



Quarterly

Your Keys to *Compliance*



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Medicare Part D Creates Compliance Obligation for Employers

The Medicare Prescription Drug Improvement and Modernization Act of 2003 was signed into law on December 8, 2003. Among other things, this law created a new prescription drug benefit for Medicare beneficiaries (Part D). This prescription drug coverage will go into effect on January 1, 2006.

Medicare beneficiaries may enroll in Part D during an initial enrollment period from November 15, 2005 through May 15, 2006. Additionally, there will be an annual open enrollment period from November 15th through December 31st in future years.

If a Medicare beneficiary does not enroll during the initial enrollment period and they later decide to enroll, they may be assessed a 1% premium penalty for each month that has passed since their initial enrollment opportunity. This increased premium will be effective as long as the beneficiary is covered by Part D.

The government however does not want to encourage Medicare beneficiaries who are already enrolled in equivalent prescription drug coverage under private health plans to drop their existing coverage in order to enroll in Part D. Accordingly, Medicare Beneficiaries must be informed as to whether or not their current prescription drug coverage is actuarially equivalent to Medicare Part D.

Medicare beneficiaries who are covered by a prescription drug plan which is actuarially equivalent to Part D will not be assessed a premium penalty if they later enroll in Part D so long as they do not have a gap in coverage of 63 days or longer between the

time they lose such coverage and enroll in Part D. Medicare beneficiaries are given an opportunity to special enroll in Part D in the event that they lose their existing actuarially equivalent prescription drug coverage.

Employers are affected by this law because, as health plan sponsors, they are required to notify Medicare beneficiaries who are covered by their plan as to whether or not the prescription drug coverage offered by the plan is actuarially equivalent to Part D. This is a mandatory requirement of the law and affects ALL health plan sponsors. There is no small employer exemption. If an employer sponsors a health plan with prescription coverage, they are covered by this law. For the purposes of this law, coverage which is actuarially equivalent is deemed to be "Creditable Coverage" and coverage which is deemed not to be equivalent is "Non-Creditable Coverage".

Plans are required to issue notices explaining whether the prescription drug coverage offered under the plan is either "Creditable" or "Non-Creditable". These notices must be provided prior to November 15, 2005. Medicare beneficiaries need this information to make an informed decision regarding enrollment in Part D. The Centers for Medicare and Medicaid Services (CMS) has developed sample language for these notifications.

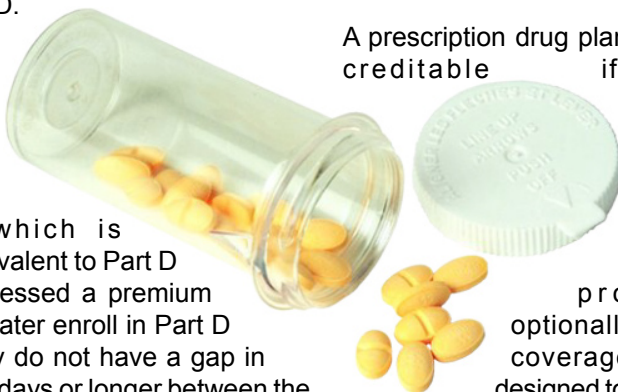
A prescription drug plan is deemed to be creditable if it: 1) Provides coverage for brand and generic prescriptions; 2) Provides reasonable access to retail providers and, optionally, for mail order coverage; 3) The plan is designed to pay on average at

least 60% of participants' prescription drug expenses; and 4) Satisfies at least one of the following: a) The prescription drug coverage has no annual benefit maximum or a maximum annual benefit payable by the plan of at least \$25,000 or b) The prescription drug coverage has an actuarial expectation that the amount payable by the plan will be at least \$2,000 per Medicare eligible individual in 2006 or c) For entities that have integrated health coverage, the integrated health plan has no more than a \$250 deductible per year, has no annual benefit maximum or a maximum annual benefit payable by the plan of at least \$25,000 and has no less than a \$1,000,000 lifetime combined benefit maximum.

While it would seem that most private health plans would meet these requirements, there are a number of common plan design issues that could potentially cause a plan to be deemed as not actuarially equivalent. Following is a non-exhaustive list of some issues that could make a determination difficult: plans with restrictions on brand name drugs; plans with high drug co-pay amounts; plans which include both an annual drug deductible and a drug co-pay; plans which require the use of mail order prescriptions; high Deductible Health Plans combined with FSA, HRA or HSA plans; or Plans with limited formulary drugs.

Plans which are actuarially equivalent may be eligible for a 28% subsidy from the Federal Government. In order to be eligible, the plan must be certified by a licensed actuary to meet the actuarial equivalency test.

Plans have flexibility in the form and manner of providing the notices. Notices may be provided along with other plan information materials. The plan may use a single notice to inform multiple Medicare



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beneficiaries so long as they reside at the same address.

This new requirement is not a one-time event. At a minimum, plans will be required to make the disclosure at the following times: 1) Prior to the Medicare Part D Annual Coordinated Election Period (ACEP) - beginning November 15th through December 31st of each year; 2) Prior to an individual's Initial Enrollment Period (IEP) for Part D; 3) Prior to the effective date of coverage for any Medicare individual that joins the plan; 4) Whenever prescription drug coverage ends or changes so that it is no longer creditable or becomes creditable; and 5) Upon a beneficiary's request.

If the notice is provided to all plan participants at least every 12 months, items 1 and 2 will be satisfied.



For more information on these or other Compliance Issues, contact your Morton Insurance Compliance Check Specialist at 720-488-4915.

OSHA Blood-borne Pathogen Requirements

Blood-borne pathogens are infectious materials in blood that can cause disease in humans, including hepatitis B and C and human immunodeficiency virus, or HIV. Workers exposed to these pathogens risk serious illness or death.

The full text of OSHA's Blood-borne Pathogens standard, published in Title 29 of the Code of Federal Regulations 1910.1030, details what employers must do to protect workers whose jobs put them at a reasonable risk of coming into contact with blood and other potentially infectious materials. The standard requires employers to do the following:

- Establish an exposure control plan.
- Use engineering controls.
- Enforce work practice controls.
- Provide personal protective equipment such as gloves, gowns, and masks.



- Make available Hepatitis B vaccinations to all employees with occupational exposure to Blood-borne pathogens within 10 days of assignment.
- Provide post-exposure follow up to any worker who experiences an exposure incident, at no cost to the worker.
- Use labels and signs to communicate hazards.
- Provide information and training to employees.
- Maintain employee medical and training records.

OSHA's website provides more in-depth information about blood-borne pathogens on the Blood-borne Pathogens webpage at www.osha.gov/SLTC/bloodbornepathogens and on the Needlesticks webpages at www.osha.gov/needlesticks and www.osha.gov/SLTC/needlestick.