

Medicare Part D Disclosure – CMS Updates the Notice of Creditable/Non Creditable Coverage

As you know, the Centers for Medicare and Medicaid Services (CMS) issued a General Creditable Coverage guidance paper in May, 2005. That paper included a sample/model “Disclosure Notice” – the Notice of Creditable/Non Creditable Coverage that plan sponsors were required to send to all covered plan participants on or before November 15, 2006. Most plan sponsors either used the CMS model or drafted independent Notices based on the requirements set forth in the CMS sample/model.

CMS recently published an updated guidance, effective May 15, 2006. The guidance included a new sample “personalized” Notice for those plan sponsors/covered entities interested in offering personalized Notices.

More importantly, this guidance includes an updated description of the language/content requirements for Disclosure Notices, for use as of May 15, 2006. CMS provides information relative to both “required” and “recommended” language/content elements. While plan sponsors can continue to create independent Notices, any Notice issued by a plan sponsor after May 15, 2006 must include all the required elements outlined in this recent CMS guidance.

Required: Notice must address the following key points:

For Creditable Coverage plans:

- Confirmation of creditable/non creditable status of the plan
- Explanation/definition of “creditable” as it applies to the plan
- Explanation of why creditability is important, and a caution to the beneficiary regarding the ramifications of a “break in coverage” that exceeds 63 days (e.g. higher Part D premiums)

For Non Creditable Coverage plans - Notice must include the points above, as well as:

- Must explain that the individual generally may only enroll in a Part D plan from November 15th to December 31st each year
- Must make it clear that the individual may be subject to payment of higher Part D premiums if they fail to enroll when first eligible

Recommended: In addition to the required informational points above, CMS has also provided recommendations for Notice contents (including sample language) on a variety of points such as when a beneficiary should expect to receive updated Notices in the future, where/when they can request a copy of the Notice, information on how beneficiaries can obtain help in funding Part D, etc.

Please note that we have provided only a brief summary of the information. The complete text of the CMS Guidance, including details relative to both the required and recommended language content can be found at:

<http://www.cms.hhs.gov/CreditableCoverage/Downloads/041206CCGuidanceUpdated-FinalOMB.pdf>

Plan sponsors are not required to redistribute Notices to all plan participants that received the Notice previously. Plan sponsors are, however, required to release a Notice to all new plan participants upon enrollment, and to issue copies of the Notice to current participants upon request. Given those requirements, it is recommended that all plan sponsors immediately review the CMS Notice and update your policy to ensure compliance.

C.M. Smith Agency, Inc. is not a law firm and therefore we are not able to give legal advice. You should consult with legal counsel if you have specific questions on this subject matter.