

## EMPLOYER CHIP NOTICE NOW AVAILABLE

On February 4, 2009 President Obama signed the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA - Pub. L. 111-3).

The Departments of Labor (DOL) and Health and Human Services (HHS) developed a model notice for employers to use to inform employees of potential opportunities available for group health plan premium assistance under state Medicaid and the Children's Health Insurance Program (CHIP).

The model notice is available at <http://www.dol.gov/ebsa/>.

### **Background**

CHIPRA contained a number of provisions that impact group health plans. Effective April 1, 2009, CHIPRA created two new special enrollment rights for an employee and/or dependent who loses eligibility for Medicaid or CHIP or gains eligibility for state premium assistance subsidy.

Some states may make available premium assistance for certain eligible employees and their dependents. Generally, the states use funds from their Medicaid or CHIP programs to help people, who are eligible for employer-sponsored health coverage, receive premium assistance to enroll in the employer coverage. In order to take advantage of this, the individual must live in a state that offers such a program, be eligible for the program and have access to *qualified employer-sponsored coverage*.

*Qualified employer-sponsored coverage* means a group health plan (or health insurance coverage) offered through an employer that:

- Qualifies as creditable coverage,
- Has an employer contribution of at least 40% toward any premium for the coverage;
- Is offered in a manner that is nondiscriminatory under Code §105(h); and
- Is not health FSA coverage or a qualified high-deductible health plan coverage (as defined under Code § 223).

Generally, employers may have two options when dealing with a state that provides premium assistance. If the employer has individuals who are eligible for the premium assistance, the employer may either receive the premium assistance payment directly from the state or opt-out. If the employer opts-out, the state will pay the individual the premium assistance amount directly.

CHIPRA also imposes two new notice requirements on employers, the Employer CHIP Notice (described below) and a coverage coordination disclosure for reporting certain information to the state in order to evaluate whether the premium assistance program is cost effective. This second notice is not yet available.

## **Employer CHIP Notice**

### ***Who provides the notice?***

Under CHIPRA, if an employer offers a group health plan in a state that provides premium assistance for the purchase of group health plan coverage, the employer is required to provide each employee the Employer CHIP Notice.

As of January 22, 2010 the following states offer one or more programs that meet this standard:

- Alabama
- California
- Idaho
- Kentucky
- Minnesota
- Nevada
- New York
- **Oregon**
- Texas
- **Washington**
- Alaska
- Colorado
- Indiana
- Louisiana
- Missouri
- New Hampshire
- North Carolina
- Pennsylvania
- Utah
- West Virginia
- Arizona
- Florida
- Iowa
- Maine
- Montana
- New Jersey
- North Dakota
- Rhode Island
- Vermont
- Wisconsin
- Arkansas
- Georgia
- Kansas
- Massachusetts
- Nebraska
- New Mexico
- Oklahoma
- South Carolina
- Virginia
- Wyoming

Thus, employers providing group health plan coverage to employees residing in any of these states will need to provide the Employer CHIP Notice.

#### Example 1

An employer in the District of Columbia sponsors a group health plan that provides reimbursement for medical care to plan participants or beneficiaries residing in the District of Columbia, Virginia, Maryland, West Virginia, Delaware, and Pennsylvania.

In this example, the plan is considered maintained in all six states. Because at least one of these states offers a premium assistance program, the employer is subject to the Employer CHIP Notice requirement.

### ***Who receives the notice?***

An Employer CHIP Notice must inform each employee of potential opportunities for premium assistance in the state where the employee resides, regardless of enrollment status. The state where the employee resides may be different from the location of the employer, the employer's principal place of business, the health plan, insurer or other service provider. Employers may provide the Employer CHIP Notice only to those employees residing in states with premium assistance programs, or for administrative ease, the employer may provide this notice to all employees.

### Example 2

Same facts as described in Example 1 (above).

In this example, employees residing in Virginia, West Virginia, and Pennsylvania are entitled to receive the notice because those three states offer premium assistance programs. Of course, the employer may send the notice to all employees if the employer chooses (for example, if it is administratively easier to send the notice to all than to distinguish between employees based on residency).

#### ***When should an employer provide the notice?***

Employers are required to provide this notice by the date that is the later of:

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

For plan years that begin between February 4, 2010 and April 30, 2010, the rule requires that the Employer CHIP Notice is provided by May 1, 2010.

For plan years beginning on or after May 1, 2010, the Employer CHIP Notice must be provided by the first day of the plan year. For calendar-year plans, the notice is due by January 1, 2011.

This notice will need to be provided annually. Each year, the DOL and HHS expect to update the notice and provide additional information, including any changes to the list of states that offer premium assistance programs.

#### ***How does an employer provide the notice?***

The Employer CHIP Notice must be provided to each employee, regardless of enrollment status.<sup>1</sup>

The notice may be provided when furnishing materials notifying the employee of health plan eligibility, concurrent with materials provided for open enrollment, or concurrent with providing the summary plan description (SPD), as long as:

- Such materials are provided no later than the dates described above,
- The materials are provided to all employees entitled to receive the Employer CHIP Notice, and
- 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.

One effective delivery method would be to include this notice a separate, prominent document contained in the open enrollment materials and new hire packets.

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<sup>1</sup> The guidance is unclear whether the notice is provided to all employees, or just those employees who are otherwise eligible for health plan benefits. Additional guidance is needed. Without further clarification, providing the notice to all employees (regardless of benefit eligibility) would not violate the requirements of the statute or notice guidelines.

### Example 3

An employer maintains a group health plan with a plan year beginning on January 1, 2011. The plan has an annual open enrollment period that occurs from October 15, 2010 through November 30, 2010 with coverage effective January 1, 2011. Open enrollment packets are distributed on October 1, 2010 to all employees of the employer.

In this example, the employer may distribute the Employer CHIP Notice as a separate, prominent document in the open enrollment packet on October 1, 2010, but the notice is required to be provided no later than January 1, 2011.

The notice may be provided electronically to the extent the delivery mechanisms satisfy the disclosure safe harbor under 26 CFR § 2520.104(b)-1(c).

#### ***Are there penalties if an employer fails to provide the notice?***

The DOL may assess a civil penalty of up to \$100 per employee per day against an employer who fails to provide the Employer CHIP Notice.

#### ***How will an employee know if he or she is eligible for premium assistance?***

Contact information for questions regarding state premium assistance programs is included in the model notice, as is a toll-free number, 1-877-KIDSNOW, and Web site, [www.insurekidsnow.com](http://www.insurekidsnow.com), for more information. This information is intended to provide resources to assist an employee in determining whether he or she is eligible for premium assistance. If an employee is eligible for assistance, he or she should contact the plan administrator (generally the employer) to request a special enrollment opportunity to enroll in the group health plan.

#### ***What should I do?***

Employers should:

- Review the states where employees reside to determine whether you are required to provide this notice. Employers with employees residing in Washington and Oregon are subject to this notice requirement.
- For March and April renewals, make sure to provide this Employer CHIP Notice no later than May 1, 2010. This may be included in enrollment materials. If open enrollment materials have already been issued, you will want to provide this as a separate notice by May 1, 2010.
- For plan years that begin May 1, 2010 and subsequent, include the Employer CHIP Notice in enrollment materials.
- Annually, include this notice (and any updates) in enrollment materials;
- Honor special enrollment requests consistent with the requirements under CHIPRA;
- If applicable, determine whether to opt-out of receiving a premium assistance payment directly from the state; and
- Continue to monitor developments.

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