

Are Medicare Part D Disclosure Notices Required for an HRA or Health FSA?

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QUESTION: I work for a start-up company that will begin offering a major medical plan, an HRA, and a health FSA next year. We know that Medicare Part D creditable coverage disclosure notices are required for the major medical plan. But are these disclosure notices also required for an HRA or health FSA?

ANSWER: The answer is probably yes for the HRA, and no for the health FSA. This assumes that your company's health FSA and HRA will offer prescription drug coverage to Part D-eligible individuals—i.e., individuals covered under Medicare Part A or Part B, including active and disabled employees, COBRA participants, retirees, and their covered spouses and dependents who live in the service area of a Part D prescription drug plan (Part D plan).

As background, plan sponsors that provide prescription drug coverage through a group health plan must disclose to covered Part D-eligible individuals and to CMS whether the drug coverage is “creditable.” Coverage is considered creditable if the actuarial value of the employer-provided coverage equals or exceeds the actuarial value of defined standard Part D coverage. Part D-eligible individuals who remain covered under an employer-provided prescription drug plan providing creditable coverage will not be assessed late enrollment penalties upon their subsequent enrollment in Part D (within certain timeframes). However, Part D-eligible individuals who are covered under an employer-provided prescription drug plan that is not creditable coverage must enroll in a Part D plan during their initial enrollment period for Part D if they want to avoid late enrollment penalties when they subsequently enroll in Part D.

The term “group health plan” for disclosure purposes specifically includes “account-based medical plans” such as HRAs and health FSAs, if those arrangements are ERISA employee welfare benefit plans providing medical care, or they would be subject to ERISA but for ERISA’s exclusion for governmental or church plans. (Most HRAs and health FSAs meet this requirement.) As a result, sponsors of such HRAs that offer prescription drug coverage must provide disclosure notices to Part D-eligible individuals, advising whether the HRA’s prescription drug coverage, either on a stand-alone basis or combined with a major medical plan, is creditable. CMS officials have informally stated that a single, combined disclosure notice covering both an HRA and another group health plan offered by the same employer is permitted, if the non-HRA plan is a non-account plan and the Part D eligible individual participates in both the non-account plan and the HRA. Thus, if all of the HRA participants are also participants in your company’s major medical plan, you could avoid separate notices for your HRA entirely. An HRA offered in conjunction with another group health plan (e.g., an HRA that is integrated with a major medical plan) should be combined with the other plan to determine whether the combined prescription drug benefit meets the actuarial equivalence test for creditable coverage.

Sponsors of health FSAs, by contrast, are not required to provide disclosure notices to Part D-eligible individuals because of a specific exception in CMS guidance. The guidance states that health FSAs are not taken into account when determining whether employer-provided prescription drug coverage is creditable, due to the difficulty in determining actuarially whether these arrangements provide creditable coverage, given the range of participant contribution levels and the lack of information about what portion of a health FSA will be spent on prescription drugs.

For more information, see EBIA's Group Health Plan Mandates manual at Section XXV.A.3 ("Group Health Plans Subject to the Disclosure Requirements"). See also EBIA's Consumer-Driven Health Care manual at Section XXV.E ("HRAs and Medicare Part D") and EBIA's Cafeteria Plans manual at Section XXII.J.7 ("Medicare Secondary Payer (MSP) and Medicare Part D Requirements").

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