine its "creditable" status; this information must be submitted to CMS as part of the employer's disclosure. If an HRA is integrated with another plan that is sponsored by the employer, different factors apply when determining if the coverage is creditable. See attached guidance on creditable coverage and HRAs: <https://www.cms.gov/Medicare/Prescription-Drug-Coverage/EmployerRetireeDrugSubsid/Downloads/AccountBasedPlansGuidanceRev1.pdf>.

As of 2020, the government issued final regulations that allows for two new categories of HRAs: an integrated coverage HRA and an excepted benefit HRA. If these types of HRAs cover individuals who are Medicare Part D eligible and may reimburse prescription drug benefits, they also should be considered for purposes of the Medicare Part D notice, as well as the disclosure to CMS.

Deadline for Completing the Notification

For 2022 **calendar year** plan years, the notice must be provided to CMS by March 1, 2022. Ongoing, the disclosure must be made to CMS on an annual basis, and upon any change that affects the creditable status of the employer's drug benefit option. Specifically, disclosure must be made at the following times:

- Within 60 days after the beginning date of the plan year;
- Within 30 days after the termination of the prescription drug plan; and
- Within 30 days after any change in the creditable status of the prescription drug plan.

Content of the Disclosure Notification

For employers (entities) with subsidiaries, etc., one disclosure form can be submitted to CMS if the plan year is the same for all subsidiaries/divisions. The disclosure form lists the information required to be submitted, and the CMS instructions provide additional definitions for this information. The guidance can be found at: <http://www.cms.hhs.gov/creditablecoverage>.

The actual updated disclosure form can be found at: <https://www.cms.gov/Medicare/Prescription-Drug-Coverage/CreditableCoverage/CCDisclosureForm.html>.

The information requested generally is self-explanatory except it does request the number of individuals expected to be covered under the "Retiree Group Health Plan." CMS confirmed that



employers should provide only "retiree" count information in response to this question even if the employer sponsors a single, "legal" employer group health plan for actives and retirees. For example, if the employer sponsors a plan with 1,200 Medicare Part D eligible participants in creditable options (200 actives and 1,000 retirees), then, the answers applicable to creditable coverage would be:

- Total number of Medicare Part D-Eligible individuals expected to be covered under these option(s) as of the plan year beginning date stated above: 1,200.
- Estimated number of those Medicare Part D-Eligible individuals stated above expected to be covered through an employer/union retiree group health plan: 1,000.

In addition, CMS clarified that an employer should not include individuals who become Medicare Part D-eligible during the year, because CMS wants data as of the **beginning** of the plan year.

More Information

For more information on Medicare Part D disclosure, please contact your Aon Consultant.



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