**Question: Does the Medicare Part D Creditable Coverage Notice need to be provided by October 15 each year? Can employers provide it during their open enrollments instead?**

**Answer:**

The Medicare Part D Creditable (or Non-Creditable) notices are required to be provided to Part D (Medicare) eligible individuals at the following times:

1. prior to commencement of the annual enrollment period for Part D (Oct 15);

2. prior to an individual's initial enrollment period (IEP) for Part D;

3. prior to the effective date of coverage for any Part D eligible individual that enrolls in the employer's prescription drug coverage;

4. whenever the employer no longer offers prescription drug coverage or changes it so that it is no longer creditable or becomes creditable; and

5. upon request by the Part D eligible individual.

The first three occasions use the term, “prior to” which CMS says means within the last 12 months. **Generally the employer can meet the timing requirements under the first two bullet points by providing the notice to all participants at open enrollment prior to October 15**. Some employers will instead issue it sometime in early October to meet this requirement. But if an employer distributes the notice to plan participants at any point within that timeframe it should satisfy this disclosure requirement.

The notice should also be sent to new enrollees throughout the year (e.g., as part of the new hire/enrollment packet), since the notice must also be distributed to new enrollees prior to the date their coverage takes effect [Item 3 above] (and a disclosure during open enrollment or at another point during the year may not satisfy this requirement). The notice should also be provided upon request.

Finally, it is important to remember that there is also a separate reporting requirement to CMS – this report due within 60 days of the beginning of the plan year. This is true even if a report was made earlier in the year, at the time of the disclosures to participants, if that report fell outside the 60-day window.

There's no penalty for failing to provide the notice to individuals, or for failing to report to CMS. However, if an employer does not provide the disclosure to an individual there is the risk that an individual will miss their window for enrolling in Part D and will have to pay a late enrollment penalty. This could cause employee relations issues and could also be a problem under ERISA if the employee were to bring a claim against the employer (for failure to carry out its fiduciary duties). If employers have not been providing the notice/reporting, the best practice is to send the notice and/or report as soon as possible and to implement a consistent practice going forward.

For more information on Part D Creditable Coverage disclosure and reporting requirements, please see our issue brief on this topic here: <https://www.benefitcomply.com/resources/2021/09/27/medicare-part-d-creditable-coverage-notice-reporting-requirements/>