Upcoming Changes for HDHP Plan Sponsors under Medicare Part D

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Employers who sponsor group health plans must act now regarding the status of their prescription drug coverage in advance of changes to Medicare Part D that go into effect for 2025. The Inflation Reduction Act of 2022 (IRA) made changes to Medicare Part D to enhance benefits and enrollee cost savings, which may significantly impact whether employer sponsored prescription drug benefits continue to qualify as creditable coverage under Medicare Part D. Creditable coverage means that the employer's prescription drug coverage is at least as good as Medicare Part D coverage.

Employers are not required to offer prescription drug coverage that qualifies as creditable coverage. However, an employer is obligated to determine whether its prescription drug program qualifies as creditable coverage. While the changes appear to primarily impact high deductible health plan (HDHP) coverage, all employer prescription drug coverage should be reviewed for creditable coverage status under the new IRA rules.

Why does creditable coverage status matter?

Employers must notify impacted individuals and the Centers for Medicare and Medicaid Services (CMS) whether the employer's prescription drug coverage is creditable. Plan sponsors must report the plan's status to CMS within 60 days after the first date of the plan year and disclose that status to Medicare-eligible employees and dependents before October 15 of each year. When a plan's creditable (or non-creditable) status changes, a plan sponsor must notify CMS within 30 days and notify employees and dependents who are entitled to benefits under Medicare Part A or are enrolled in Medicare Part B and live in the service area of a Part D plan. This could include active employees, disabled employees, COBRA participants, and retirees, as well as their covered spouses and dependents.

Individuals who are eligible for Medicare Part D, but delay enrollment because they are covered by the employer's group prescription drug plan, will be subject to a late enrollment penalty when they later sign up for Medicare Part D. The penalty results in an increased premium for Medicare Part D for life.

Employers receiving a retiree drug subsidy from CMS must offer creditable coverage. Under this federal program, employers and unions are subsidized for a portion of the cost of prescription drug coverage they provide that is creditable coverage for Medicare-eligible retirees. For more information on the retiree drug subsidy program, visit the CMS Retiree Drug Subsidy website.

How can an employer determine if prescription drug coverage is creditable coverage?

Generally, a group health plan's prescription drug coverage is considered creditable if its actuarial value equals or exceeds the actuarial value of standard Medicare Part D prescription drug coverage, as demonstrated using generally accepted actuarial principles and in accordance with CMS guidelines.

Employers with insured prescription drug plans should reach out to the carriers or through their broker to see if the insured benefit option is creditable coverage. Employers with self-insured plans, including carve-out pharmacy coverage, should reach out to the administrative services only (ASO) vendor, third-party administrator (TPA), or pharmacy benefit manager (PBM) for confirmation of creditable coverage status.

If the insured or self-insured benefit has not been evaluated on an actuarial basis (or the information is not made available to the employer), CMS offers a simplified determination for employers that treats coverage as creditable if the benefit option meets certain design requirements. However, the plan must have a prescription drug deductible (or combined medical and prescription drug deductible) no greater than $250 to use this method. CMS is reconsidering the ongoing viability of the simplified method after the IRA changes to the Medicare Part D Program. The simplified method will remain available to employers not receiving a retiree drug subsidy for 2025, but future guidance is expected on whether it will be eliminated or updated for 2026.

What significant change did the IRA make to determine creditable coverage?

The IRA generally increased the benefits and actuarial value of Medicare Part D coverage. This means that when employer plans are compared actuarially to the Medicare Part D coverage, the employer plan must meet a higher actuarial benchmark because of the Medicare Part D Improvements. Accordingly, employer prescription drug coverage that previously met creditable coverage standards may no longer do so when compared against the higher benchmark of the improved Medicare Part D.

What impact does this change have on Medicare-eligible enrollees in an employer's group health plan?

These changes to the creditable coverage standard will likely mean that more employer prescription drug coverage options will not be creditable coverage. This will have an impact on employers electing the retiree drug subsidy, which will not be available for plans not meeting the new standard for creditable coverage and on Medicare-eligible enrollees who prefer to stay on employer-sponsored coverage rather than switching to Medicare. It is expected that HDHP benefit options will have great difficulty satisfying the creditable coverage standards. This will limit the ability of Medicare-eligible enrollees to utilize HDHPs with health savings accounts (HSAs), which many view as an additional retirement savings tool, without incurring the lifetime penalty on future Medicare Part D premiums.

How is the Medicare Part D lifetime penalty calculated?

Medicare-eligible individuals must maintain creditable coverage for prescription drugs if they do not enroll in Medicare Part D when first eligible. If there is more than a 63-day gap in participation in creditable coverage and enrollment in Medicare Part D, the lifetime penalty applies. The cost of the late enrollment penalty depends on how long an individual went without Part D or creditable prescription drug coverage. Medicare calculates the penalty by multiplying 1% of the "national base beneficiary premium" ($34.70 in 2024) by the number of full, uncovered months the individual went without Part D or creditable coverage. The monthly penalty is rounded to the nearest $.10 and added to the monthly Part D premium.

The national base beneficiary premium may increase or decrease each year, so the penalty amount may also change each year. For more information, see the Medicare Summary of Part D Late Enrollment Penalty.

Does an employer pay a penalty for not offering creditable coverage?

No. Employers are not required to offer creditable coverage unless they utilize the retiree drug subsidy and there is no specific penalty for failing to provide the Medicare Part D Notices of Creditable Coverage. However, the U.S. Department of Labor takes the view that plan fiduciaries under the Employee Retirement Income Security Act (ERISA) must administer their plans to comply with both ERISA and other federal laws, which would include the notice requirements. Failure to provide accurate and timely notification to employees and dependents who are Medicare eligible of the creditable coverage status of their prescription drug coverage would likely be viewed as a breach of fiduciary duty creating liability issues for the plan administrator (usually the employer). In addition, failure to comply with notice requirements could be viewed as a violation of the ERISA summary plan description and summary of material modification requirements. Given the potential hardship on employees who may make a decision without adequate knowledge resulting in a lifetime of higher Medicare premiums, it is incumbent upon employers to ensure proper notice is provided.

What steps should an employer take now?

Employers should implement the following steps as soon as possible to ensure a smooth annual enrollment process for Medicare-eligible employees and their dependents. Communication will be key, so employers must be proactive in seeking out information regarding the impact of the IRA updates to Part D.

1. **Contact your carrier, TPA, ASO, or PBM.**
   The determination that prescription drug coverage is creditable is an actuarial determination and employers will generally not be able to make that determination without third party assistance. Reach out to these third parties or ask your broker to do so on your behalf. Employers must ensure that their prescription drug offerings are being evaluated in light of the new requirements for 2025 and that they will be informed of the determination in time to allow for 2025 benefit planning.

2. **Evaluate deductibles in your prescription drug coverage.**
   The plans at most risk of being deemed non-creditable are HSA-compatible HDHPs. HDHP deductibles are adjusted annually and, in 2025, the minimum deductibles are $1,650 for self-only coverage and $3,300 for other-than-self-only (e.g., family) coverage. The IRA imposed a $2,000 limit on

Part D deductibles. Because the HDHP minimum deductible for other-than-self-only coverage is higher than the S2,000 Part D out-of-pocket maximum introduced by the IRA, all HSA-compatible HDHPs will potentially lose creditable coverage status for 2025. This change can also impact other prescription drug coverage that is not an HDHP if it has a higher deductible than the new Part D deductible. This is not the only consideration, but it is a simple way for employers to get a quick sense of how their plans compare under the new Part D coverage.

3. Reconsider 2025 prescription drug offerings.
   All benefit options should be immediately reviewed and evaluated in light of the changes to Medicare Part D and employers may want to ensure that at least one of their coverage options for prescription drug benefits meets the creditable coverage requirements for Medicare-eligible employees and spouses who would prefer to remain in group coverage rather than Medicare. This will be particularly important to executives and upper-level management. Deductibles may need to be decreased for plans that allow it (i.e., non-HSA compatible HDHPs).

4. Develop a participant communication strategy.
   Plan sponsors should prepare a communications strategy to advise affected individuals of the changes to the creditable coverage requirements and the potential impact on HDHPs and other benefit options in 2025. These individuals will need to weigh the pros and cons of remaining in an employer plan that is no longer creditable coverage or transitioning to Medicare or a potentially higher cost plan of the employer that meets the creditable coverage standard. Communications should consider the timing of open enrollment and election changes so that employees are able to drop the group health plan coverage to enroll in Medicare Part D by cafeteria plan rules and restrictions on mid-year election changes. Medicare-eligible individuals who lose creditable coverage will be eligible for a two-month special enrollment period into Part D, so timing of the employer notice and communications is particularly important.

5. Consider a Medicare enrollment guide for employees.
   The interaction of Medicare and group health coverage is one of the more confusing areas for employees when making decisions about their benefit coverage. Failing to make the correct choices can result in significant financial exposure relating to coordination of benefits with COBRA, for example, or in lifetime premium penalties under Medicare for late enrollment. Plan sponsors may want to consider providing an enrollment guide or other resource to employees addressing the interaction between non-creditable prescription drug coverage and Medicare Part D late enrollment penalties and how enrollment in Medicare Parts A, B, or D (or a Medicare Advantage Plan) will result in the loss of HSA contribution eligibility.
