



EMPLOYEE BENEFITS

CLIENT ALERT

February 17, 2009

NEW LAW BRINGS NEW OBLIGATIONS FOR GROUP HEALTH PLANS

In early February, Congress passed and the President signed the Children's Health Insurance Program Reauthorization Act of 2009 (the "Act"). The primary goal of the Act is to expand the State Children's Health Insurance Program ("S-CHIP"). However, the Act also contains several provisions that affect employer-provided group health plans.

Special Enrollment Rights

The Act establishes new special enrollment rights. By way of background, a group health plan generally may use whatever enrollment schedule best suits its needs. Most group health plans have an initial enrollment period for new hires, and an annual enrollment period for existing employees. However, under existing law, a group health plan must allow "special" enrollment under certain circumstances. Specifically, a group health plan must allow enrollment when an otherwise-eligible individual acquires a new dependent as a result of birth, adoption, placement for adoption, or marriage. Similarly, a group health plan must allow enrollment when an otherwise-eligible individual loses other qualifying coverage.

Effective April 1, 2009, the Act requires group health plans to offer special enrollment in two additional circumstances:

- The employee's or a dependent's Medicaid or S-CHIP coverage terminates. The employee or dependent must request coverage from the group health plan within 60 days after the termination.
- The employee or a dependent becomes eligible for a premium assistance subsidy under Medicaid or S-CHIP. The employee or dependent must request coverage from the group health plan within 60 days after he or she is determined to be eligible for the subsidy.

More Action Items:

- Under existing law, employers must provide employees with a written notice explaining the special enrollment rights. Employers must provide the notice at or before the time the employee first becomes eligible to enroll in the group health plan. These special enrollment notices must be updated to include the new special enrollment rights.
- The governing documents of employers' group health plans must be amended in order to incorporate the new special enrollment rights.
- The group health plan must distribute a summary of material modification or a revised summary plan description incorporating the new rights.

Premium Assistance Subsidy

Under the Act, a state may offer a “premium assistance subsidy” to help low-income children and their families to pay the premiums for “qualified employer-sponsored coverage.” A state may pay the subsidy as a reimbursement to the employee or as a direct payment to the employer, though an employer can opt out of these direct payments.

If a state offers a premium assistance subsidy, and if an employer in that state offers a group health plan, *the employer must provide a written notice* to its employees, informing them of the opportunity for premium assistance. The Act requires the Department of Health and Human Services (“HHS”) to develop a model notice. The employer’s notice obligation takes effect for plan years beginning after the date on which the model notice is issued.

To allow states to evaluate the cost effectiveness of premium assistance subsidies, the Act allows states to request, and *requires group health plans to disclose*, certain information about plan benefits available to plan participants and beneficiaries who are also covered by Medicaid or S-CHIP. The Act requires HHS and the Department of Labor to develop a model disclosure form. The plan’s disclosure obligation takes effect for plan years beginning after the date on which the model disclosure form is issued.

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