

Theresa Flynn

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Sent: Monday, February 08, 2010 3:25 PM
To: Theresa Flynn
Subject: CHIPRA Update from Strategic Benefit Advisors



CHIPRA Model Notice Available - Annual Notice Requirement Now in Effect

The Department of Labor (DOL) has released model notices for purposes of informing employees of potential opportunities in their state of residence to obtain Medicaid and/or Children's Health Insurance Program (CHIP) premium assistance. The model notice is available on the [DOL website](#).

Employers are required to provide these notices by the date that is the later of (1) the first day of the first plan year after February 4, 2010; or (2) May 1, 2010.

Per the DOL, "Employer CHIP Notice may be furnished concurrent with enrollment packets, open season materials, or the plan SPD, provided that (1) such materials are provided no later than the date determined above, (2) such materials are provided to all employees entitled to receive the Employer CHIP Notice, and (3) the Employer 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." Please note that the notice must go to all employees and not just those enrolled in benefit programs.

Employers may elect to use the DOL's model notice or draft their own notice. The DOL notice provides a "safe harbor" for compliance and we recommend that any customized notices include all information in the model notice. We also recommend that employers check for any updates to the model notice before distribution to confirm that the number of States offering premium assistance programs (or the contact information for those States) has not changed from what is in the current notice.

For your reference, below is SBA's client alert from March, 2009 that provide the details on the CHIPRA Legislation. Please do not hesitate to contact us with any questions or if you require additional information.

CHIPRA Alert - March, 2009

Employer Requirements in CHIPRA Legislation

The Children's Health Insurance Program Reauthorization Act includes several new

requirements applicable to employers and other sponsors of group health plans. Of key interest are the following provisions:

- *New special enrollment rules.* The law modifies ERISA to add a new special enrollment event for employees (or dependents) who are eligible but not enrolled. If an employee (or dependent) is covered under Medicaid or a State child health plan, and that coverage is terminated based on loss of eligibility, then the employee (or dependent) can enroll in your health plan. Unlike the HIPAA special enrollment events which require an employee (or dependent) to request coverage within 30 days, the new law says that employees (or dependents) losing Medicaid or CHIP coverage have 60 days to request enrollment. This rule is effective April 1, 2009.
- *New notice requirements.* The law modifies ERISA to add a new annual notice requirement. The law requires an annual written notice be provided to each employee informing them of potential opportunities in their state of residence to obtain premium assistance. The notice can be furnished with annual enrollment materials or with an SPD. The government is required to develop a model notice within 1 year of enactment, and plan sponsors will have to begin providing the notices for the first plan year beginning after the model notice is issued. Failure to provide the notice can result in a \$100/day penalty.
- *New requirement to respond to state information requests.* The law modifies ERISA to require employers/plan sponsors to respond to state information requests. The background here is that the law authorizes states to develop premium assistance programs to help keep low-income employees (and their dependents) enrolled in employer plans. To facilitate these programs, the law anticipates that states will need to ask employers for information about their plan designs. The law establishes a working group to develop a model "coverage coordination disclosure form" and requires that form to be available within 18 months. Failure to respond to these state information requests can result in a \$100/day penalty. States may not wait 18 months to begin sending these information requests, so employers should be on alert.
- *Other non-ERISA provisions.* The law gives employers an "opt-out" election under which employers may notify a state that the employer does not want to receive premium assistance payments directly from the state. The law does not specify how employers should make this election, so we'll have to keep our eyes open for additional guidance on this topic. The law also says that when a child has coverage under both a state child health plan and an employer health plan, the State plan is the secondary payer. SPD's should be updated to reflect this Coordination of Benefits (COB) requirement.

Employers must administer the new special enrollment rules effective April 1, 2009. Plan documents, SPDs and other notices that explain special enrollment rights must be updated.

Applicable employers will also be required to provide written notice to their employees of the potential opportunities for premium assistance. The Department of Health and Human Services must issue model notices by February 4, 2010. The notice requirement is effective for plan years beginning on or after the date on which the model notices are issued.

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