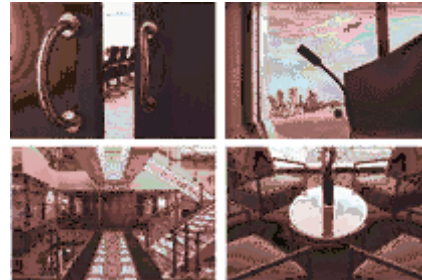




A Publication of  BOLT • CUMMINGS
CONNERS • BERRY LLC

Upcoming Medicare Changes Affecting Employee Benefit Plans

by [Charles. M. Cain II](#) and [B. David Joffe](#)



Two recent changes will affect the filing and notice requirements for plan administrators, insurers, and third-party administrators of group health plans regarding Medicare-eligible health plan participants.

New Model Medicare Part D Notice

Since November 15, 2005, group health plans that provide prescription drug benefits covering any Medicare-eligible individuals have been required to disclose to such individuals whether the coverage is creditable or noncreditable (that is, whether or not it is at least the actuarial equivalent of Part D coverage).

Generally, a plan sponsor must provide one notice (either the “creditable” notice or the “noncreditable” notice) and customize the notice to reflect the specific provisions of the plan. The required notice must be provided at several points. Specifically, it must be provided before the Medicare Part D annual coordinated election period beginning November 15th of each year and any annual open enrollment. Second, the notice must be provided before the effective date of coverage for any Medicare-eligible individual who joins the plan. Third, it must be provided whenever prescription drug coverage ends or changes so that it is no longer creditable or becomes creditable.

To assist with these disclosures, the Centers for Medicare & Medicaid Services (“CMS”) has issued model notices of creditable and noncreditable coverage. However, CMS has recently issued new model notices for use after June 15, 2008. Although employers are not required to use the model notices, they may want to revise their Medicare Part D notices based on the new model notices. The new model notices can be obtained from the CMS website, which can be found at the following link:

http://www.cms.hhs.gov/CreditableCoverage/09_CCafterJune15.asp#TopOfPage.

New Disclosure Requirements to HHS

Last fall, Congress passed the Medicare, Medicaid, SCHIP Extension Act of 2007 (the “Act”), which was signed into law by President Bush on December 29, 2007. The Act amended the Medicare Secondary Payer statute to include provisions requiring insurers, third-party administrators, and (in the case of self-funded plans) plan administrators of group health plans to obtain certain information about plan participants and submit such information to the Department of Health and Human Services (“HHS”). The information is intended to assist HHS in identifying situations where Medicare would be a secondary payer to the health plans.

An entity that fails to comply with the requirements are subject to a civil penalty of **\$1,000 per day for each individual** for which information should have been submitted. Although HHS has not yet specified the form, manner, and frequency for submitting the information to HHS, the information for group health plan participants must be submitted to HHS beginning on January 1, 2009. As a result, employers should begin discussing with their service providers (such as third-party administrators and insurers) how the service providers are preparing for the requirement.

If you have any questions about the changes regarding Medicare-eligible participants, please contact one of the [Employee Benefits and Executive Compensation](#) attorneys at Boulton, Cummings, Conners & Berry PLC:

Martha L. Boyd
615.252.2357
mboyd@boultoncummins.com

Charles M. Cain II
615.252.2330
ccain@boultoncummins.com

Andrew Elbon
615.252.2378
aelbon@boultoncummins.com

B. David Joffe
615.252.2368
djoffe@boultoncummins.com

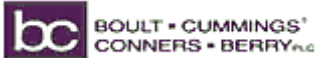
Gordon Earle Nichols
615.252.2387
gnichols@boultoncummins.com

John M. Scannapieco
615.252.2352
jscannapieco@boultoncummins.com

Boulton Cummings eNews is published solely for the interest of clients and friends of [Boulton, Cummings, Conners & Berry, PLC](#) and should in no way be relied upon or construed as legal advice. If you need specific information on legal issues or want to address specific factual situations please seek the opinion of legal counsel.

Boulton Cummings eNews is designed to update our clients on legal issues that may impact their business. If this information is not relevant to your position, please forward to the appropriate person in your organization. If this topic is not pertinent to your company, please provide topic suggestions as to the types of legal updates and topics that are relevant to your business. Please email cbillingslea@boultoncummins.com your feedback or suggestions.

2008 Boulton, Cummings, Conners & Berry, PLC. All rights reserved



Roundabout Plaza, 1600 Division Street, Suite 700 Nashville, TN 37203
615.244.2582 www.boultoncummins.com

This email was sent to [email]. To ensure that you continue receiving our emails, please add us to your address book or safe list.

[manage](#) your preferences | [opt out](#) using TrueRemove™
Got this as a forward? [Sign up](#) to receive our future emails.

