
FOR YOUR INFORMATION

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News For School and Municipal Clients

Medicare Part D – Insurance Coverage

In response to widespread concerns about the ever-increasing costs of prescription drugs, the federal government recently took steps to offer all Medicare participants, regardless of income, health status, or prescription drug usage, access to prescription drug coverage. Medicare Part D is the new Medicare drug insurance program that will become effective on January 1, 2006. At that time, it will provide prescription drug coverage for Medicare participants through private health insurance companies.

The initial enrollment period for Medicare Part D begins on November 15, 2005, and runs through May 15, 2006. However, in order for prescription drug coverage to start on January 1, 2006, a participant must enroll in Medicare Part D on or before December 31, 2005.

In most cases, active employees who are eligible for Medicare do not utilize Medicare for purposes of health insurance and prescription drug coverage. Therefore, active school district employees, who are Medicare-eligible, will generally not be affected by this new program.

However, where the school district provides post-employment health insurance with prescription drug coverage as a retirement benefit, current and future retirees may be affected by the creation of Medicare Part D. School districts will need to communicate with their respective health insurance carriers to determine what impact, if any, Medicare Part D will have on such retirees.

Several health insurance carriers have decided to change their health insurance plans to exclude prescription drug coverage for Medicare-eligible retirees, in light of the drug coverage provided through Medicare Part D. For example, WEA Trust concluded that it cannot continue to provide drug coverage at a competitive price due to the government subsidies provided by Medicare Part D. As a result, the Trust adopted a general rule excluding prescription drug coverage for Medicare-eligible retirees from its health insurance plans effective January 1, 2006.

WEA Trust sent its participating employers a letter dated October 2005, which explained that the insurance agreements have been revised to account for the exclusion of prescription drug coverage for Medicare-eligible retirees and they would be mailed to district administrators without delay. It is expected that other health insurance carriers may take similar steps to “get out of the business” of offering prescription drug coverage to Medicare-eligible retirees. However, school districts should not simply accept the decision of the school district’s health insurance carrier to drop coverage. If the school district’s health insurance carrier has decided to stop offering prescription drug coverage for Medicare-eligible retirees, the school district should review its master contract for health insurance to determine whether the carrier has the authority to modify the contract/policy at a time other than when the policy/contract is up for renewal. If not, the school district may have a basis for negotiating with the carrier to continue its prescription drug coverage for Medicare-eligible retirees.

Furthermore, just last month, WEA Trust created a limited exception to its general rule that prescription drug coverage for Medicare-eligible retirees will be excluded from the plan. Based on the current information provided by WEA Trust, if a school district requests that the Trust provide prescription drug coverage for Medicare-eligible employees, the Trust will agree to such an exception if: (1) there is a contractual obligation for the school district to pay for its Medicare-eligible retirees' prescription drug coverage; (2) the school district notifies WEA Trust, in writing, as to the identity of those individuals who are eligible for the exception on January 1, 2006; (3) the district notifies WEA Trust, in writing, 90 days in advance, as to the identity of those individuals who will be eligible for the exception in the future; (4) the district advises WEA Trust of the terms of the district's premium obligation and the description of the "group" to whom it applies; and (5) the district notifies the Medicare-eligible retirees who are eligible for the exception and advises them as to how long they will remain eligible for such coverage.

WEA Trust has offered to provide a Memorandum of Understanding, upon the request of a district, if the district wishes to seek an exception to the general exclusion of drug coverage for Medicare-eligible retirees. Before signing a Memorandum of Understanding provided by WEA Trust, a district administrator or business manager should carefully assess the district's obligation to do so, the implications for doing so, and any other reasonable options available to the district.

For school districts with health insurance coverage provided through an insurance carrier other than the Trust, it is important for the district to contact the carrier to inquire about any changes that will be taking place as a result of the new Medicare Part D program and how the district's contractual obligations will be affected by any such changes.

A school district's contractual obligation to continue prescription drug coverage for

Medicare-eligible retirees must be analyzed using the principles articulated in *Roth v. City of Glendale*, 237 Wis. 2d 173 (2000). In *Roth*, the Wisconsin Supreme Court held that, generally, individuals whose employment is governed by the terms of a collective bargaining agreement have vested rights to the specific retirement benefits conferred by the collective bargaining agreement in effect on the date of the individual's retirement. Furthermore, the Court held that collective bargaining agreements provide retirement benefits to retirees that automatically vest upon the individual's retirement such that those benefits cannot be altered or diminished by the bargaining of subsequent agreements unless the collective bargaining agreement expressly states that retirement benefits do not vest upon retirement. Thus, it is essential for school districts to review the language in all existing collective bargaining agreements, employment contracts, and school board policies to determine whether any or all of the district's retirees are *vested* in prescription drug coverage.

Regardless of whether the school district has the obligation to continue to provide prescription drug coverage for its Medicare-eligible retirees, it is expected that some school districts will want to explore methods to continue prescription drug coverage for its Medicare-eligible retirees at the district's expense. The first step will be for the district to determine how many individuals are actually affected. Assuming that the district's health insurance plan is primary for active employees and their spouses, regardless of their eligibility for Medicare, the group of affected individuals will include: (1) retirees who are or will become Medicare eligible while receiving post-employment health insurance coverage with prescription drug coverage, and (2) retirees with spouses or dependents who are or will become Medicare eligible while the retiree is receiving post-employment health insurance coverage with prescription drug coverage. Once the group of affected individuals is identified, the school district may then consider contacting these

retirees to discuss the available options. For example, the school district may propose to pay the premiums for one of the 40 Medicare Part D plans available in Wisconsin on behalf of the retiree, in exchange for the retiree waiving all potential claims against the school district related to the change in coverage. Of course, this is only one option that the school district could offer in exchange for the retiree waiving all potential claims against the school district related to the change in coverage.

Finally, school districts cannot lose sight of the imminent deadline looming on **November 15, 2005**, the date by which school district employers must provide written notice to certain employees and retirees to explain whether the district's health insurance plan will offer *creditable coverage* effective January 1, 2006. To offer *creditable coverage* means that the prescription drug coverage offered by the district's plan, on average, is at least as good as the Medicare standard prescription drug coverage. The purpose of the written notice is to help individuals, who are eligible for prescription drug coverage under Medicare Part D, to determine whether they should enroll in Medicare Part D during the initial enrollment period. This is important because an individual who is not participating in a plan with creditable coverage, but who fails to enroll in Medicare Part D during the initial enrollment period, will

face a late-enrollment penalty if he/she enrolls at a later date. The districts cannot presume that the insurance carrier will issue this written notice to affected individuals.

To summarize, it is extremely important for each school district to ascertain whether the health insurance carrier providing coverage to the district's retirees intends to change the prescription drug coverage in light of Medicare Part D, and then to commence an immediate review of the collective bargaining agreement(s) and other contracts and policies to determine the district's contractual obligations regarding prescription drug coverage for Medicare-eligible retirees and their Medicare-eligible dependents. School districts insured through WEA Trust may consider requesting an exception to the Trust's general exclusion of prescription drug coverage for Medicare-eligible retirees and attempting to negotiate the terms of the Memorandum of Understanding provided by WEA Trust to provide for such an exclusion. In the interim, the district must make arrangements to send the appropriate notice regarding *creditable coverage* to affected individuals. Finally, if the district's health insurance carrier intends to terminate prescription drug coverage for Medicare-eligible retirees, the district must consider whether it intends to negotiate with the affected retirees related to the change in prescription drug coverage resulting from Medicare Part D.

If you have any questions regarding this topic, please call any of the following members of the Lathrop & Clark LLP School, Municipal, Labor and Employment Law Team.

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