

KELLY, HANNAFORD & BATTLES P.A.

ANTHONY R. BATTLES
JULE M. HANNAFORD IV
A. DAVID KELLY
JOHN W. HAINE
SONJA LEMMER MARTENS

MARK D. MEYER
THEODORE K. RICE
OF COUNSEL

ATTORNEYS AT LAW
3900 CAMPBELL MITHUN TOWER
222 SOUTH NINTH STREET
MINNEAPOLIS, MINNESOTA 55402
TELEPHONE (612) 341-0881
FACSIMILE (612) 341-1041
KHBLAW.COM

WRITER'S DIRECT DIAL:
612/455-6075
DKelly@KHBlaw.com

August 22, 2005

Re: New Employee Notice Requirements in Connection With Medicare Part D

Dear Clients and Other Friends:

By November 15, 2005, many employers will need to distribute a new notice to employees, retirees, and dependents who are eligible for the new Medicare Part D prescription drug benefit. This notice is required by the Centers for Medicare and Medicaid Services (CMS), the federal agency responsible for administering Medicare. The new notice will advise individuals covered by the employer's medical plan who also are eligible for Medicare Part D coverage whether their employer coverage is "creditable coverage" for purposes of Part D. If an individual has "creditable coverage", he or she can enroll in Part D coverage after the earliest possible date without having to pay higher monthly premiums.

For this purpose, "creditable coverage" is prescription drug coverage with an actuarial value at least equal to the actuarial value of Part D coverage. Whether the employer's prescription drug coverage is at least actuarially equivalent to Medicare Part D must be determined by the employer, presumably with advice from the insurer or third party administrator of the employer's medical plan. Some plans will qualify as actuarially equivalent through a safe harbor in the CMS rules.

This notice must be given to individuals who have coverage under Medicare Part A or B and also have coverage under the employer's medical plan. Individuals entitled to the notice generally would be in these categories:

- Employees and dependents age 65 or older
- If the employer provides retiree medical coverage, retirees and their dependents age 65 or older who have such coverage
- Individuals who have Medicare coverage as a result of disability and also have coverage under the employer's medical plan

Note that the notice requirements can apply to an employer even if that employer does not offer retiree medical coverage. If you have active employees or dependents participating in your medical plan who are 65 or older, you probably are required to provide this notice.

The CMS has prescribed two alternative forms employers can use to give this notice – one if the employer's drug coverage is at least actuarially equivalent to Part D and the other if it isn't. If you received this letter by e-mail, links to the forms are on the e-mail transmittal message. If you received this letter by U.S. Mail and would like a copy of these forms, let us

know and we will e-mail them to you. (Also, let us know if you would like to receive future KHB newsletters by e-mail.)

Employers are also free to develop their own notice forms as long as they include certain content required by CMS. We would be happy to go over those requirements if you are interested.

The CMS rules are quite flexible about the means of providing the notice. For example, it could be combined with your annual enrollment materials or included in your Summary Plan Description, so long as it gets into participant hands by November 15, 2005. If you combine the notice with an SPD or other employee communication, CMS requires that the first page of the communication include wording along the lines of the following to note prominently that the notice is included:

If you have Medicare or will become eligible for Medicare in the next 12 months, a new Federal law gives you more choices about your prescription drug coverage, starting in 2006. Please see page xx for more details.

If the notice is provided to an employee or retiree, it is not necessary to send a separate notice to their dependents unless the employer knows that a dependent lives at a different address.

The CMS guidelines for electronic distribution of employee notices are more restrictive than the Labor Department guidelines. Let us know if you want more information on that subject.

Several other Medicare Part D requirements affecting employers will be implemented later:

- Beginning in 2006, employers will be required to distribute additional employee notices on this subject at least annually.
- Eventually it will be necessary for employers to provide a notice to the CMS identifying individuals who have creditable coverage under the employer's plan.
- Employers will have to provide certain claims information to CMS or to Medicare Part D plan sponsors so Part D coordination of benefits can be administered.

Let us know if you have any questions about this subject.

Sincerely,

A. David Kelly

ADK/jks

P.S. Employers that provide retiree medical coverage to individuals who are eligible for Medicare may qualify for a government prescription drug subsidy equal to a portion of the prescription drug costs paid for such individuals. To obtain the subsidy for 2006, certain actions must be taken by September 30, 2005. Let us know if you want more information about the subsidy.