

CREDITABLE COVERAGE GUIDANCE FOR MEDIGAP ISSUERS

INTRODUCTION

The guidance found on the Centers for Medicare & Medicaid Services Creditable Coverage webpage (General Creditable Coverage Guidance) provides general guidance on how certain entities should comply with section 1860D-1 of the Social Security Act, as added by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA), and with implementing regulations at 42 CFR §423.56. That guidance applies to Medigap issuers, with the following exceptions:

POLICY GUIDANCE

Content of Creditable Coverage Disclosures from Entity to Beneficiaries

The general information under this subheading in the General Creditable Coverage Guidance, including those subsections that discuss disclosures of creditable coverage and noncreditable coverage, generally does **not** apply to Medigap issuers. Medigap issuers **are** required to send the beneficiary notices described in 42 CFR §423.56. However, a separate requirement at section 104(a) of MMA requires Medigap issuers to send a notice, during the period of September 15 through November 14, 2005, to individuals¹ who have policies that include prescription drug coverage. That notice must disclose whether the prescription drug coverage is creditable, along with other specified information. CMS has consulted with the National Association of Insurance Commissioners in developing a notice of creditable coverage, and a notice of non-creditable coverage, that Medigap issuers must use to satisfy this obligation under section 104(a) of MMA. They are included in the list of documents posted on the CMS Website. Medigap issuers must use the precise language that appears in the posted notices, with the following exceptions:

1. The posted notices indicate where Medigap issuers must use different language to describe certain consumer protections that are guaranteed by State, but not Federal law, or that the Medigap issuer voluntarily provides. Each state is responsible for enforcing the requirement that Medigap issuers include the mandatory (i.e., not bracketed) language in the posted notices, where applicable. When additional protections apply, either by operation of State law or issuer choice, each issuer is responsible for using substituted or additional language that complies with State law.
2. The posted notices indicate where Medigap issuers can mention that they are offering PDP or MA-PD products. Additionally, the posted notices indicate that such issuers may

¹ The notice described in 42 CFR §423.56, and the notice in section 104(a) of MMA, apply to ALL Medigap Rx policies in ALL states, including policies that are no longer being marketed (i.e., all standardized plans H, I, and J; any other standardized policies that contain Rx benefits as innovative benefits or riders; any prestandardized Medigap Rx policies issued prior to mid-1992; and policies issued at any time in one of the waived states of Massachusetts, Minnesota, and Wisconsin that contain Rx coverage.

supply additional materials on these products along with the creditable/noncreditable coverage notice. To the extent any notice includes language mentioning that the issuer is offering such other products, the issuer is responsible for using language that complies with Federal law.

3. With regard to policyholders who intend to join a PDP or an MA-PD, the posted notices indicate where Medigap issuers must disclose the policyholder's adjusted Medigap premium, and indicate where issuers must instruct policyholders or certificateholders how to notify the Medigap issuer that they have joined a PDP or MA-PD. Each issuer is responsible for using language that complies with State law.

4. With regard to issuers that are not offering any of the Plans A, B, C, F, K or L (or any similar plans, in waiver states) to new enrollees, the text under the heading "If You Enroll By May 15, 2006, in a Plan that Provides Medicare Prescription Drug Coverage" should be revised as indicated in the document entitled "Medigap Closed Block Modification," which is included on the list of documents posted on the CMS Website. Issuers that have assumed a closed block of business from another issuer, but are themselves offering any of the plans A, B, C, F, K, or L to new enrollees, must offer these plans to individuals in those closed blocks of business who wish to switch to one of these plans.

Each state is responsible for enforcing the requirement that Medigap issuers determine the correct notice to send (creditable vs. noncreditable), and then timely send the appropriate notice with the mandatory language in the posted notices, and any other appropriate language.

Timely use of these Medigap notices by Medigap issuers as required in section 104(a) will satisfy the beneficiary disclosure requirements under 42 CFR §423.56, to provide disclosure prior to November 15, 2005.

To the extent any Medigap issuer sells policies that include prescription drug coverage and have an effective date any time from November 15 through December 31, 2005, the issuer can use the beneficiary notice required under section 104(a) to satisfy its beneficiary notice obligation in 42 CFR §423.56. Also, to the extent any individual requests a copy of the disclosure notice anytime during the period November 15, 2005, through May 15, 2006, or if the creditable status of a Medigap policy changes during that time period, a Medigap issuer can satisfy its obligation under that section of the regulations to provide a notice, by providing a copy of the notice required under section 104(a).

As stated in the section of the general guidance relating to disclosure to beneficiaries, subsequent sample/model language will be provided in further guidance, for use after December 31, 2005.

Form and Manner of Creditable Coverage Disclosure from Entity to Medicare Beneficiaries

Most of the general information under this subheading in the General Creditable Coverage Guidance applies to Medigap issuers. Medigap issuers can include the Medigap-specific notice described in section 104(a) in the same envelope with other separate enrollee information documents. However, the notices cannot be made part of the other documents.

Timing of Creditable Coverage Disclosure from Entity to Beneficiaries

The General Creditable Coverage Guidance list five “events” that occur on or after November 15, 2005, that trigger a requirement that entities again provide creditable coverage disclosure notices to beneficiaries. Unlike some entities such as group health plans, Medigap issuers do not cover individuals until after they are enrolled in Medicare. Moreover, as of January 1, 2006, Medigap issuers cannot offer for sale any policies with prescription drug coverage. Therefore, two of the five requirements listed in the General Creditable Coverage Guidance do not apply to Medigap issuers (i.e., sending a notice prior to an individual’s Initial Enrollment Period for Part D, and prior to the Medicare-eligible individual’s effective date of coverage in a plan or entity described in 42 CFR §423.56.²). Only the following three events trigger Medigap issuers’ obligations to provide creditable coverage disclosure notices to individuals who have a policy with prescription drug coverage:

1. Prior to the Medicare Part D Annual Coordinated Election Period (ACEP) – which is November 15th through December 31st of each year;
2. Upon a beneficiary’s request; and
3. Whenever creditable prescription drug coverage ends, or whenever prescription drug coverage changes so that it is no longer creditable or becomes creditable. Note that these scenarios will rarely apply to Medigap insurers. Most Medigap policies are guaranteed renewable and therefore their benefits cannot be changed. However, the creditable status of prescription drug coverage depends on how it compares to the standard Medicare drug benefit. Therefore, the creditable status of a Medigap policy conceivably could change due to changes in utilization under the policy or under the Medicare benefit, or indexing of the standard Medicare drug benefit.

CONTACT FOR FURTHER INFORMATION

For further information on creditable coverage, you may refer to the sources of information listed under this subheading in the General Creditable Coverage Guidance.

LINK TO CREDITABLE AND NON-CREDITABLE COVERAGE DISCLOSURE NOTICES

² As stated previously, to the extent a Medigap issuer sells policies that include prescription drug coverage and have an effective date any time from November 15 through December 31, 2005, such issuers can provide the appropriate Medigap-specific notice under Section 104(a). Also, to the extent any individual requests a copy of the disclosure notice anytime during the period November 15, 2005, through May 15, 2006, or if the creditable status of a Medigap policy changes during that time period, a Medigap issuer can satisfy its obligation under that section of the regulations to provide a notice, by providing a copy of the notice required under section 104(a).

As stated previously, CMS has posted, on our Website, the notice of creditable coverage, and the notice of noncreditable coverage, that Medigap issuers must send to Medicare beneficiaries under Section 104(a) of MMA. **For the period September 15 through November 14, 2005, Medigap issuers must use those Medigap-specific notices (instead of the more general creditable coverage notices that appear in the list of documents posted on the Creditable Coverage webpage on the CMS Website at www.cms.hhs.gov) in order to satisfy their beneficiary notice requirements under Section 104(a) of MMA.** Timely use of those Medigap-specific notices as provided in section 104(a) of MMA will constitute compliance with the provisions of 42 CFR §423.56 that require beneficiary notices to be sent by November 14, 2005.

NOTE

In instances where an employer or union is involved in facilitating coverage for employees or retirees that consists of a product generally sold in the Medigap market, either this Guidance paper, or the General Creditable Coverage Guidance will apply. To determine which of these two documents apply, see the document titled “Employers/Unions & Medigap Issuers Guidance – Which Notice of Creditable Coverage to Provide?” which is included in the list of documents posted on the CMS Creditable Coverage webpage.