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EMPLOYEE BENEFITS

CMS Adopts Final Calendar Year 2026 Part D Creditable Coverage Redesign Program Instructions

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Background

Employer group health plans are required to disclose to Medicare-eligible individuals whether the employer-sponsored prescription drug plan (if applicable) provides creditable or non-creditable coverage. This disclosure notice should be distributed by October 15 of each calendar year (in addition to other applicable times during the year). Employers must also report to CMS (via an online disclosure) whether the prescription coverage offered under the group health plan is considered creditable or non-creditable within 60 days following the beginning of the plan year.

An employer's prescription drug plan is considered **creditable** when the actuarial value (the measurement of how robust a plan is in providing coverage) of the prescription drug plan is the same as, or greater than, the actuarial value of Medicare Part D prescription drug coverage. **Non-creditable** means an employer's prescription drug plan's actuarial value does not meet or exceed the actuarial value of Medicare Part D prescription drug coverage.

Typically, a Medicare-eligible individual who does not enroll in Medicare Part D or creditable coverage within a period not to exceed 63 days after the later of the date the individual first becomes eligible for Medicare or the date they no longer have creditable coverage will be subject to late enrollment penalties under Medicare.

Creditable Coverage Determination

The actuarial value of an employer's prescription drug plan varies from health plan to health plan. Whether a prescription drug plan is creditable may require an annual "actuarial determination." Qualifying prescription drug plans may also utilize an alternative to the actuarial determination method, referred to as the Simplified Determination method[1], which provides a more straightforward process for determining whether a prescription drug plan is creditable. The current Simplified Determination method may be utilized for plan years beginning in calendar year 2025 and in 2026 (pending future guidance on whether the current Simplified Determination could continue to be utilized by plan sponsors in later calendar years). The *Revised* Simplified Determination method may be used for **all plan years beginning in calendar year 2026 (i.e., beginning January 1, 2026) and thereafter** under guidance issued as of April 2025. The following describes the Simplified Determination method under the CMS rules and the newly adopted Revised Simplified Determination method for plan years occurring in or after calendar year 2026.

[1] *https://www.cms.gov/Medicare/Prescription-Drug-Coverage/CreditableCoverage/downloads/CCSimplified091809.pdf*

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Utilization of the Simplified and Revised Simplified Determination Method in Determining Creditable Coverage Status of a Prescription Drug Plan

Current Simplified Determination Method to Determine Creditable Coverage Status

For plan years beginning in **calendar years 2025 and 2026** only (pending future guidance on whether the current Simplified Determination could continue to be utilized by plan sponsors in later calendar years), employers/union health plans that do not apply for the retiree drug subsidy (RDS) or participate in an Employer Group Waiver Plan (EGWP)[2] may use the Simplified Determination method to assess whether their prescription drug plan is creditable under the rules. If the prescription drug plan meets the Defined Standards (DS) set forth for an integrated or non-integrated plan, the plan would be considered creditable. For more information on the Simplified Determination method, please go to our Brown & Brown article published in August of 2024, which can be found by clicking on the green READ MORE tab, below.

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[2] EGWPs or Employer Group Waiver Plans are employer/union plans that provide Medicare Advantage coverage to retirees and are managed by private insurance companies. These plans are typically exempt from certain rules that apply to individual Medicare Advantage plans.

Revised Simplified Determination Method to Determine Creditable Coverage Status

For plan years beginning in **calendar year 2026 and beyond**, employers/union health plans that do not apply for the retiree drug subsidy (RDS) or participate in an EGWP may use the Revised Simplified Determination method to assess whether their prescription drug plan is creditable under the rules. The Revised Simplified Determination method states that a plan will be deemed to "provide prescription drug coverage with an actuarial value that equals or exceeds the actuarial value of DS Part D coverage if it meets all the following standards:

- Provides reasonable coverage for brand name and generic prescription drugs and biological products;
- Provides reasonable access to retail pharmacies; and
- Is designed to pay on average at least 72 percent of participants' prescription drug expenses."

The new Revised Simplified Determination method parameters contained in the Calendar Year 2026 Final Instructions remove many of the antiquated parameters within the previous Simplified Determination method, such as references to annual and lifetime benefit maximums (and different deductibles), which no longer apply since the inception of the Affordable Care Act.

Actuarial Determination Method

Even when a plan is not creditable under either the Revised Simplified Determination method or the current Simplified Determination method, the actuarial determination method could still be used to demonstrate that a plan is creditable. This requires using actuarial models to determine the estimated Part D base plan's gross and net costs (or the Gross Costs less the member cost sharing). The net-to-gross cost ratio is the Part D actuarial value. This number is compared to the actuarial value of the employer's plan you are testing. For it to be creditable, the actuarial value of the employer's plan must be equal to, or higher than, the actuarial value of the Part D plan design.

Significant Changes to Medicare Part D on January 1, 2025

Beginning January 1, 2025, changes to Medicare Part D impacted the actuarial value of Medicare prescription drug coverage. For 2025, the coverage gap phase has been eliminated, and an out-of-pocket spending cap of $2,000 now applies in the initial coverage phase (and increased to $2,100 for 2026). This change to the member cost sharing requirements under Medicare Part D plans will make it more difficult for plans to pass creditable coverage testing.

These changes mean the Medicare Part D plan's actuarial value will increase to 72% in 2026 (pursuant to language used in the Revised Simplified Determination method). This meaningful difference could cause many existing employer-sponsored plans considered creditable in 2024 or 2025 to no longer meet minimum requirements in 2026, subject to an actuarial review.

Employer Considerations

Although employers are not required to provide creditable coverage to employees, former employees or their Medicare-eligible spouses and dependents, many of these individuals may be surprised that coverage in which they have been enrolled for many years may now be considered non-creditable considering these new final instructions. As previously mentioned, certain Medicare-eligible individuals who fail to enroll in Medicare Part D (or an equivalent plan) may be subject to penalties for any gaps of 63 or more days between creditable coverage and Medicare Part D prescription drug coverage when they eventually enroll in Medicare Part D.

Action Plan

Plan sponsors should either perform an actuarial review of their prescription drug plan or apply the Simplified Determination method/Revised Simplified Determination method (depending on the plan year) to their prescription drug plans due to these new final instructions. This enables the plan sponsor to provide the correct applicable creditable/non-creditable notice to Medicare-eligible individuals and to accurately report the plan's creditable/non-creditable status to CMS.

Plan sponsors of fully insured plans should consult with their insurance carrier partners. Plan sponsors of self-funded plans may want to review their prescription drug plans more closely with their third-party administrators (TPAs) and pharmacy benefit managers (PBMs) to see if they will assist with determining the creditable/non-creditable status of the prescription drug plans.

Plan sponsors affected by these changes to Medicare Part D may want to consider the following:

- Changing their prescription drug plan design with their insurer/TPA to satisfy creditable coverage standards under the CMS rules if those plans would no longer be considered creditable due to these new final instructions
- Notifying Medicare-eligible individuals that their prescription drug plans no longer meet the standards for creditable coverage due to these new final instructions by delivering the non-creditable coverage notice to Medicare-eligible individuals.

For more information on whether the plan is creditable or non-creditable, health plan sponsors should contact their insurance carriers/TPAs/PBMs (as applicable), their actuarial team and/or legal counsel.

How Brown & Brown Can Help

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Brown & Brown Insurance Services, Inc.
in CA Brown & Brown Retail Insurance Services (CA Entity License #0F56560)
300 N Beach St, Daytona Beach, FL 32114 | (386) 252-6176

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