

## **Justification for Non-Material Changes Model Creditable, Non-Creditable and Personalized Disclosure Notices**

**Background:** The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) provided an optional prescription drug benefit (Part D) to Medicare beneficiaries beginning February 1, 2006. Beneficiaries who opt not to enroll when initially eligible may be subject to a late enrollment penalty—a permanently higher beneficiary premium—if they subsequently enroll in Part D. The late enrollment penalty will not apply if the beneficiary has creditable coverage—a non-Medicare prescription drug plan that is expected to pay at least as much, on average, as the standard prescription drug plan under Part D of Medicare.

Section 1860D-13(b)(6) of the MMA and 42 CFR §423.56(c) and (d) require that all entities providing a prescription drug plan to a Medicare Part D eligible individual disclose whether the coverage is creditable. Medicare eligible individuals that delay enrolling in Part D will be required to provide copies of all disclosure notices provided to them as proof that they have maintained creditable prescription drug coverage since the end of their initial enrollment period in order not to be subject to the late enrollment penalty outlined under 42 CFR §423.46 and §423.286(c)(3) and in 70 Fed. Reg. 13397, 13399 (Mar. 21, 2005).

42 CFR §423.56 does not require entities to use specific disclosure notices or any specific language to provide the disclosure of creditable coverage status. The regulation requires that entities provide the information outlined under 42 CFR §423.56(c) and (d). However, at public request, CMS issued a Model Notice of Creditable Coverage and a Model Notice of Non-Creditable Coverage in May 2005, and a Model Personalized Disclosure Notice in May 2006 which contained the required information under 42 CFR §423.56 as well as additional beneficiary information about the MMA.

### Issue:

It has come to our attention from two external inquiries that the Model Notice of Creditable Coverage and the Model Notice of Non-Creditable Coverage issued by CMS contain certain statements that require correction. The first two bullet points below specifically outline the items that were brought to our attention from external parties. We further note that these issues did not arise when the Model Notice of Creditable Coverage and the Model Notice of Non-Creditable Coverage that are currently on the CMS website were previously posted for public comment. The last two bullet points address items that arose internally when we took the opportunity to further review the Model Notice of Creditable Coverage and the Model Notice of Non-Creditable Coverage.

### External Review

- The Model Notice of Creditable Coverage and the Model Notice of Non-Creditable Coverage posted on the CMS website at [http://www.cms.hhs.gov/CreditableCoverage/10\\_CCafterFeb15.asp#TopOfPage](http://www.cms.hhs.gov/CreditableCoverage/10_CCafterFeb15.asp#TopOfPage) both include the following sentence:

You should also know that if you drop or lose your coverage with [Insert Name of Entity] and don't join a Medicare drug plan within 63 continuous days after your current

coverage ends, you may pay a higher premium (a penalty) to join a Medicare drug plan later.

This statement is only relevant to the Model Notice of Creditable Coverage. By including it in the Model Notice of Non-Creditable Coverage, we have incorrectly stated that a Medicare beneficiary will not be subject to a late enrollment penalty by enrolling in a Medicare Part D plan within 63 days of dropping or losing a non-creditable prescription drug plan. Since the coverage is non-creditable, the beneficiary may be subject to the late enrollment penalty unless he/she has other creditable coverage.

- The Model Notice of Creditable Coverage and the Model Notice of Non-Creditable Coverage posted on the CMS website at [http://www.cms.hhs.gov/CreditableCoverage/10\\_CCAfterFeb15.asp#TopOfPage](http://www.cms.hhs.gov/CreditableCoverage/10_CCAfterFeb15.asp#TopOfPage) both include the following sentence:

This may mean that you may have to wait to join a Medicare drug plan and that you may pay a higher premium (a penalty) if you join later. You may pay that higher premium (a penalty) as long as you have Medicare prescription drug coverage.

This statement is only relevant to the Model Notice of Non-Creditable Coverage. By including it in the Model Notice of Creditable Coverage, we have incorrectly stated that a Medicare beneficiary may be subject to a penalty by enrolling in a Medicare Part D plan at a later date. Since the prescription drug coverage that he/she has is creditable, the beneficiary would not be subject to the late enrollment penalty if he/she enrolls in a Medicare Part D plan at a later date unless he/she experiences a period of 63 continuous days or longer without creditable coverage.

### Internal Review

- The Model Notice of Non-Creditable Coverage posted on the CMS website at [http://www.cms.hhs.gov/CreditableCoverage/10\\_CCAfterFeb15.asp#TopOfPage](http://www.cms.hhs.gov/CreditableCoverage/10_CCAfterFeb15.asp#TopOfPage) includes the following two sentences:

You can join a Medicare drug plan when you first become eligible for Medicare and each year from November 15<sup>th</sup> through December 31<sup>st</sup>. This may mean that you may have to wait to join a Medicare drug plan and that you may pay a higher premium (a penalty) if you join later.

The second sentence of the two above does not follow from the first. We believe the text would be clear if the second sentence explained that not taking advantage of the initial enrollment period may result in application of a higher premium if the beneficiary joins later. We are revising the second sentence to read as follows and moving it to the first page of the Model Notice of Non-Creditable Coverage:

This also is important because it may mean that you may pay a higher premium (a penalty) if you do not join a Medicare drug plan when you first become eligible.

- In addition to taking the opportunity to revise the Model Personalized Disclosure Notice with the changes cited above to the Model Notice of Creditable Coverage and the Model

Notice of Non-Creditable Coverage, we are taking the opportunity to incorporate some minor edits to all three notices which we believe will be helpful in clarifying this information for entities issuing them and for beneficiaries receiving the notice. These include moving some of the prior text around, consolidating some prior text, and inserting headings that are more descriptive and highlighted for beneficiaries.

Requested Action:

We believe it is important to remove the above-referenced erroneous sentences from the Model Notice of Creditable Coverage and the Model Notice of Non-Creditable Coverage at the earliest possible date so entities can have immediate access to the corrected versions for their use. The primary purpose of the Model Notice of Non-Creditable Coverage is to inform beneficiaries that they may be subject to a late enrollment penalty because the prescription drug coverage that they currently have is non-creditable. The purpose of the Model Notice of Creditable Coverage is to inform beneficiaries that they can keep their current prescription drug coverage and will not be subject to a late enrollment penalty because the prescription drug coverage that they currently have is creditable. The Model Notice of Creditable Coverage and the Model Notice of Non-Creditable Coverage include incorrect information that may interfere with those intended purposes. At the same time, as stated above, we also believe that the other editorial changes we have made will improve the clarity and understanding of all three Model Notices. We are requesting the ability to make these changes without going through a public comment period as we believe that these changes do not impact the burden estimate for these Model Notices. We also do not believe the public interest will be best served by a delay in making these changes until completion of a public comment period.

**Contact for Questions related to this request:**

James Mayhew, CMS, CBC, EPOG, DPHI  
[James.Mayhew@cms.hhs.gov](mailto:James.Mayhew@cms.hhs.gov)  
(410) 786-9244