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DOL Releases Model Employer CHIP Notice

The Department of Labor recently released a model notice that employers with group health plans may use to notify employees of their eligibility for premium assistance under Medicaid or the Children's Health Insurance Program (CHIP) for their own or their dependents' health coverage.

Background

Most states currently provide premium assistance under Medicaid or CHIP programs for health coverage of qualifying residents and their dependents. At present, only 10 states do not offer premium assistance – Connecticut, Delaware, Hawaii, Illinois, Maryland, Michigan, Mississippi, Ohio, South Dakota, and Tennessee.

The Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) requires employers that offer group health plans to notify their employees of potential opportunities to receive premium assistance under current state programs. (See our March 4, 2009 [For Your Information](#).) CHIPRA also added new HIPAA special enrollment rights that allow employees and their dependents to enroll in their employers' group health plans if they lose eligibility for Medicaid or CHIP coverage or become eligible for premium assistance under Medicaid or CHIP. The DOL has now released a [Model Employer CHIP Notice](#) that employers may use to satisfy their new notice obligations under CHIPRA.

Model Notice

Employers Required to Provide Notice. An employer must provide the Employer CHIP notice if it maintains a group health plan (i.e., if the employer provides medical care benefits directly or through insurance, reimbursement, or otherwise) in a state that provides premium assistance under Medicaid or under a state children's health insurance program for the purchase of group health plan coverage. Thus, whether an employer is subject to the notice requirement depends on where the group health plan participants or beneficiaries reside – not the location or principal place of business of the employer, plan, plan administrator, insurer or affiliated service provider.

Employees Entitled to Notice. Regardless of plan enrollment status, each employee who resides in a state that offers premium assistance programs must receive notice of potential opportunities for assistance. If the state in which the employee (or employee's family) resides does not offer premium assistance programs, no notice is required.

BUCK COMMENT. *Although the employer's obligation to provide notice is based on the state residency of its employees, the employer may opt to send the notice to all employees as a matter of administrative convenience.*

Form and Content of Notice. The Model Employer CHIP Notice was designed to fulfill employer obligations on a national level by providing a brief description of premium assistance and state contact information for state-specific programs, including how to apply for assistance. It also informs employees of the new 60-day special enrollment period that may be available to them under certain circumstances. Although the model notice satisfies the content requirements for the Employer CHIP notice, employers are free to modify the notice to include more comprehensive state-specific information.

Timing and Delivery of Notice. The Employer CHIP notice must be provided annually, beginning with the first plan year that begins after February 4, 2010. The initial written notice must be provided by the later of –

- the first day of the first plan year beginning after February 4, 2010, or
- May 1, 2010.

Thus, for plan years beginning on February 4, 2010 through April 30, 2010, notice must be provided by May 1, 2010. For employers whose next plan year begins after April 30, 2010, notice must be provided by the first day of that next plan year (January 1, 2011 for calendar year plans).

Because the Employer CHIP notice is not required to be provided in a separate mailing, employers may provide the notice along with open enrollment packets, open season materials, or the plan SPD, as long as it is timely provided to all employees entitled to notice. If included as part of an enrollment packet, the notice must be a separate and prominent document so that its significance is reasonably apparent to those who receive it. The notice may be provided by first-class mail or electronically as long as DOL electronic disclosure regulations are satisfied.

BUCK COMMENT. *It appears that insertion of the notice text directly into a larger enrollment guide or SPD would not meet the “separate and prominent” document requirement.*

Conclusion

Employers will need to review the model notice and decide whether they want to use it as is or customize it for their workforce. Unless the employer opts to send notice to all employees, the most immediate concern will be identifying those employees (or their dependents) who reside in states that offer premium assistance under Medicaid or CHIP and are entitled to the notice. Employers should also ensure that they have implemented the CHIP special enrollment rights, and have determined whether they will accept the subsidy payment from each state or have the payment made directly to the employee.

Buck’s consultants would be pleased to assist you in preparing the required Employer CHIP notice.

This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic