

**Part D Waiver Guidance for Employer/Union Retiree Coverage**  
**February 11, 2005**

**Introduction**

***Employer Options***

The MMA provides employers and unions with a number of options for providing prescription drug coverage to their retirees.

- An employer or union sponsor with coverage that is at least as good as Medicare's Part D defined standard prescription drug benefit can receive a tax-free retiree drug subsidy that pays 28 percent of a retiree's drug costs (as defined by the regulation) between \$250 and \$5,000 in 2006. The subsidy only applies to retirees eligible for but not enrolled in a Medicare Prescription Drug Plan or a Medicare Advantage Plan (such as an HMO or PPO), cost plan, or PACE plan with prescription drug coverage (collectively, a "Part D plan").
- Another available option is for an employer or union to encourage its retirees to enroll in a Part D plan and then provide them with additional benefits. There are several ways that sponsors could supplement the standard Medicare drug benefit, such as:
  - Setting up their own separate supplemental plans and coordinating benefits with the coverage provided by the Part D plans their retirees enroll in, in much the same way they currently supplement the standard Medicare Part A and B benefits;
  - Paying for enhanced coverage offered under a Part D plan that subsidizes more of their retirees' cost-sharing and provide additional benefits;
  - Making special arrangements with Part D plans to provide an employer-only plan with customized drug benefits for their retirees pursuant to CMS waivers (discussed in more detail below); and
  - Providing the customized drug benefits for their retirees by becoming Part D plans pursuant to CMS waivers.

***Overview of Standard Part D Benefit Design***

In 2006, standard Part D coverage features a \$250 deductible. After that, the plan pays on average approximately 75 percent of the beneficiary's drug costs up to \$2,250. Once a beneficiary spends \$3,600 out-of-pocket, Medicare will cover about 95 percent of all remaining costs, with 80 percent coming in the form of federal reinsurance. Part D plans can bid based on different benefit designs that reduce the deductible or modify other cost-sharing elements of the standard Part D benefit in a package, provided it has the same actuarial value or better than the defined standard benefit. The equivalent actuarial value

applies with respect to various aspects of the benefit, including the value of the benefit at the initial coverage limit (\$2,250 in 2006).

### **Employer Group Waivers**

Part D plans are subject to specific standards concerning enrollment, beneficiary protections, plan design, and a variety of other issues. However, section 1860D-22(b) of the Social Security Act (Act) says that the provisions of section 1857(i) of the Act shall apply with respect to prescription drug plans in relation to employment-based retiree health coverage in a manner similar to the manner in which they apply to an MA plan in relation to employers or unions, including authorizing the establishment of separate premium amounts for enrollees of the employer/union-sponsored group prescription drug plan and limitations on enrollment in such plan to Part D eligible individuals participating in the sponsor's employment-based retiree health coverage. Section 1857(i)(1) of the Act provides that to facilitate the offering of MA plans under contracts between MA organizations and employers, labor organizations, and employer/union funds, the Secretary may waive or modify requirements that hinder the design of, the offering of, or the enrollment in such MA plans. Section 1857(i)(2) of the Act provides the Secretary with similar waiver authority to facilitate the offering of MA plans by employers, labor organization's, or employer/union funds to their retirees.

### ***Policy Goals***

In considering the extent to which it will exercise its waiver authority, CMS will consider a number of important goals, including:

- Providing group plan sponsors with maximum flexibility and minimum administrative burden with regard to requirements that would hinder the design of, the offering of, or the enrollment in, Part D plans offered to their retirees so they will keep offering --- and retirees can retain -- high quality retiree prescription drug coverage;
- Adhering to budgetary constraints; and
- Considering the appropriate protections that Medicare enrollees may expect when enrolling in a Part D plan.

### ***Scope of Guidance***

This initial guidance solely addresses employer group waivers that CMS will provide for retiree prescription drug coverage provided under the last two types of arrangements described above – an employer or union making a customized arrangement with a Medicare Prescription Drug Plan or Medicare Advantage Plan with prescription drug coverage, or becoming such a plan itself. It is not intended to address standards that

apply under any other employer or union option (the waiver provisions referenced above are not applicable for such other options).

Discussed below are several Part D requirements dealing with timing and entry for which employer group waivers will be approved by CMS. These waivers will automatically apply and will not need to be granted on an individual basis.

In the near future, CMS will release additional waiver guidance detailing other employer group waivers CMS will approve. Examples of additional waiver areas may include, but are not limited to marketing materials requirements, drug formulary requirements, and pharmacy access requirements, among others. In the meantime, the waivers that CMS will currently approve are listed below.

CMS will also consider additional waiver requests relating to specific requirements not addressed in this document or in future guidance on a case-by-case basis.

### **Approved Part D Employer Group Waivers**

#### **Part D Timeline for Retiree Group Plans**

Part D plans must submit various types of materials to CMS for review by certain specified deadlines. For example, a notice of intent to apply must be filed with CMS by February 18<sup>th</sup>. For plan year 2006, CMS will permit flexibility in these timeframes by allowing employer/union-sponsored prescription drug plan or MA-PD plan materials to be submitted by the following deadlines:

<b>March 23, 2005-</b>	Notice of intent to apply must be submitted to CMS
<b>April 18, 2005-</b>	PDP or MA-PD applications must be submitted to CMS
<b>June 6, 2005-</b>	PDP or MA-PD formularies must be submitted to CMS

Further guidance will be issued regarding any possible changes in the deadlines for submitting bids for employer-sponsored prescription drug coverage (individual market Part D plan bids must be submitted by June 6, 2005).

#### **State Licensure and Solvency Requirements**

In general, a Part D sponsor must be organized and licensed under State law as a risk-bearing entity eligible to offer health insurance or health benefits coverage in each State in which it offers coverage (42 C.F.R. 423.504 (b) (2)). However, an employer/union applying to become a PDP or MA-PD solely for purposes of providing prescription drug coverage to its retirees will not have to meet state licensing requirements as a condition of being a Medicare prescription drug sponsor. However, CMS will require such entities to certify that they meet solvency standards and/or have other safeguards that CMS will identify in additional guidance.

### Governmental Entity Requirements

In general, governmental entities are not permitted to be PDP or MA-PD sponsors (section 1860D-41 (a)(13) of the Act). However, CMS will waive that requirement for governmental entities applying to sponsor a PDP or MA-PD plan for their retirees, such as for state retirement funds and municipal or local government plans.

### Enrollment Requirements

In general, Part D plans have to accept all Medicare-eligible beneficiaries who reside in their service area. Through our waiver authority, CMS will allow employer or union-sponsored group plans approved as PDPs or MA-PD plans to restrict enrollment solely to their retirees.

### Service Area Requirements

In general, Part D plans can only cover beneficiaries in the service areas in which they operate. However under our waiver authority, for employers/unions which directly contract with CMS to sponsor their own PDP or MA-PD plans, coverage can extend to all of their retirees, regardless of whether they reside in one or more other PDP or MA regions in the nation.

### Minimum Enrollment Requirements

In general, Part D plans must meet minimum enrollment standards (42 C.F.R. 423.512 (a)). CMS will waive this requirement for employer/union-sponsored retiree group plans approved as PDPs or MA-PD plans.

### **For More Information**

A significant amount of information regarding Part D plans (including applications, formulary information, a place to register for user group calls, and other implementation materials) can be found at: <http://www.cms.hhs.gov/pdps/>.

Questions about employer group waivers can be submitted to [epog@cms.hhs.gov](mailto:epog@cms.hhs.gov).