



NOTICE REQUIREMENT UNDER THE CHILDREN'S HEALTH INSURANCE PROGRAM MODEL NOTICE FROM THE DEPARTMENT OF LABOR IS MADE AVAILABLE

March 2010

ON FEBRUARY 4, 2009 PRESIDENT OBAMA SIGNED THE CHILDREN'S HEALTH INSURANCE PROGRAM REAUTHORIZATION ACT OF 2009 (CHIPRA), WHICH EXPANDED THE PROVISIONS OF THE STATE CHILDREN'S HEALTH INSURANCE PROGRAM (CHIP), ORIGINALLY SET TO EXPIRE IN MARCH 2009. THIS LEGISLATION ALLOWS STATES TO USE CHIP FUNDS TO PROVIDE PREMIUM ASSISTANCE TO LOW-INCOME EMPLOYEES WHO WISH TO COVER A CHILD UNDER AN EMPLOYER'S GROUP HEALTH PLAN. THE LEGISLATION REQUIRES EMPLOYERS TO PROVIDE AN ANNUAL NOTICE TO EMPLOYEES DESCRIBING HOW TO OBTAIN INFORMATION ABOUT THE SUBSIDY PROGRAM IN THE STATE IN WHICH THEY LIVE.

The Department of Labor, as required under law, issued a Model Notice that employers can use to fulfill this compliance requirement. This *Insights* will describe the notice requirement and what employers must do to comply with this new notice obligation.

WHO MUST PROVIDE THE NOTICE?

Group health plan sponsors must issue an annual notice to all employees (not just participants) who reside in a state providing premium assistance subsidies which helps low-income individuals purchase employer-provided coverage. The notice requirement applies to plan sponsors of insured as well as self-funded plans, regardless of how many employees are employed or covered under the plan.

WHO QUALIFIES FOR ASSISTANCE?

Eligibility for premium assistance is determined based on the state in which each employee resides and is not based on the employer's location, place of business or the state in which an insurance contract is written. These subsidies may be available to employees who qualify for either:

- **Medical assistance under Medicaid, or**
- Health assistance for their children under a state-run

program such as Child Health Plus in New York or NJ FamilyCare.

As of January 22, 2010, forty State Medicaid and CHIP offices have reported the availability of programs to help low-income employees potentially qualify for premium assistance. The Department of Labor expects to update the website and model notice each year.

THE NOTICE REQUIREMENT

More information and a copy of the model notice can be found on the Department of Labor website under the heading *Children's Health Insurance Program* http://www.dol.gov/ebsa/compliance_assistance.html.

The notice briefly summarizes an individual's potential right to premium assistance and provides phone numbers and websites (for each of the 40 states) where employees can go for more information. Employees who reside in one of the 10 states not listed in the notice are not eligible for premium assistance at this time. Each State may post additional information on its website, for those employers who wish to incorporate additional state-specific premium assistance information in the notice. Employers who use the Department of Labor's model notice, will comply with the notice requirements.

Employers must provide the notice to employees who reside in a subsidy-assistance state, each year on or before the first day of the plan year. Alternatively, an employer can issue a notice each year to all employees to ease the burden of tracking where each employee lives.

The initial notice must be issued beginning with the date that is the later of:

- **The first day of the plan year after February 4, 2010 (the date the model notice was released), or**
- **May 1, 2010.**

Group health plans with plan years that begin from February 4, 2010 through April 30, 2010 have until May

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1, 2010 to issue this initial notice, while calendar year plans, for example, have until January 1, 2011 to issue the notice for the first time.

The CHIP notice is not required to be provided in a separate mailing, but may be furnished with an employee's initial enrollment materials, along with the Summary Plan Description, and can be distributed each year with open enrollment materials. The law requires, if furnished in any of these fashions, that:

- ◆ The materials be provided in the required timeframe,
- ◆ The materials are provided to all employees entitled to receive the CHIP notice, and
- ◆ The CHIP notice appears separately and in a manner which ensures that an employee who may be eligible for premium assistance could reasonably be expected to appreciate its significance.

Alternatively, the notice may be distributed by use of first-class mail or electronically, as long as the safe-harbor electronic delivery standards are met, which include:

- ◆ Ensuring that participants receive the information. Return-receipt electronic mail features or surveys can be used to confirm actual receipt,
- ◆ Notifying participants that these documents are being furnished electronically and explaining the significance of the document, and
- ◆ Describing their right to request and receive, free of charge, a paper copy of the notice.

REPORTING TO STATE MEDICAID OR CHIP PROGRAMS

Upon request from State Medicaid or CHIP programs, plan sponsors will be required to provide information about the group benefit plans being offered to their employees. This will allow each State to evaluate employment-based benefits in order to determine whether premium assistance is a cost-effective way to provide medical or child health assistance to low-income employees. The Department of Labor will develop a model disclosure form by August 4, 2010. States may begin requesting this information from plans beginning with the first plan year after the model disclosure form is issued (January 1, 2011 for calendar year plans).

SPECIAL ENROLLMENT RIGHTS

CHIPRA created special enrollment rights for employees and their dependents. These special enrollment rights became effective on April 1, 2009 and allow employees

and their dependents the right to enroll in an employer group health plan if:

- ◆ An employee or dependent child becomes eligible for a premium assistance subsidy under Medicaid or a State plan, or
- ◆ An employee or dependent child is no longer eligible for Medicaid or a State plan.

An employee has 60 days to notify the plan administrator about these events to be eligible for coverage under the group health plan. More information about **The Children's Health Insurance Program Reauthorization Act of 2009**, including a notice describing the CHIPRA special enrollment rights, can be found in our March 2009 *Insights* at:

http://www.chernoffdiamond.com/files/Insights_GHW/chernoffdiamond/CHIPRA-2009-05-FINAL-CD.pdf

ADDITIONAL INFORMATION

For specific questions concerning information contained in this *Insights*, please contact your Chernoff Diamond consultant.

Information contained in this *Insights* is not intended to render tax or legal advice. Employers should consult with qualified legal and/or tax counsel for guidance in respect of matters of law, tax and related regulation.

Chernoff Diamond provides comprehensive consulting and administrative services with respect to all forms of employee benefits, risk management and qualified and non-qualified retirement plans.

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