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**DATE:** October 9, 2009  
**TO:** Our Valued Client Partners & Friends  
**FROM:** HIB Account Team  
**RE:** **LEGISLATIVE UPDATE 2009-15**  
**Medicare Part D: Annual Notice**  
**Action Required by November 15, 2009**

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We are pleased to bring you our **Legislative Update 2009-15: Medicare Part D: Annual Notice**. As the title indicates, Action is Required, however, many of you who distribute these forms at Open Enrollment do not need to provide another notice. Please note, this Legislative Update addresses some of the changes to the Medicare Part D filing requirements as outlined in the Centers for Medicare and Medicaid Services regulatory guidance released on September 18, 2009.

We hope you find this informative, and please, if you have any questions, contact your HIB Account Team for assistance.

Medicare Part D regulations require all health care Plan Sponsors whose plans contain prescription drug coverage, to distribute an Annual Notice to plan participants who are, or who might be, eligible for Medicare Part D coverage or have covered family members who may be eligible.

On January 1, 2009 the Centers for Medicare and Medicaid Services (CMS) released updated notices and regulatory guidance. On September 18, 2009, CMS released additional updated guidance. The purpose of this memorandum is to assist Plan Sponsors in meeting the Part D Notice requirements.

## **DISCUSSION**

- 1. The Annual Notice:** CMS has provided new sample notices (English and Spanish) for creditable coverage and non-creditable coverage and an updated list of elements which must be included in employer-drafted notices. Plan Sponsors must determine whether the prescription drug benefit they offer is considered creditable or not creditable, and distribute the appropriate notice by November 15, 2009. Each Plan Sponsor will need to add specific content to these notices. We discuss this topic in Section 6 of this Memorandum. Please refer to our **Attachment A** and **B** for the sample notices.

Plan Sponsors have the option of using the sample notices or producing their own notices which contain all of the necessary elements, as described in the updated guidance. This guidance is available on the CMS website:

[http://www.cms.hhs.gov/CreditableCoverage/08\\_CCAfterJanuary1.asp#TopOfPage](http://www.cms.hhs.gov/CreditableCoverage/08_CCAfterJanuary1.asp#TopOfPage)

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2. **Delivering the Notice by Mail.** Plan Sponsors may mail the notice as a standalone mailing or choose to incorporate the notice into other documents or disclosures, so long as there is a prominent first-page, 14-point font reference to the incorporated notice language.
3. **Electronic Delivery.** Plan Sponsors may also deliver the notice electronically to plan participants who have the ability to access the Plan Sponsor's electronic information system on a daily basis as a part of their work duties. Plan Sponsors should inform participants that they are to share the electronic notice with all family members who are covered under the group health plan.
4. **Recipients.** Plan Sponsors should provide the notice to all health plan participants or Part D eligible individuals who apply for the Plan's drug coverage, as well as to COBRA beneficiaries. As we stated above, Plan Sponsors need only to provide a single notice to a participant with covered dependents, unless the sponsor records contain a separate address for other family members.
5. **The Deadline.** November 15, 2009! Medicare beneficiaries begin an open enrollment period on that date. To assist them in electing prescription drug coverage, they must know the status (creditable / non-creditable) of their current coverage. This requirement applies whether the plan coverage is primary or secondary.

If for some reason, a Plan Sponsor does not meet this deadline, it is critical to distribute the notice as soon as possible thereafter.

6. **Instructions for Completion.** In addition to inserting the employer's name, or plan name if more than one, the Plan Sponsor will need to personalize the paragraph, "What happens to your current coverage if you decide to join a Medicare Drug Plan."
  - a. **Your Current Coverage [will/will not] be Affected.** *The issue here is whether an individual is covered under a medical plan providing drug coverage that requires the participant to elect its drug coverage. For example, if a member drops drug coverage under a Kaiser Senior Advantage Plan, Kaiser will also cease to provide medical to that member. This is common for Medicare Advantage plans. The Plan Sponsor will complete the sentence [will be affected], and explain what happens.*
  - b. **If you decide to join a Medicare drug plan and drop your current [Employer's or Plan's name] coverage, be aware that you and your dependents [will/will not] be able to get this coverage back.** *Typically, group health plans will allow an individual back on to the Plan (if eligible to do so) but only at the Plan's next open enrollment. Medigap policies issued to individuals will not allow an individual back on the Plan.*
7. **Multiple Plans with Drug Benefits.** Plan Sponsors who offer more than one health plan option (e.g. PPO, HMO) may want to produce separate notices for each group of plan participants, if the drug benefits are different; however, it is not necessary so long as the Plan options are shown in list form

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in the paragraph discussed in Section 6 of this Memorandum. *Please note that Plan Sponsors must use different notices if one Plan is creditable and another is not.*

- 8. Determining Creditability.** Plan Sponsors should rely on professional guidance to obtain this determination. For an overview of the criteria used please refer to **Attachment C** or to the CMS Website: <http://www.cms.hhs.gov/creditablecoverage/>
- 9. Other Medicare Part D Notice Requirements.** Plan Sponsors must also provide a Medicare Part D notice:
- a. Prior to an individual's Initial Enrollment Period (IEP) for Part D;
  - b. Prior to the effective date of coverage for any Medicare eligible individual that joins the Plan;
  - c. Whenever the entity no longer offers prescription drug coverage or changes the coverage offered so that it is no longer creditable or becomes creditable; and,
  - d. Upon the request by the individual.

The September 18, 2009 guidance clarifies that "prior to" means that the individual must have received the Disclosure Notice within the past twelve months. So, plans that issue the Part D notice at time of policy renewals do not need to provide another notice.

For a more detailed discussion of the Medicare Part D notice and coverage requirements, please refer to our Legislative Updates 2006-6 distributed in June of 2006 and Legislative Update 2005-12, distributed in September of 2005, or go to either the Heffernan Insurance Website and click on HIB Client Community or the CMS website: <http://www.cms.hhs.gov>.

**To access archived Legislative Updates please log into [www.heffgroup.com](http://www.heffgroup.com) and clicking on the link for HIB Client Community. If you need information on your Username and Password please contact your HIB Account Team.**

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