

What Individuals Are Entitled to a Medicare Part D Disclosure Notice?

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QUESTION: We are preparing to send out our major medical plan's Medicare Part D disclosure notices before October 15. Do we need to provide these notices to spouses and other dependents?

ANSWER: Sponsors of group health plans providing prescription drug coverage must inform all "Part D eligible individuals" who are enrolled in or seeking to enroll in the plan whether the actuarial value of the prescription drug coverage is "creditable" (equal to or greater than the actuarial value of standard Part D coverage) or "non-creditable" (less than the actuarial value of standard Part D coverage). Notices to Part D eligible individuals must generally be provided annually before October 15.

A "Part D eligible individual" is an individual who (1) is entitled to benefits under Medicare Part A or enrolled in Medicare Part B; and (2) lives in the service area of a Part D plan. Part D eligible individuals could include active employees, disabled employees, COBRA participants, retirees, and, importantly, covered spouses and dependents of any of the above. A single notice may be provided to Part D individuals and their covered Part D eligible spouses and dependents unless the plan sponsor knows a spouse or dependent resides at a different address. Here are more details to help you determine who should receive a notice:

- *Who Is Considered Entitled to Medicare Part A?* To be entitled to Medicare Part A, individuals must actually be enrolled in Part A. Individuals who are merely eligible for Part A without being enrolled are not "entitled" to Part A for purposes of the Part D disclosure requirements.
- *Who Is Considered Enrolled in Medicare Part B?* For purposes of the Part D disclosure requirements, individuals are not considered enrolled in Part B until they have applied for and been granted coverage under Part B, even though, for other purposes, they are considered enrolled in Part B once they have applied for coverage under Part B.
- *What Is a Part D Plan Service Area?* A Part D plan service area consists of one or more regions established by CMS—these are usually (but not always) Medicare Advantage regions. Individuals who are living abroad or incarcerated are not eligible for Part D because they are not considered to be residing in the service area of a Part D plan.
- *Who Is Considered Enrolled or Seeking to Enroll in Coverage?* Determining the employees, retirees, spouses, and dependents who are currently enrolled in an employer's prescription drug plan should be straightforward, but determining which individuals might be "seeking to enroll" is more challenging. It seems reasonable to assume that the requirement to provide disclosures to Part D eligible individuals who are "seeking to enroll" in a plan will be satisfied if disclosures are provided to all employees (or retirees) who are eligible to enroll. For example, the requirement would seem to be satisfied if a plan's enrollment materials include a Part D notice and those materials (including the notice) are provided on an annual basis to all employees or retirees who are eligible to enroll in the plan.

It is important to remember that in addition to notifying Part D eligible individuals, group health plan sponsors must also notify CMS about creditable coverage status. Different requirements apply regarding the content of that notification and the method and timing of delivery. For more information, see EBIA's Group Health Plan Mandates manual at Sections XXV.E ("Disclosures to Individuals: Who Is Entitled to a Disclosure Notice?") and XXV.H ("Disclosure to CMS").

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