

CMS Excludes HRAs and Health FSAs from Medicare Part D Notices

The Centers for Medicare and Medicaid Services (CMS) has released a [final rule](#) that exempts account-based plans, such as health reimbursement arrangements (HRAs) and health flexible spending accounts (FSAs), from Medicare Part D disclosure requirements. The change applies to coverage beginning **Jan. 1, 2027**.

As background, employers with group health plans that provide prescription drug coverage to individuals who are eligible for Medicare Part D must inform both those individuals and CMS whether that coverage is creditable. A group health plan's prescription drug coverage is considered creditable if its actuarial value equals or exceeds the actuarial value of standard Medicare Part D prescription drug coverage; coverage that does not meet this standard is deemed noncreditable.

For this purpose, the term "group health plan" includes account-based medical plans such as HRAs and health FSAs, to the extent they are employee welfare benefit plans that provide medical care.

The final rule exempts account-based plans, such as health FSAs and HRAs (including individual coverage HRAs, or ICHRAs), from the creditable coverage disclosure requirements. According to CMS, these account-based plans do not actually offer prescription drug coverage; rather, they are designed to provide savings on health care costs through pretax contributions and reimbursements to supplement other health coverage. CMS explains that requiring these plans to determine if their coverage is creditable and report that status unduly increases administrative burden and could result in confusion for beneficiaries.

Employers should continue to comply with existing creditable coverage disclosure requirements until the rule takes effect, keeping in mind that the exclusion applies only to account-based plans. Group health plans that offer prescription drug coverage remain subject to the Medicare Part D disclosure requirements.

EBSA Outlines Shifting Priorities for ERISA Enforcement

The U.S. Department of Labor's Employee Benefits Security Administration (EBSA) has released a [memorandum](#) outlining its enforcement priorities and guiding principles under the Employee Retirement Income Security Act of 1974 (ERISA). According to EBSA, these priorities and principles are designed to ensure that the agency's enforcement is "fair, even-handed, responsive and focused." The memorandum reflects an overall shift to **prioritize enforcement actions related to violations of the duty of loyalty** rather than prudence in the operation of employee benefit plans.

EBSA's memorandum outlines the following general standards for the agency's enforcement actions:

- Focusing enforcement on the most egregious conduct and significant harm, particularly criminal

cases and civil investigations where there is direct evidence of disloyalty or impermissible conflicts of interest;

- Ensuring the agency does not regulate by enforcement and instead uses the notice-and-comment rulemaking process and sub-regulatory guidance to drive policy;
- Requiring proper review by senior agency officials of all significant enforcement activities; and
- Committing to timely and responsive enforcement.

Private-sector employers should periodically review their compliance with ERISA's fiduciary requirements, including adherence to the duty of loyalty and avoidance of prohibited transactions involving impermissible conflicts of interest.