Important Information about Your Medicare-eligible Employees' Prescription Drug Coverage for EMPLOYERS

Under the Medicare Prescription Drug Improvement and Modernization Act (MMA), you the Employer have an obligation to disclose to your Medicare-eligible employees and their dependents the creditable status of their current prescription drug coverage with whomever your Health Insurance Carrier is. You have this obligation every year prior to open enrollment (which is before 10/1)

The insurance carrier will normally notify the employer group via writing to inform you if current prescription plan is creditable and is expected to pay out as much, on average, for all plan participants as the standard Medicare prescription coverage. **This means that your plan(s) is considered creditable coverage.** Since your Medicare-eligible employees and their dependents have creditable coverage through your plan(s), these individuals may keep your coverage and will not pay higher premiums if they later decide to enroll in Medicare coverage. **VERY IMPORTANT NOTE**: If your employer group is under 20 employees on payroll, they have to obtain Medicare A&B to make sure their claims will be paid because Medicare pays first and then the group pays secondary.

Additionally, since your group health plan(s) is creditable, your group may be eligible to receive a subsidy from the federal government for certain retiree prescription drug coverage. For more information, visit https://www.rds.cms.hhs.gov/.

To obtain a sample Model Creditable and Personalized Disclosure Notice language you can use for annual notification and for new plan enrollees, visit https://www.cms.gov/medicare/employers-plan-sponsors/creditable-coverage/model-notice-letters.

The MMA also requires employers to disclose to the Centers for Medicare & Medicaid Services (CMS) whether the coverage offered to Medicare-eligible employees and their dependents is creditable prescription drug coverage. This disclosure must be made to CMS annually and upon any changes that affect whether the coverage is creditable. The *Disclosure to CMS Form* can be found at https://www.cms.gov/medicare/employers-plan-sponsors/creditable-coverage/disclosure-form.

If your Medicare-eligible employees want to purchase a Medicare Part D plan, they may call **863-588-1582**, Monday through Friday, between 9am-5pm and speak with Lynne or Sue. Or they can book an appt on our calendar at: https://calendly.com/lynneclausen

The letter is a key factor that needs to be provided to every employee on the health insurance plan because you never know what their dependents situations are. In order for employees to obtain Medicare SEP (*special enrollment period*) rights, they will need to provide a letter to their MedSup/MedAdv company stating they have a right to enroll as a "SEP. We have run up against this several times and if they can't get the letter from the employer or past employer, then they get a penalty and they most likely have to be underwritten to obtain a MedSup policy and this is a real problem.

Employers are responsible for providing a letter to all employees upon new hire and prior to 10/1 every year for employees 65 and older. If anything happens in the future where they have to show prior creditable coverage, they must have a letter for each year showing their coverage since they turned 65. Horizon does not provide the notice, it is the employers responsibility. Link to letter To obtain Model **Creditable and Personalized Disclosure Notice** language you can use for annual notification and for new plan enrollees, make sure you fill out your plan information accordingly on the letters. visit https://www.cms.gov/medicare/employers-plan-sponsors/creditable-coverage/model-notice-letters.

Employers are **legally** mandated by the **Medicare Modernization Act (MMA) of 2003** to provide Creditable Coverage Notices for prescription drug benefits. The policy centers on protecting beneficiaries from lifetime penalties while helping them make informed choices about Medicare Part D. However, failing to send these notices exposes employers to significant indirect legal liabilities, employee lawsuits, ERISA fiduciary enforcement, and regulatory risks.

EMPLOYER: DOL Request Penalties: While CMS does not levy a direct fine for missing the disclosure, the Department of Labor (DOL) enforces plan documentation rules under ERISA. If an employee or participant requests a copy of the notice or plan disclosures in writing and the employer fails to provide it within 30 days, courts can assess ERISA penalties of **up to $110 per day** per affected individual.

- **Forfeiture of Federal Subsidies:** Employers offering retiree health plans that apply for the federal **Retiree Drug Subsidy (RDS)** will have their tax-free government subsidies denied or clawed back if they fail to meet CMS notice and disclosure requirements.

- **Audit Triggers & ERISA Violations:** Missing required annual notices during a Department of Labor or Health Plan compliance audit serves as a red flag, often triggering deeper administrative investigations into plan governance, Form 5500 filings, and Summary Plan Descriptions (SPDs).

Employee Incurs a permanent/LIFETIME **1% per month** Medicare Part D late-enrollment penalty If they don't have this letter.

Primary Reasons Employers Must Disclose Status

- **Protection Against Lifetime Late Enrollment Penalties:** If a Medicare-eligible individual delays joining Medicare Part D and stays on non-creditable drug coverage for 63 days or longer, Medicare imposes a permanent monthly late enrollment penalty when they eventually sign up. The disclosure letter serves as official proof so individuals aren't penalized if they defer Part D.
- **Informed Healthcare Decision-Making:** A benefit plan's actuarial value isn't obvious to an employee. By explicitly stating whether the company's prescription plan pays, on average, at least as much as Medicare Part D, the notice lets employees decide whether to keep group coverage, enroll in a Part D plan, or hold both.
- **Plan Sponsor Responsibility:** Employers (as plan sponsors) hold the actuarial data and plan design details necessary to determine if a prescription plan meets CMS creditable standards. Neither the employee nor Medicare can make that actuarial calculation independently.
- **Federal CMS Compliance:** CMS requires employers to notify both plan participants and CMS directly. This dual-reporting requirement allows CMS to track active group coverage and verify valid Special Enrollment Periods when beneficiaries switch plans later.

Required Distribution Timelines

- **Annual Notice:** Distributed before **October 15** each year (prior to the Medicare Annual Enrollment Period).
- **New Eligibility & Enrollment:** Provided when an employee or dependent turns 65, becomes eligible due to disability, or newly joins the group health plan.
- **Plan Changes:** Issued whenever the employer changes prescription coverage status (e.g., switching from creditable to non-creditable).
- **Upon Request:** Whenever a covered individual requests verification.

When **onboarding a new employee**, the employer provides either the **Model Creditable Coverage Disclosure Notice** or the **Model Non-Creditable Coverage Disclosure Notice**, depending on whether the plan meets CMS standards.

Key Requirements for New Hire Notifications

- **Timing Trigger:** Federal rules require providing the disclosure notice *prior to the effective date of coverage* for any individual joining the plan. Including this notice in new hire onboarding or open enrollment packets fulfills this requirement.
- **Blanket Distribution Standard: Employers rarely know if a new employee—or their dependent—is eligible for Medicare (e.g., age 65+, disability, or ESRD). Because of this, standard practice is to distribute the notice to all new hires automatically.**
- **Single vs. Option-Specific Notices:** If an employer offers multiple health benefit plans (e.g., a PPO that is creditable and a High Deductible Health Plan that is non-creditable), the notice provided to the new hire must explicitly reflect the specific option they select.

UNIONIZED GROUPS

Since they have a Union there, just for their protection, I would make them aware of this:

Medicare Part D notice requirements apply regardless of employer size or whether employees are unionized. However, **who is actually responsible for sending the letter depends on how the union coverage is set up.**

The responsibility falls on the **Plan Sponsor**—the entity that owns and maintains the prescription drug benefits.

How Responsibility Breaks Down by Plan Structure

- **Multi-Employer Union Trust (Taft-Hartley Plans):** If union employees get their health/drug coverage through a collective bargaining agreement where the union trust manages the health plan, **the Board of Trustees (the Union Fund/Trust) is the Plan Sponsor.** The union trust—not the individual small employer—is responsible for evaluating the drug coverage, sending the Part D notice to participants, and filing with CMS.

- **Employer-Sponsored Group Health Plans:** If the small employer sponsors its own group health plan that union employees participate in (e.g., a union-negotiated plan hosted directly through the company's health insurance carrier), **the employer remains the Plan Sponsor.** The employer must ensure the notice is distributed to union members.
- **Dual Coverage Scenarios:** If union members are offered a choice between the company's plan and a separate union trust plan, the employer is responsible for issuing disclosures for the employer-sponsored plan options, while the union trust covers its own plan options.

Key Takeaways for Small Employers

- **No Small Business Exemption:** Unlike rules under COBRA (20+ employees) or ACA employer mandates (50+ employees), CMS Medicare Part D notice regulations apply to employers of **all sizes**—even if you have only 1 or 2 employees.
- **Verify Bargaining Contracts:** If your union workers are on a Taft-Hartley plan, confirm in writing with the union trust administrative office that they handle the CMS Part D Creditable Coverage disclosures directly.

Small employers should never assume an insurance carrier or union fund is sending the Part D disclosure notices to employees. **As a general rule, insurance carriers rarely issue these letters directly to employees**, and union funds only do so under specific plan structures.

Steps a small employer can take to verify who is handling the notice:

1. Verification Steps for Fully Insured Carrier Plans

- **Check the Carrier's Determination Letter (Not Distribution):** Most fully insured carriers (e.g., Blue Cross, Aetna, UnitedHealthcare) only calculate whether their plan designs are "creditable" or "non-creditable". They release an annual **Creditable Coverage Status Report** or notice template for the employer to use, **but they do not mail or email the letters to the employer's employees**.
- **Review Your Service Agreement/Contract:** Check your master contract or broker service agreement. Unless it explicitly states in writing that the carrier assumes total responsibility for *participant distribution*, the obligation remains on the employer.
- **Call the Carrier / Broker:** Ask your broker or account manager two distinct questions:
    1. *"Has the carrier determined if our plan option is creditable for this plan year?"*
    2. *"Is the carrier physically distributing the notice to our employees, or is that our responsibility?" 99% of the time it is the EMPLOYER'S RESPONSILITY*

2. Verification Steps for Union Plans

- **Confirm the Plan Type (Taft-Hartley vs. Employer Plan):**
    - **If it is a Multi-Employer Union Trust (Taft-Hartley Fund):** The Board of Trustees is the legal Plan Sponsor. The fund office usually handles both the actuarial testing and participant distribution.
    - **If it is an Employer-Sponsored Plan with Union Bargaining:** If the employer owns the policy and simply offers union-negotiated benefits, the employer remains the Plan Sponsor responsible for sending the notice.

- **Request a Copy of the Notice & Distribution Confirmation:** Contact the Union Fund Administrator in writing and ask:
  - *"Does the Fund handle the Medicare Part D disclosures directly to covered members?"*
  - *"If yes, please provide a copy of the notice and confirmation of the annual mailing/distribution date for our compliance records."*

3. Action Summary Table

Entity Involved	What They Usually Do	What You Must Verify
Fully Insured Carrier	Calculates creditability status and provides templates.	Confirm whether they only provided the status or are actually mailing notices to workers. Again, 99% of the time Employer is responsible for sending the letter
Union Trust / Taft-Hartley	Often handles notice generation and distribution for trust participants.	Obtain written proof/confirmation that the fund office distributed the notice.
Insurance Broker / TPA	Assists with templates, open enrollment packets, and CMS filings.	Confirm if they offer automated distribution as an administrative service.

Pro Tip: When in doubt, include the CMS model notice inside your standard annual open enrollment packet or new-hire onboarding packet. Because there is no penalty for providing the notice when it wasn't strictly necessary, sending it yourself guarantees your business remains compliant.

Any Questions, please reach out to us, there are too many things Involved and we never want anyone to misunderstand anything. 😊 If you need a strategy meeting, use the above QR Codes to book your appt.