A Variety of Medicare Part D Subsidy Deadlines Are Rapidly Approaching

November 2010

While the Medicare Part D retiree drug subsidy (RDS) Web site alerts employers to key deadlines regarding the application, RDS continues to be a complicated administrative process. Aon Hewitt offers complete RDS services, so that employers can outsource the Account Manager and Payment Requester roles, as well as project management.

Because the RDS process remains complex, this Aon Hewitt bulletin contains a list of action items to help employers prepare for the impending RDS busy season.

Action Items for Calendar Year Plans
Following is a quick list of items that must occur between both an employer and its vendors to ensure that RDS requirements are met for the 2009, 2010, and 2011 plan years.

Item 1: Prescription Drug Plan Designs
Plan designs must be finalized before the RDS application is submitted so that the actuary can attest to the plan’s actuarial equivalence. In addition, an actuary generally is needed to determine an employer’s prescription drug plan’s creditable status for purposes of the notice in cases where the employer is not applying for the RDS (e.g., active plans).

Item 2: Application
The RDS application is due no later than 90 days before the beginning of the plan year. For calendar year plans, employers had to complete the application, with its retiree list, actuarial attestation, and Authorized Representative’s electronic signature, no later than October 4, 2010. Since there is no downside to requesting the extension, most employers extend. If an employer requested an extension on or before October 4, 2010, the extension delayed the deadline until November 3, 2010. If the deadline is missed, an employer may still be able to receive a portion of the RDS by submitting a partial year application. However, missing a deadline almost always results in a loss of at least a portion of the RDS.

■ Retiree List Submission—Most eligibility vendors needed (or imminently need) the employer’s plan sponsor ID, 2010 application ID, and unique benefit option identifier (UBOI), so that they can begin creating the retiree list. Again, the retiree list must be submitted on or before the application deadline.

■ Actuarial Attestation—The actuary must attest that the designs are actuarially equivalent.

Item 3: Creditable/Non-Creditable Coverage Notices
All employers must provide all prescription drug plan participants (or, at a minimum, all prescription drug plan participants who are Medicare Part D-eligible or will be eligible during the upcoming plan year) with an appropriate notice before November 15, 2010. This means that the notices should be mailed at least a week prior to this deadline.

Employers should review their notices and ensure that they are as close to the model as feasible. The model was last updated for use after January 1, 2009. In addition, employers should recognize that variable
text likely should be different for active employees due to the impact of the Medicare Secondary Payer rules. Specifically, an employer’s prescription drug plan must pay before (primary to) Medicare for active employees and the spouses of active employees. Depending on how the employer plan is affected by a retiree who enrolls in a Part D prescription drug plan, this language could look significantly different for active employees. An active employee cannot be “penalized” for enrolling in Medicare.

In addition, the notices must be mailed at other times as well, and a personalized notice must be provided upon request.

**Item 4: 2009 Reconciliation Preparation**
The Centers for Medicare and Medicaid Services (CMS) is not going to afford employers with an automatic extension for the 2009 plan year. Reconciliation must be complete no later than 15 months after the end of the plan year. A lot of work must occur in that time frame.

For **calendar year** plans, the deadline is **March 31, 2011**. We do not expect CMS to provide extensions, unless extreme extenuating circumstances exist. The time to get started is now!

- **Covered Retiree List (CRL)**—Eligibility needs to be reviewed and updated and then provided to the pharmacy benefit manager (PBM). This needs to occur this fall to ensure that the PBMs have enough time to pull the necessary claims data. An employer may be subject to the Federal False Claims Act if cost data submitted contains cost data for an individual (or a time frame) who is not a qualifying covered retiree (QCR). Further, if a QCR transfers between UBOIs, aggregation must occur to ensure compliance with the cost threshold and the cost limit.

- **Final Claims Data**—An employer should review its claims data to ensure that it is only submitting claims for “Part D drugs.” An employer needs a Part B/D co-eligible drug strategy, and must ensure that it is being properly applied by the PBM.

As employers may recall from prior reconciliations, the Authorized Representative must attest that he or she has:

> “. . . examined this Reconciliation Payment Request and [certifies] that the information contained in the Reconciliation Request is true, accurate and complete to the best of my knowledge and belief; that the Plan Sponsor agrees to comply with all RDS program requirements . . . and other applicable laws and regulations. I understand that, because payment of a subsidy will be made from Federal funds, any false statements, documents, or concealment of a material fact is subject to prosecution under any applicable Federal and/or State law.”

Accordingly, an employer should strongly consider reviewing its data prior to reconciliation, so that it has some evidence of due diligence.

**Item 5: Part D Agreements**
An employer is required by regulation to have an agreement in place with its PBMs and related vendors. This agreement was required to be in place by **December 31, 2005**. If an employer changes its PBM, a new agreement will need to be prepared. Specifically, the PBM (as well as other vendors, such as eligibility vendors that are involved in the process) must agree to disclose the necessary data and must acknowledge that it is subject to the Federal False Claims Act. Finally, the PBM agreement should also contain a provision specific to the handling of rebates, per recent CMS guidance. An employer also should ensure that the agreement sets forth the vendor’s responsibilities, such as records retention, handling of Part B/D co-eligible drugs, drug accuracy, etc.
Item 6: Disclosure to CMS
CMS requires all employers that offer prescription drug coverage (not just those that apply for the RDS) to provide certain information about their prescription drug plans to individuals for whom the employers do not apply for the RDS. This disclosure is due 60 days after the beginning of the plan year or March 1, 2011 for calendar year plans.

Important Note
Many employers are modifying their legal plan structure so that the group market (insurance) reforms do not apply to retirees. The group market reforms under the Patient Protection and Affordable Care Act (Affordable Care Act) (P.L. 111-148) and the Health Care and Education Reconciliation Act of 2010 (Reconciliation Act) (P.L. 111-152) include extension of coverage to adult children to age 26, removal of lifetime dollar limits, restrictions on annual dollar limits, and so on. As employers know, grandfathered health plans must comply with a limited subset of group market reforms. However, a plan that has “fewer than two participants who are current employees” on the first day of the plan year is exempt from complying with any of the new group market reforms.

If an employer makes this change, it should consider any impact to the RDS application. The RDS application typically reflects each legal plan. While the impact for some employers may be minimal, employers should notify their Aon Hewitt consultant if they are contemplating this change to ensure there is no impact on the application or actuarial equivalence of the plan. CMS may need to be contacted in some instances.

More Information
If you need help with any of the above requirements, including data review, contract review, or just ad hoc support, please contact your Aon Hewitt consultant or RDS Solutions team member.