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## **Medicare: Enrollment in Medicare Drug Plans**

**November 3, 2005**

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# Medicare: Enrollment in Medicare Drug Plans

## Summary

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) established a new voluntary prescription drug benefit under a new Medicare Part D. The new benefit becomes effective January 1, 2006. Prescription drug coverage will be provided through private prescription drug plans (PDP) or Medicare Advantage prescription drug (MA-PD) plans. At a minimum, these plans will offer “standard coverage” or alternative coverage with actuarially equivalent benefits. Beneficiaries will be required to enroll in one of these private plans in order to obtain coverage.

Persons first eligible for Medicare on or before January 31, 2006, have an initial enrollment period beginning November 15, 2005, and ending May 15, 2006. If they enroll by December 31, 2005, their coverage will begin January 1, 2006. If they enroll later in the initial enrollment period, their coverage will begin on the first day of the first month following the month of enrollment.

In general, an individual who does not enroll during his or her initial enrollment period will only be able to enroll during the annual open enrollment period, which will run from November 15 to December 31 each year. Coverage will begin the following January 1. Thus, individuals first eligible for Medicare on or before January 31, 2006, who fail to enroll by May 15, 2006, will not be able to enroll until the open enrollment period beginning November 15, 2006. If these individuals enroll at that time, their coverage will begin January 1, 2007.

Medicare beneficiaries who do not enroll in a plan during their initial enrollment period will have a delayed enrollment penalty if they enroll at a later date. However, they will not be subject to a penalty if they have maintained “creditable” drug coverage through another source. One source of possible creditable coverage is retiree health coverage offered by a former employer or union.

The late enrollment penalty is 1% of the base beneficiary premium for each uncovered month. The “base beneficiary premium” is a national figure; it may therefore be different from the premium for the plan selected by the beneficiary. Individuals first eligible for Medicare on or before January 31, 2006, who defer enrollment until the November 15-December 31, 2006 enrollment period would have seven uncovered months, unless they had maintained creditable coverage. Their penalty would therefore be 7% of the base beneficiary premium.

Special enrollment provisions apply to some low-income persons. Some categories of low-income individuals will be randomly assigned to a plan if they fail to select a plan by a target date. They will be allowed to change plans if they feel the plan selected for them fails to meet their needs.

Some observers have suggested that the range of options posed by the new drug benefit may prove confusing for some Medicare beneficiaries. Some have recommended deferral of the application of the late enrollment penalty. The report will be updated as events warrant.

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# Medicare: Enrollment in Medicare Drug Plans

## Overview

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) established a new voluntary outpatient prescription drug benefit under a new Medicare Part D. The new benefit becomes effective January 1, 2006. Prescription drug coverage will be provided through private prescription drug plans (PDP) or Medicare Advantage prescription drug (MA-PD) plans. At a minimum, these plans will offer “standard coverage” or alternative coverage with actuarially equivalent benefits. Beneficiaries will be required to enroll in one of these private plans in order to obtain coverage.

Persons who fail to enroll during their initial enrollment period will be subject to a penalty if they decide to enroll in the program at a later date. However, they will not be subject to the penalty if they have maintained “creditable” drug coverage through another source. One source of possible creditable coverage is retiree health coverage offered by a former employer or union.

Special enrollment provisions apply to some low-income persons.

## Enrollment in Part D

All persons enrolled in Medicare Part A and/or Medicare Part B are eligible to enroll in a prescription drug plan under Part D. Beneficiaries enrolled in the “original Medicare” program can obtain drug coverage through a PDP. A beneficiary enrolled in a managed care plan under the Medicare Advantage (MA) program can only obtain drug benefits through the MA organization. If the MA enrollee wants to enroll in a PDP, he or she must drop their MA enrollment.

Different PDP and MA-PD plans are available in different parts of the country. Information on plan availability and characteristics can be obtained from a number of sources. These include the Medicare toll-free information number (1-800-MEDICARE) and the website [<http://www.medicare.gov>]. Other organizations may also be able to provide assistance; these include State Health Insurance Assistance Programs (SHIP) and other local organizations.

Beneficiaries must enroll with the organization offering their selected plan. They can enroll by mail, in person, or on the Web.

## Initial Enrollment Period

In general, Medicare beneficiaries will need to enroll in a plan during their initial enrollment period in order to avoid the delayed enrollment penalty. Persons first eligible for Medicare on or before January 31, 2006, have an initial six-month enrollment period beginning November 15, 2005, and ending May 15, 2006. If they enroll by December 31, 2005, their coverage will begin January 1, 2006. If they enroll later in the initial enrollment period, their coverage will begin on the first day of the first month following the month of enrollment.

Individuals first eligible for coverage in February 2006, have an initial enrollment period from November 15, 2005 through May 31, 2006. Their coverage will begin on the first day of the first month following the month of enrollment, but no earlier than February 2006. Persons eligible for Medicare beginning March 2006 or later will have an initial seven-month enrollment period beginning three months before the month of Medicare eligibility and ending seven months later. This initial eligibility period is the same as that applicable for Medicare Part B. Coverage for these individuals will begin on the first day of the first month following the month of enrollment, but no earlier than the first month they are entitled to Medicare.

## Annual Open Enrollment Period

In general, an individual who does not enroll during his or her initial enrollment period will only be able to enroll during the annual open enrollment period which will occur from November 15-December 31 each year. Coverage will begin the following January 1. Thus, individuals first eligible for Medicare on or before January 31, 2006, who fail to enroll by May 15, 2006, will not be able to enroll until the open enrollment period begins November 15, 2006. If these individuals enroll during this annual open enrollment period, their coverage will begin January 1, 2007. (Individuals already enrolled in Part D can change their plan enrollment during the annual open enrollment period.)

## Creditable Coverage

The law imposes a late enrollment penalty on persons who delay enrollment in a Part D plan until after their initial enrollment period. However, there is an exception for persons who maintain creditable coverage through some other public or private source and then choose to enroll in Part D at a later date. Creditable coverage is defined as drug benefits whose actuarial value equals or exceeds that of standard coverage.

Major sources of *possible* creditable coverage are the following:

- *Retiree Health Plans Offered by Employers or Unions.* Sponsors of retiree plans are required to disclose whether their plan is creditable coverage. The disclosure must be made by November 14, 2005, to all of their retirees, spouses, and dependants who are both eligible to

participate in the retiree health plan and who are eligible for Part D.<sup>1,2</sup>

- *Other Group Health Plans and Some Individual Health Plans.* This includes health insurance coverage provided to Medicare-eligible persons who are active employees.
- *Military Coverage Including TRICARE.* TRICARE has a comprehensive drug benefit which will not change when Part D is implemented. Most TRICARE-Medicare eligible beneficiaries will not need to obtain Part D coverage. The only possible exception is for low-income persons who might benefit from the low-income subsidy; these individuals might be able to reduce their out-of-pocket drug costs. For persons with both Medicare and TRICARE, Medicare will pay first.<sup>3</sup>
- *Prescription Drug Plans for Veterans.* Persons receiving Department of Veterans' Affairs health care benefits have creditable coverage. Some of these individuals may elect to enroll in Part D. Persons may benefit from Part D coverage if: (1) they live in or move to a nursing home that does not let them access VA drug benefits; (2) they live a long way from a VA facility and would prefer to get drugs from local pharmacies; or (3) they want the flexibility to get prescriptions filled by a non-VA pharmacy. Individuals can enroll in both programs, and decide on a prescription by prescription basis whether to use VA or Medicare. A single drug prescription will only be covered by one program.<sup>4</sup>
- *State Pharmaceutical Assistance Program (SPAP).* A number of states help the low-income elderly, and in some cases disabled, residents with their drug costs. It is anticipated that most states will modify their SPAPs to "wrap around" the Part D benefit. Individuals would therefore need to be enrolled in both Part D and the SPAP to retain their full coverage.
- *Medigap.* In general, Medigap plans will NOT offer creditable coverage. Individuals generally select from one of 10 standardized

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<sup>1</sup> However, if the employer or union contracts directly as a Part D plan or contracts with a Part D plan to provide Part D coverage, the disclosure requirement is waived.

<sup>2</sup> For a discussion of the interaction of the drug benefit and retiree coverage, see CRS Report RL33041, *Medicare Drug Benefit: Retiree Provisions*, by Jennifer O'Sullivan.

<sup>3</sup> U.S. Department of Health and Human Services, "Information Partners Can Use on TRICARE," *New Medicare Prescription Drug Coverage, Tip Sheet*, [<http://www.cms.hhs.gov/medicarereform/TRICARE.pdf>], accessed Sept. 28, 2005.

<sup>4</sup> U.S. Department of Health and Human Services, "Information Partners Can Use on Veterans' Administration Benefits," *New Medicare Prescription Drug Coverage, Tip Sheet*, [<http://www.cms.hhs.gov/medicarereform/VA.pdf>], accessed Sept. 28, 2005.

plans; only three of these (Plans H, I, and J) currently offer drug coverage. CMS has stated that Plans H and I will never meet the definition of creditable coverage and that Plan J is unlikely to. The law requires Medigap issuers whose policies include prescription drug coverage to send a special notice, before November 15, 2005, to their policyholders. One part of this notice will inform policyholders whether their drug coverage is or is not creditable coverage. Beginning January 1, 2006, insurers will no longer be able to sell Medigap policies with drug coverage. Individuals who currently have them may renew them provided they do not enroll in a Part D plan.<sup>5</sup>

- *Other Coverage.* This includes (1) Indian Health Service Tribe or Tribal Organization or Urban Indian Organization; (2) Program of All Inclusive Care for the Elderly (PACE) organization; (3) cost-based health maintenance organization or competitive medical plan under Medicare; or (4) state high risk pool.

All of the entities noted above (except for PACE and cost-based HMOs and CMPs) are required to disclose to *all* Part D individuals enrolled in or seeking to enroll in the plan, whether the coverage is creditable. If the coverage is non-creditable, the entity must: (1) include the fact that the coverage is non-creditable, (2) note that there are limited periods during a year in which the individual may enroll in Part D, and (3) specify that the individual may be subject to late enrollment penalties.

The notification must be provided: (1) prior to an individual's initial enrollment period; (2) prior to the effective date of enrollment in the coverage and upon any change that affects whether the coverage is creditable; (3) prior to the annual open enrollment period; and (4) at the request of the individual.

## **Considerations When Switching From Creditable Coverage to Part D Coverage**

A beneficiary who has creditable coverage may wish to enroll in a Part D plan after the conclusion of their initial enrollment period. Care must be taken to assure that any noncoverage period between the two events does not exceed 63 days. Otherwise the beneficiary could be subject to a late enrollment penalty.

For example, a retiree who is enrolled in a plan offered by their former employer decides in July 2006 that they want to drop the employer coverage and enroll in Part D. The individual will not be able to enroll in a Part D plan until the annual election period (November 15-December 31). Coverage will not begin until the following January 1. They will probably want to keep their employer coverage through the end of 2006.

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<sup>5</sup> For a discussion of the new Medigap requirements see CRS Report RL31223, *Medicare: Supplementary "Medigap" Coverage*, by Jennifer O'Sullivan.

## Special Enrollment Periods

In general, individuals can only enroll in Part D during their initial enrollment period or during the annual open enrollment period. However, there are a few exceptions. *The most important exception is for persons who are dually eligible for Medicare and full Medicaid benefits.* They may have a special enrollment period at any point during the year; during this period a dual eligible individual is allowed to drop one plan and switch to another plan. (See discussion on low-income populations, below.)

The following are other more limited occasions when an individual may have a special enrollment period.

- *Involuntary Loss of Creditable Coverage.* The individual involuntarily loses creditable coverage or coverage is involuntarily reduced so that it is no longer creditable coverage. (Loss of creditable coverage due to failure to pay required premiums is not considered involuntary loss of coverage.)
- *Inadequate Information.* The individual was not adequately informed that he or she had lost creditable coverage, never had creditable coverage, or coverage is involuntarily reduced so that it is no longer creditable coverage.
- *Federal Error.* The individual's enrollment or non-enrollment in a part D plan is unintentional, inadvertent, or erroneous because of error, misrepresentation, or inaction of a federal employee or authorized representative of the federal government.
- *Disenrollment from MA-PD Plan During First Year.* The individual enrolls with a MA-PD plan upon turning 65, disenrolls during the first year and elects coverage under traditional "fee-for-service" Medicare.
- *Termination of PDP Contract.* The contract is terminated by the PDP sponsor or CMS or the plan is no longer offered in the area where the individual resides.
- *Individual Moves.* The individual is no longer eligible for the PDP because the individual moved outside of the PDP region.<sup>6</sup>
- *Plan Failures.* The individual demonstrates to CMS that the PDP sponsor substantially violated a material provision of the contract relating to the individual including failure to provide benefits on a timely basis, failure to provide benefits in accordance with

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<sup>6</sup> Note that persons who are "snowbirds" are encouraged to enroll in national PDP plans. Persons referred to as snowbirds are generally persons who move to warmer locations in the winter and then return home for the remainder of the year.



applicable quality standards or materially misrepresenting the plans provisions in marketing the plan to the individual.

## Calculation of Late Enrollment Penalty

The late enrollment penalty (sometimes referred to as a higher premium charge) is assessed on persons who go for 63 days or longer after the close of their initial Part D enrollment period without creditable coverage and subsequently enroll in Part D. The penalty is based on the number of months the individual does not have creditable coverage. The premium that would otherwise apply is increased for each month without creditable coverage.

The late enrollment penalty is frequently described as being equal to at least 1% of the otherwise applicable premium for each uncovered month. The actual calculation is somewhat more complicated. The law specifies that the penalty is the greater of: (1) the amount CMS determines is actuarially sound for each uncovered month; or (2) 1% of the *base beneficiary premium* for each uncovered month. The “base beneficiary premium” is a national figure;<sup>7</sup> it may therefore be different than the premium for the plan selected by the beneficiary. For uncovered months occurring during 2006, the 1% calculation applies, though the amount will not be announced until late 2006. For uncovered months in 2007, the 1% calculation will also apply unless the Secretary specifies a different amount based on available analysis. It is possible that in future years, CMS may calculate an actuarially sound amount (i.e., an amount better reflecting the costs associated with late enrollment) which is higher than the 1% calculation. In that case the actuarially sound amount would apply.

The penalty applies for as long as the individual is enrolled in Part D. The dollar amount of the penalty is expected to increase each year.

As noted above, individuals first eligible for Medicare on or before January 31, 2006, who fail to enroll by May 15, 2006, will not be able to enroll until November 15, 2006, with coverage beginning January 1, 2007. If these individuals do not have creditable coverage during the period, they will have seven uncovered months. Their penalty would therefore be 7% of the base beneficiary premium. If these same persons waited an additional year, their penalty would be 19% of the base beneficiary premium (or possibly a higher actuarially sound amount, as determined by CMS).

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<sup>7</sup> The base beneficiary premium is linked to a weighted average of plan bids for a reference month in the preceding calendar year, as determined by CMS. The weighted average is based on plan enrollment compared to overall Part D enrollment. For 2006, CMS will assign equal weights to PDP sponsors and assign MA-PD plans a weight based on prior enrollment (with new MA-PD plans assigned a zero weight).

## Special Provisions for Low-Income Populations

A major focus of MMA is the enhanced coverage provided to low-income individuals who enroll in Part D.<sup>8</sup> Generally there is a two-step process for low-income enrollees. First, a determination must be made that they qualify for the assistance; and, second, they must enroll in a specific Part D plan. Special procedures have been established to make the process easier. The procedures are different for different categories of low-income enrollees.

### Dual Eligibles

Dual eligibles are persons who are dually eligible for Medicare and *full* Medicaid benefits. They currently have their drug costs paid by Medicaid. Effective January 1, 2006, they will have their prescription drug costs paid under the new Part D. Medicaid will no longer pay for drugs which could be covered under Part D.

There are over 6 million dual eligibles who will need to be enrolled in a Part D plan. CMS has established an auto-enrollment process which is intended to assure there is no gap in coverage. During the first week of November 2005, CMS began mailing notices to dual eligibles informing them about the upcoming transition, the enrollment process, and information on the plan they will be enrolled in if they fail to make another choice before December 31, 2005.

The auto-enrollment process is random among plans with premiums below the low-income benchmark premium.<sup>9</sup> There will be a number of differences among available plans. Key differences are drugs included in plan formularies and pharmacies participating in the plan as network pharmacies. Some dual eligibles may find that they have been auto-enrolled in a plan which may not best meet their needs. For this reason, they will be able to change enrollment at any time with the new coverage effective the following month. This is the only population group that has this option. It should be noted that if an enrollee selects a plan with a premium above the low-income benchmark, he or she will be required to pay the difference.

### Other Persons Automatically Qualifying for Extra Help

A second group of low-income persons automatically qualify for assistance in meeting Part D Medicare premium and cost-sharing requirements. These are individuals who are currently enrolled in Medicare Savings programs [i.e., the Qualified Medicare Beneficiary (QMB) program, the Specified Low-Income Medicare Beneficiary (SLMB) program, and the Qualified Individual (QI-1) program]<sup>10</sup>, or the Supplemental Security Income program. In the spring of 2005,

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<sup>8</sup> For a discussion of the low-income benefits, see CRS Report RL32902, *Medicare Prescription Drug Benefit: Low-Income Provisions*, by Jennifer O'Sullivan.

<sup>9</sup> The low-income benchmark premium is a weighted average of premiums in the area.

<sup>10</sup> The QMB program pays Medicare Parts A and B cost-sharing charges and Medicare Part B premiums for persons at or below 100% of the federal poverty level. The SLMB program  
(continued...)

CMS mailed letters to these persons informing them that they would automatically qualify for low-income subsidies.

Other low-income persons may qualify, but they will need to submit an application. Earlier this year, the Social Security Administration (SSA) sent application forms to low-income persons who it identified as possibly qualifying for extra help. SSA makes eligibility determinations for those who fill out the applications.

Federal efforts are not expected to identify all persons potentially entitled to low-income assistance. Persons who think they might qualify should file an application with SSA or their state Medicaid office.

CMS will facilitate enrollment in Part D plans for persons identified as qualifying for extra help. Individuals who have not selected a plan by the close of the initial enrollment period (May 15, 2006) will be randomly enrolled in a plan with coverage effective June 1, 2006. The facilitated enrollment process will be similar to that for dual eligibles. Namely, persons will be randomly enrolled in plans with premiums at or below the low-income benchmark. However, they will only be able to switch plans once during 2006, with the new coverage effective the following month. Subsequently they will only be able to change during the annual open enrollment period with the coverage effective the following January.

Low-income persons who have not been identified as qualifying for low-income assistance will not have facilitated enrollment. They will be subject to a late enrollment penalty if they delay enrollment after their initial enrollment period.

## **Enrollment/Legislative Issues**

Some observers have suggested that the range of options posed by the new drug benefit may prove confusing for some Medicare beneficiaries. They contend that some persons may be unable to make a selection by May 15, 2006, the closing date of the initial enrollment period. Additional concerns have been raised with the ability of persons displaced by Hurricane Katrina to make timely enrollment decisions. Some persons are therefore recommending deferral of the application of the late enrollment penalty. To date the following bills have been introduced:

- H.R. 3861 (Stark et al.) and S. 1841 (Nelson, Bill et al.), the Medicare Informed Choice Act of 2005. The bill would extend the open enrollment period through the end of 2006 and permit one enrollment change in 2006.

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<sup>10</sup> (...continued)

pays Medicare Part B premiums for persons with incomes over the QMB limit up to 120% of poverty. The QI-1 program pays the Part B premiums for persons above the SLMB limit up to 135% of poverty.

- H.R. 3940 (Price et al.), Ensure Prescription Drug Coverage Act of 2005. The bill would extend the initial enrollment period through June 30, 2007.
- H.R. 3952 (Gingrey and Scott, David) and S. 1716 (Grassley, et al.), Emergency Health Care Relief Act of 2005 and H.R. 3958 (Melancon), S. 1765 (Landrieu) and S. 1766(Vitter), Louisiana Katrina Reconstruction Act. These bills would require the Secretary to have a written plan for dealing with transition issues for dual eligibles impacted by Hurricane Katrina.
- S. 18, (Dayton et al.) Meeting Our Responsibility to Medicare Beneficiaries Act of 2005, and S. 1822 (Murray and Cantwell) Medicare HEALS Act of 2005. The bills would waive the late enrollment penalty for individuals who enrolled prior to January 1, 2008.
- S. 1637 (Reid et al.), Katrina Emergency Relief Act of 2005. The bill would extend the initial enrollment period for Katrina survivors to May 15, 2007.