

LEGAL UPDATE



ENFORCEMENT

There is no penalty or fee for employers that offer prescription drug coverage that is non-creditable. Non-creditable prescription drug coverage can still be a valuable benefit for employees.

However, individuals need to know whether their prescription drug coverage is creditable or non-creditable. If the coverage is non-creditable and Medicare-eligible individuals fail to enroll in Part D during their initial enrollment period, they can be subject to a higher Part D premium if they enroll in Part D at a later date.

CMS Resources

Additional information and resources on the IRA's changes to Medicare Part D are available on CMS' [Part D Improvements webpage](#).

CMS Preserves Creditable Coverage Simplified Determination for 2025, Proposes Revised Method for 2026

In April 2024, the Centers for Medicare and Medicaid Services (CMS) issued [Final Part D Redesign Program Instructions](#) for calendar year 2025. On Jan. 10, 2025, CMS released [Draft Part D Redesign Program Instructions](#) for calendar year 2026. Both sets of instructions contain a detailed description of, and guidance related to, changes to the Part D benefit made by the Inflation Reduction Act of 2022 (IRA). Among other things, these changes impact the creditable coverage status of employer-sponsored prescription drug coverage.

Creditable Coverage

Employers that provide prescription drug coverage to individuals who are eligible for Medicare Part D must inform these individuals and CMS whether their prescription drug coverage is **creditable**, meaning that the employer's prescription drug coverage is at least as good as Medicare Part D coverage. Under [existing CMS guidance](#), there are a few different ways for an employer to determine whether its prescription drug coverage is creditable:

- As a first step, employers with insured prescription drug plans should ask their carriers if they have determined whether the plan's coverage is creditable.
- For self-insured plans, or where the carrier for an insured plan has not made a creditable coverage determination, employers may use a **simplified determination** as long as the coverage meets certain design requirements. If it doesn't, the employer must use an **actuarial determination method**.

Part D Redesign Program Instructions for CY 2025

Previously, CMS stated in its Draft Part D Redesign Program Instructions that the simplified determination method would no longer be valid as of calendar year (CY) 2025, given the significant changes made to Medicare Part D by the IRA. However, according to the Final Program Instructions, **CMS will continue to permit use of the simplified determination methodology, without modification, for CY 2025 for group health plan sponsors who are not applying for the retiree drug subsidy.**

Draft Part D Redesign Program Instructions for CY 2026

CMS' [Draft Part D Redesign Program Instructions for CY 2026](#) state that it will permit use of a **revised simplified determination methodology** that better reflects actuarial equivalence with the richer Part D defined standard benefit under the IRA. Most notably, the revised simplified determination methodology would specify that **coverage must be designed to pay, on average, at least 72% of a participant's drug expenses—an increase from 60% under the current methodology—to be considered creditable coverage.** CMS will accept comments on the draft instructions through Feb. 10, 2025, before publishing the final program instructions **no later than April 7, 2025.**