



CHIPRA Notice Requirement

The Children's Health Insurance Program Reauthorization Act of 2009 ("CHIPRA") expands the state children's health insurance program ("SCHIP") law, allows States to subsidize premiums for employer-provided health coverage; requires special enrollment for employees, spouses, and dependents as a result of loss of eligibility under Medicaid or SCHIP¹ and upon becoming eligible for a premium assistance subsidy under Medicaid or SCHIP; and requires that employers make disclosures to the State. Also, employers are required to provide annual written notices to their employees informing them of the potential opportunities for premium assistance. The Department of Health and Human Services ("HHS") issued a model notice on February 4, 2010 to enable employers to comply with this notice requirement.

Applicability

The notice requirement applies to all employers with group health plans, whether insured or self-funded, where benefits are provided to employees in states that provide Medicaid or SCHIP premium assistance.

Effective Date

Employers are required to provide the first notice by the later of: (1) the first day of the first plan year after February 4, 2010; or (2) May 1, 2010. So, for plan years beginning between from February 4, 2010 through April 30, 2010, the Employer CHIP notice must be provided by May 1, 2010. For employers whose next plan year begins on or after May 1, 2010, the Employer CHIP notice must be provided by the first day of the next plan year (**January 1, 2011** for calendar year plans).

Delivery of the Notice

The Employer CHIP notice is not required to be provided in a separate mailing. Plans may combine information to reduce administrative costs, if the other requirements of this notice are met. Thus, the Employer CHIP Notice may be furnished with enrollment materials or the plan's summary plan description ("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. The notice is required to be provided automatically, free of charge.

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

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

¹ HIPAA already provides special enrollment rights upon certain losses of eligibility of group health coverage or health insurance coverage and upon the acquisition of a new spouse or dependent by marriage, birth, adoption, or placement for adoption.

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The notice must be provided in writing in a manner calculated to be understood by the average employee. It may be provided by first-class mail. Alternatively, it may be provided electronically to the extent the criteria of the DOL's electronic disclosure safe harbor are satisfied.

States Offering Assistance

For purposes of the Employer CHIP Notice requirement, an employer providing benefits (directly or through insurance, reimbursement, or otherwise) for medical care in a State is considered to maintain a group health plan in that State. If that State provides medical assistance under a State Medicaid plan or child health assistance under a State child health plan in the form of premium assistance for the purchase of group health plan coverage, the employer is required to provide the Employer CHIP Notice. As of January 22, 2010, all states offer one or more programs that meet this standard other than:

- Connecticut
- Delaware
- Hawaii
- Illinois
- Maryland
- Michigan
- Mississippi
- Ohio
- South Dakota
- Tennessee

Accordingly, if a group health plan provides benefits for medical care to participants, beneficiaries, or providers in any State not listed above, the plan is required to provide the Employer CHIP Notice, regardless of the employer's location or principal place of business (or the location or principal place of business of the group health plan, its administrator, its insurer, or any other service provider affiliated with the employer or the plan).

Example. 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.

Conclusion. 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.

Employees Entitled to Notice

An Employer CHIP Notice must inform each employee, regardless of whether he or she is enrolled in the group health plan, of potential opportunities for premium assistance in the State in which the employee resides. The State in which the employee resides may or may not be the same as the State in which the employer, the employer's principal place of business, the health plan, its insurer, or other service providers are located.

Example. Same facts as Example 1, above.

Conclusion. 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).

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Form of Notice

The approach of the Model Employer CHIP Notice is to provide a very brief description of premium assistance and rely on State contact information for State-specific program descriptions.

For a copy of the notice, visit: http://www.dol.gov/ebsa/compliance_assistance.html

Note: EBSA is developing a Spanish version of the May 2014 model notice and will post it as soon as it is available.

Penalties

The new law provides for civil penalties of up to \$100 a day for failure to comply with the new notice requirement.

Disclosure to the States

In addition to the Employer CHIP Notice requirement, CHIPRA also provides that, in order for States to evaluate an employment-based plan to determine whether premium assistance is a cost effective way to provide medical or child health assistance to an individual, group health plans are required to provide, upon request, information about their benefits to State Medicaid or CHIP programs. The DOL and HHS are separately developing a model coverage coordination disclosure form that will be issued in the future. States may begin requesting this information from plans beginning with the first plan year after this model form is issued.

For guidance, visit: <http://edocket.access.gpo.gov/2010/pdf/2010-2409.pdf>

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