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Corporate Headquarters

One Kaiser Plaza, Suite 1101  
Oakland, CA 94612  
Toll Free: 800.733.3131  
Tel: 510.452.0458  
Fax: 510.452.1378

Santa Rosa Office

Fountaingrove Center  
3554 Round Barn Blvd., Suite 309  
Santa Rosa, CA 95403  
Toll Free: 800.733.3131  
Tel: 707.577.8300  
Fax: 707.577.0609

Visit us on the web  
[www.smlinc.com](http://www.smlinc.com)

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# INSURANCE BRIEF

## Medicare Part D Notice Reminder

It's that time of year again!! The Centers for Medicare and Medicaid Services (CMS) requires entities to provide an annual notice to Part D eligible individuals before October 15 indicating whether its plan's coverage is **creditable or non-creditable**. The Disclosure Notice requirement applies to Part D eligible individuals who are *active or retired* employees, as well as those who are covered as spouses or dependents under active or retiree coverage.

If your plan data does not include dependent data in the detail necessary to identify eligible dependents who may be Medicare Beneficiaries, you may choose to provide the notice to all eligible employees to assure proper notice to all Medicare Beneficiaries. Notice to the employee will constitute notice to dependents unless you have a separate address for a non-resident spouse/dependent.

Plan Sponsors must also provide a Medicare Part-D notice:

- a. **Prior to an individual's Initial Enrollment Period for Part-D;**
- b. Prior to the effective date of coverage for any Medicare eligible individual that joins the Plan;
- c. Whenever the entity no longer offers prescription drug coverage or changes the coverage offered so that it is no longer creditable or becomes creditable; and,
- d. Upon the request by the individual.

“Prior to” means that the individual must have received the Disclosure Notice within the past twelve months. So, plans that issue the Part-D notice at time of policy renewals do not need to provide another notice.

The notices have not changed since April 2011. Therefore, if the status of your plans is the same you can use last year's notice. The notices are provided in English and Spanish at <http://www.cms.gov/Medicare/Prescription-Drug-Coverage/CreditableCoverage/Model-Notice-Letters.html>

You can also contact your SML Account Team to request a copy be emailed to you.

Delivery. Plan Sponsors may mail the notice as a stand-alone mailing or choose to incorporate the notice into other documents or disclosures, so long as there is prominent first-page, 14-point reference to the incorporated notice language.

Plan Sponsors may also deliver the notice electronically to plan participants who have the ability to access the Plan Sponsor's electronic information system on a daily basis as a part of their work duties. Plan Sponsors should inform participants that they are to share the electronic notice with all family members who are covered under the group health plan.

*Cont'd on Page 2*

## Reinsurance Fee: Updates and Reminders

The Department of Health and Human Services (HHS) set the 2015 reinsurance fee at \$44 per participant.

Deadlines: November 15, 2015. This is the deadline for the second installment of 2014 fees if an employer chose to pay in two installments  
November 16, 2015. Self-funded employers must report the number of covered lives to HHS through [www.Pay.gov](http://www.Pay.gov).  
January 15, 2016. The first installment of \$33.00 per covered life is due. If an employer chooses the combined payment method, both parts are due.  
November 15, 2016. The second installment of \$11.00 per covered life is due.

The Center for Medicare and Medicaid Services (CMS) has conducted training sessions. Please register at <https://www.regtap.info/> to receive notices regarding upcoming trainings. You can also view the webinar presentations once they have been posted to the REGTAP library.

Counting Methods: HHS provides the same methods permitted under the Comparative Effective Research (CER) fee provision, modified to allow for an annual count determined in the fourth quarter. The sponsor of a self-insured plan is allowed to use a different counting method for purposes of the reinsurance contribution from that used for purposes of the CER fee. If an employer sponsors both self-insured and insured options, then they are only permitted to use the actual count or snapshot count method.

*HRA rule.* If the HRA is integrated with a medical benefit that provides minimum value then the reinsurance requirement does not apply.

*Actual Count Method:* Calculate the sum of the lives covered for each day of the first nine months of the plan year and divide that sum by the number of days in those nine months.

*Snapshot Count Method:* Add the totals of lives covered on a date (or more dates if an equal number of dates is used for each quarter) during the same corresponding month in each of the first three quarters of the benefit year. The dates used for the second and third quarters must be within the same week of the quarter as the date used for the first quarter. Divide the total by the number of dates on which a count was made.

*Snapshot Factor Method:* Add the total lives covered on any date (or more dates if an equal number of dates is used for each quarter) during the same corresponding month in each of the first three quarters of the benefit year, and divide that total by the number of dates on which a count was made. The number of lives is calculated by adding the number of participants with self-only coverage to the product of the number of participants with coverage other than self-only and a factor of 2.35.  $\text{Self-only coverage} + (\text{other than self-only} \times 2.35) = \text{total number of covered lives}$ .

*Form 5500 Method :* For a plan that offers self-only coverage and coverage other than self-only coverage, add the total participants covered at the beginning and end of the benefit year, as reported on the Form 5500 for the last applicable plan year.

## Medicare Part D *cont'd*

Disclosure to CMS Form. Don't forget that you must also disclose to CMS whether your plans' coverage is creditable or non-creditable. This is done online at [www.cms.hhs.gov/CreditableCoverage/45\\_CCDisclosureForm.asp](http://www.cms.hhs.gov/CreditableCoverage/45_CCDisclosureForm.asp)

This disclosure must be made within 60 days following the start of the plan year, within 30 days after termination of a prescription drug plan, and within 30 days after any change in the plan's creditable coverage status.

## IRS Forms 1094 and 1095

On September 17th the IRS released the final 2015 1094 and 1095 forms and instructions.

Section 6055 - Forms [1094-B](#) and [1095-B](#) and their [Instructions](#).

Section 6056 - Forms [1094-C](#) and [1095-C](#) and their [Instructions](#).

**Background:** The “B Forms” (1094-B and 1095-B) are filed by providers of health coverage (insurers for fully-insured and employers for self-insured), and the “C Forms” (1094-C and 1095-C) are filed by applicable large employers (ALEs). The final forms are substantively identical to the drafts released in June. The final instructions generally follow the draft instructions released in August, but with some important modifications.

**Key Provisions:** The 1095-B instructions include an important change for sponsors of fully-insured medical with an integrated self-insured HRA. Under the heading “Coverage in More Than One Type of Minimum Essential Coverage” (MEC) the instructions now indicate an employer sponsoring both a fully-insured medical plan and an integrated HRA are not required to report the coverage under the HRA for an individual covered by both arrangements. The HRA reporting rules in the draft instructions had not included this exception and had raised concern especially for small employers who otherwise would not have to complete any reporting.

The 1095-C instructions include several clarifications and simplifications.

**Reporting COBRA Offers to Terminated Employees.** An offer of COBRA coverage made to a former employee upon termination of employment is not reported as an offer of coverage on line 14. Instead, the ALE will enter code 1H (no offer of coverage) on line 14 and code 2A (individual not employed) on line 16 for any month for which a COBRA offer was made to a terminated employee. This is a major reversal from a position announced in Q&A guidance earlier this year, which would have required ALEs to report the “offer” of COBRA based on actual COBRA elections. Under the final instructions, COBRA offers for terminated employees are not reported as offers of coverage under any circumstances, even if a former employee elects the coverage. By entering code 2A on line 16, the ALE is protected from potential Code § 4980H penalties for the month.

**HRA Reporting.** The final instructions incorporate HRA reporting rules consistent with the revised reporting rules under Form 1095-B, discussed above.

**ALE Definition.** The final instructions note that an employee is not counted for the ALE determination for any month that he or she has coverage under the TRICARE or Veterans’ Administration health care programs.

The 1095-C Form added clarification in the “Instructions for Recipient” section. Line 14 added “(If you received an offer of coverage through a multiemployer plan due to your membership in a union, that offer may not be shown on line 14.)” This corresponds with the existing Form 1095-C instructions: For reporting offers of coverage for 2015, an employer relying on the multiemployer arrangement interim guidance should enter code 1H on line 14 for any month for which the employer enters code 2E on line 16 (indicating that the employer was required to contribute to a multiemployer plan on behalf of the employee for that month and therefore is eligible for multiemployer interim rule relief).

**Penalties:** Congress has increased the penalties for failure to timely or correctly report information from \$100 to \$250 per return. The calendar year cap is increased from \$1.5 million to \$3 million. If the failure is due to intentional disregard the per return penalty is \$500 and there is no calendar year cap.

**What’s Next:** Please contact your SML Account Team if you have any questions.

## 5500 Extensions

Congress has passed a law which contains a provision changing the extension deadline for 5500 filings. [H.R. 3236](#) increases the one-time extension of time for plan administrators to file Form 5500 from 2 1/2 months to 3 1/2 months.

Effective date: Applicable for returns for taxable years beginning on or after January 1, 2016.

Background: Plan administrators must file Form 5500 to report various information about an employee benefit plan, its finances, and its operation. Requirements vary depending on the particular type of plan and its size—for example, a group health plan with fewer than 100 participants that is either fully insured or self-funded (or a combination of both) is generally not required to file Form 5500.

The Form 5500 generally must be filed by the last day of the 7th calendar month after the end of the plan year (not to exceed 12 months in length).

Under current rules, plan administrators may obtain a one-time extension of time to file a Form 5500—of up to 2½ months—by filing Form 5558, *Application for Extension of Time To File Certain Employee Plan Returns*, with the IRS on or before the date the report would otherwise be due without extension. For calendar Plan years, under the new law, this one-time extension will apply to the 3½ month period ending on November 15th.

## Appeals Court Ruling on Birth Control Mandate

The 8th U.S. Circuit Court of Appeals in St. Louis ruled on September 17th that the provision requiring employers to help provide birth control coverage violates the rights of religiously affiliated employers. This decision differed with six others thus increasing the likelihood that the U.S. Supreme Court will take up the issue during the 2015-16 session. That term runs from October to June.

The ruling upholds two lower court orders barring the government from enforcing the Affordable Care Act's (ACA) contraceptive provisions against a group of religiously affiliated employers. The ruling's impact is limited to the 8th Circuit.

These cases, and seven others already pending at the Supreme Court, are sequels to the ruling last year in [Burwell v. Hobby Lobby Stores](#). The decision involved only an interpretation of the federal Religious Freedom Restoration Act, not the Constitution. All have religious objections to some of the contraceptives mandated by the ACA.

Background: The ACA allows religiously affiliated non-profit employers to opt out of paying for contraceptive coverage directly. They can claim an exemption either by filing a government form that is then sent to their insurers providing the actual coverage to initiate access, or they can file a letter giving the federal government enough information about their insurers to allow the government to then arrange the coverage. Once they do, insurers must provide the coverage separately at no extra cost to the employee. Employers that do not follow the opt-out process face a financial penalty. Many employers have filed lawsuits against the government claiming that the opt-out process makes them complicit in providing contraceptive coverage.

What's Next: The Obama administration now has the option of asking the full Eighth Circuit to rehear the cases en banc (before all the judges of that court) or to go, now or later, to the Supreme Court. The Supreme Court has not set a date for its initial consideration of any of the seven pending petitions. Some of them had been scheduled for the September 28 Conference, but then were postponed, presumably until all of the cases are ready.



## Benefits Eligibility Chart

We hope you find this chart useful in tracking when your employees' benefits should be effective.

### Waiting period = First of month following 30 days

Date of Hire	Date of Eligibility
Nov 2 - Dec 2	January 1
Dec 3 - Jan 2	February 1
Jan 3 - Jan 30; Jan 3 - Jan 31 leap years	March 1
Jan 31 - Mar 2; Feb 1 - Mar 2 leap years	April 1
Mar 3 - Apr 1	May 1
Apr 2 - May 2	June 1
May 3 - Jun 1	July 1
Jun 2 - Jul 2	August 1
Jul 3 - Aug 2	September 1
Aug 3 - Sep 1	October 1
Sep 2 - Oct 2	November 1
Oct 3 - Nov 1	December 1

### Waiting period = First of month following 60 days

Date of Hire	Date of Eligibility
Oct 3 - Nov 2	January 1
Nov 3 - Dec 3	February 1
Dec 4 - Dec 31; Dec 4 - Jan 1 leap years	March 1
Jan 1 - Jan 31; Jan 2 - Feb 1 leap years	April 1
Feb 1 - Mar 2; Feb 2 - Mar 2 leap years	May 1
Mar 3 - Apr 2	June 1
Apr 3 - May 2	July 1
May 3 - Jun 2	August 1
Jun 3 - Jul 3	September 1
Jul 4 - Aug 2	October 1
Aug 3 - Sep 2	November 1
Sep 3 - Oct 2	December 1