



## BENEFIT NEWS BRIEFS

### ***CMS Posts Revised Part D Disclosure Notices For Use After January 1, 2009 And Updated Guidance***

The Centers for Medicare and Medicaid Services (CMS) posted on its website updated disclosure of creditable coverage notices for Medicare Part D eligible individuals for use after January 1, 2009. The updated Notices are at: [http://www.cms.hhs.gov/CreditableCoverage/08\\_CCafterJanuary1.asp#TopOfPage](http://www.cms.hhs.gov/CreditableCoverage/08_CCafterJanuary1.asp#TopOfPage).

These notices replace the prior model notices that were issued in June 2008. (See [Special Bulletin 2008-33](#)). The revisions stem from CMS's decision to eliminate the model personalized disclosure notice. CMS has instead moved the personalized information from that notice to the Model Creditable and Non-Creditable Coverage Disclosure Notices (Model Notices). The updated Guidance merely notes this revision and is otherwise unchanged and is available for download from CMS: [http://www.cms.hhs.gov/CreditableCoverage/Downloads/Updated\\_Guidance\\_01\\_01\\_09.pdf](http://www.cms.hhs.gov/CreditableCoverage/Downloads/Updated_Guidance_01_01_09.pdf) or by "[clicking here](#)."

Health plan sponsors and individuals involved with drafting and distributing creditable/non-creditable coverage notices may wish to begin using the new Model Notices. *The prior notices would still be OK for the annual notice issuance requirement. Plans that do use the new Model Notices would have to provide personalized information upon request if it is not included in the Plan's current annual notice. It appears that using the Plan's current notices would be easier and more cost-effective than using the new Model Notices, especially since no substantive changes have been made to the notice.* However, in an effort to keep our readers abreast of changes in the Part D guidance and notices, we are reporting on the matter.

A copy of the updated *Model Individual Creditable Coverage Disclosure Notice* in MS Word is available by "[clicking here](#)." The red font indicates items where the user needs to insert information. As noted, the new Model Notice includes an optional insert that can be used to provide a personalized disclosure notice.

Under the Medicare Part D regulations, most entities that currently provide prescription drug coverage to Medicare beneficiaries must disclose if the entity's

coverage is “creditable prescription drug coverage.” This disclosure is required whether the entity’s coverage is primary or secondary to Medicare.

The Medicare Part D regulation, at 42 C.F.R. Section 423.56(f), specifies when creditable coverage disclosures must be made to Part D eligible individuals. Among other times, such as when the coverage becomes non-creditable or upon a beneficiary’s request, disclosure must be made annually, prior to November 15th (the beginning of the Medicare Part D Annual Coordinated Election Period).

Notices for plans that do not offer drug coverage that is creditable coverage under Part D are also located on the CMS website:

[http://www.cms.hhs.gov/CreditableCoverage/08\\_CCafterJanuary1.asp#TopOfPage](http://www.cms.hhs.gov/CreditableCoverage/08_CCafterJanuary1.asp#TopOfPage).

CMS recommends that entities complete the personalized box on the Model Notice if an individual requests a copy of a disclosure notice. Individuals may submit a copy of a personalized disclosure notice as proof of prior creditable coverage when enrolling in a Part D plan. If the entity chooses to not use the Model Disclosure Notices, they can provide a personalized statement of creditable coverage which contains all of the following elements: (a) individual’s first and last name; (b) individual’s date of birth or unique member identification number; (c) entity name and contact information; (d) statement that the entity’s plan was determined by the entity to be creditable or non-creditable coverage; and (e) the date ranges of creditable coverage.

**Entities that opt to use their own notice must include the following information:**

- That the entity has determined that the prescription drug coverage it provides is creditable.
- The meaning of creditable coverage, i.e., that the amount the plan expects to pay on average for prescription drugs for individuals covered by the plan in the applicable year for which the disclosure notice is being provided is the same or more than what standard Medicare prescription drug coverage would be expected to pay on average.
- An explanation of why creditable coverage is important and a caution that even though coverage is creditable, the person could be subject to payment of higher Part D premiums if the person subsequently has a break in creditable coverage of 63 continuous days or longer before enrolling in a Part D plan.

CMS recommends that such entities also provide clarifications in their disclosure statements. Suggestions for these clarifications can be found at pages 7-11 of the revised Guidance mentioned in paragraph two on page one of this publication.

\* \* \*

**LEGAL DISCLAIMER:** Information contained in this publication is not legal advice, and should not be construed as legal advice. If you need legal advice upon which you can rely, you should seek a legal opinion from your attorney.