

MEDICARE PART D DEADLINES APPROACHING

Effective January 1, 2006, a prescription drug benefit known as "Medicare Part D" will be added to Medicare for the first time. Employers that sponsor retiree health plans must decide whether and how to amend their plans in light of this new program. In addition, employers who wish to apply for government subsidies under Part D in 2006 must do so by October 31, 2005, and employers who sponsor prescription drug plans must notify their Medicare-eligible participants by November 15, 2005 as to whether their existing prescription drug coverage meets certain new requirements.

The New Part D Drug Benefit

Beginning November 15, 2005, anyone eligible for Medicare can choose to enroll in the new Part D prescription drug program, effective as of January 1, 2006. The monthly premium for Part D is expected to be approximately \$37 per month. The standard Part D plan will have a \$250 deductible, after which it will pay 75% of the next \$2,000 of the enrollee's annual prescription costs. After the \$2,250 level is reached, the enrollee must pay 100% of the next \$2,850 of drug costs – this is known as the "doughnut hole". After total costs for the year reach \$5,100 - of which the enrollee will have paid \$3,600 - "catastrophic" coverage kicks in. Part D will pay approximately 95% of catastrophic drug costs (those above \$5,100 in one year).

Medicare Part D can therefore be viewed as comprising four levels:

Level	Annual Drug Costs	Who Pays What
Deductible	\$0 - \$250	Individual pays 100%
Co-insurance level	\$250 - \$2,250	Individual pays 25% Part D pays 75%
"Doughnut hole"	\$2,250 - \$5,100	Individual pays 100%
Catastrophic level	\$5,100 and up	Individual pays 5% Part D pays 95%

The new Part D benefit will be provided primarily by commercial prescription drug plans (PDPs) and "Medicare Advantage" plans (MA-PDs).

Effect on Employer Plans

Employers that sponsor retiree health plans have several options in light of the new federal prescription drug benefit.

- *Discontinue prescription drug coverage:* If not prevented from doing so by its plan documents or any applicable collective bargaining agreement, the employer can simply cease providing any prescription drug benefits to Medicare-eligible retirees. Such retirees could enroll in Part D, and the employer could subsidize their enrollment, in whole or in part, if it wished. Presumably, the removal of the drug benefit would reduce the overall cost of the retiree plan.
- *Continue prescription drug coverage "as is":* The employer can continue its prescription drug benefit unchanged, so that such benefits would, in effect, substitute for Part D. Under this scenario, the employer may be entitled to a tax-free subsidy, equal to a portion of the retiree drug benefits paid by its plan each year to retirees who waive Part D coverage. The subsidy is available only if the employer drug benefit is deemed to be as valuable, on average, as the Part D benefit. (The subsidy is described in more detail below.)
- *Wrap-Around Plan:* The employer can amend its prescription drug plan so that it "wraps around" Medicare Part D – that is, pays drug expenses that Part D doesn't pay. For example, it could pay costs that comprise the "doughnut hole" (annual drug costs between \$2,250 and \$5,100). Note, however, that this would effectively prevent Part D catastrophic coverage from kicking in – because this coverage takes effect only after the *individual* has paid \$3,600 of out-of-pocket costs – amounts reimbursed by an employer plan don't count.

In designing retiree drug plans that coordinate with Part D, employers must keep in mind the "TrOOP cost" rules under Part D. "TrOOP costs" are "True Out-Of-Pocket costs" - the \$3,600 of drug costs that a Part D participant must pay out of his or her own pocket before Part D's catastrophic coverage level is activated (see "The New Part D Drug Benefit", above). Only drug costs paid by the individual, a family member or certain charities can be counted as TrOOP costs – amounts paid by an employer-funded plan don't count. Thus, amounts paid for prescription drugs from an employee funded flexible spending account (FSA) or a health spending account (HSA) count as TrOOP costs, but amounts paid by a health reimbursement arrangement (HRA) do not.

The Employer Notice Requirement

Background – The Late Enrollment Penalty: An individual is first eligible to enroll in Part D when he or she becomes eligible for Medicare (generally, at age 65 or in the event of certain disabilities). The enrollment period for the first year of the Part D program (2006) runs from November 15, 2005 through May 15, 2006; thereafter, it will run from November 15th through December 31st of each year. If an individual doesn't enroll in Part D when he or she is first eligible, the Part D premium will increase by 1% for each month that the individual delays – *unless* such individual was enrolled in the interim in an employer or union sponsored plan that is deemed to be as valuable as Part D coverage – that is, "creditable coverage".

Because of the penalty for late enrollment, employees need to know whether their employer's prescription drug plan meets the creditable coverage test – if it does, the employee can wait to enroll in Part D without fear of paying an increased premium if the employee enrolls later. **The new law, therefore, requires employers who sponsor prescription drug plans to notify all Medicare eligible employees and retirees by November 15, 2005, whether its drug coverage is or is not "creditable coverage".** If the employer's coverage is not creditable, the notice must also explain the late enrollment penalty and the Part D enrollment periods.

The required notice can be sent as a separate mailing, or it can be combined with other materials sent to participants (such as plan enrollment materials).

Employer Subsidy

If the employer provides retiree drug coverage that satisfies a special "actuarial equivalence" test, it may receive a tax-free subsidy equal to 28% of the net drug benefits between \$250 and \$5,000 paid out each year to retirees who do not enroll in Part D. To meet the special test, the employer must show that the overall value of its prescription drug coverage is as valuable to the retiree as Part D would be, net of the premiums paid by the retiree. In order to receive the subsidy, the employer must furnish an actuarial certification showing that its drug coverage meets this test, and must apply for the subsidy on a timely basis. ***For 2006, the subsidy application must be filed by October 31, 2005.***

What Employers Should Do Now

Deadlines under Part D are fast approaching. Employers should:

- Determine whether they should modify or discontinue their retiree prescription drug coverage in light of the new Part D benefit and, if modifications are appropriate, what plan design changes should be made.
- Determine if their prescription drug coverage meets the special "actuarially equivalent" test and, if so, whether they should apply for the tax-free subsidy. **Again, the subsidy application must be filed by October 31, 2005.**
- Deliver the required notice, as to whether its prescription drug benefit is "creditable coverage", to all Medicare-eligible employees and retirees who participate in the employer's health plans. Remember, **the Notices must be sent by November 15, 2005.**
- Be prepared to address questions and concerns of their employees and retirees about the effects of the new program.

This update summarizes critical aspects of the new Medicare Part D program for employers to consider. Many other important issues are raised by the new benefit and may require further evaluation of existing retiree health benefit plans.

If you have any questions about Medicare Part D Deadlines, please contact a member of our Employee Benefits Practice group:

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