

MARCH 2010 LEGAL ALERT Notice:

CHIPRA STATE PREMIUM ASSISTANCE OPPORTUNITIES – DOL MODEL NOTICE ISSUED

The Children's Health Insurance Program Reauthorization Act of 2009 ("CHIPRA"), which was enacted by President Obama last year, included a requirement that employers maintaining group health plans must notify their employees of potential opportunities for group health plan premium assistance through Medicaid and the Children's Health Insurance Program ("CHIP") in the States in which the employees reside. *As required by CHIPRA, on February 4, 2010, the U.S. Department of Labor ("DOL"), working together with the Department of Health and Human Services, issued a model Employer CHIP Notice that may be used for this purpose.*

The DOL's model Notice provides information on how an employee may contact the State in which he or she resides for additional information regarding potential opportunities for premium assistance, including how to apply for such assistance. The DOL also issued regulatory guidance regarding the Notice requirement, including the timing of the Notice, as explained below.

Which Employers Must Provide the Notice?

The Employer CHIP Notice must be provided by employers that maintain group health plans in States that provide medical assistance under a State Medicaid plan or children's health insurance program. For this purpose, an employer "maintains" a plan in *all* States in which it provides medical care to its employees or their dependents (*i.e.*, generally, the States in which they reside), regardless of the location of the employer or its principal place of business, or the location or principal place of business of the plan, its administrator or insurer (if any). The DOL regulation includes the following example that illustrates this point:

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 [(i.e., Virginia and West Virginia and Pennsylvania)] offers a premium assistance program, the employer is subject to the Employer CHIP Notice requirement.

In addition, the notice requirement applies regardless of whether the employer provides group health coverage directly or through insurance, reimbursement or otherwise.

Although the CHIP notification requirement is clearly an *employer* requirement, it is possible that employers who participate in multiemployer health benefit plans will look to these plans to assist in satisfying the Notice requirement. Multiemployer plans themselves are subject to certain other requirements under CHIPRA, including to provide additional special enrollment rights to employees and dependents upon a loss of eligibility for Medicaid or CHIP and upon eligibility for premium assistance under Medicaid or CHIP. (See our February 2009 *Client Alert* regarding CHIPRA's other requirements).

To Whom Must the Notice Be Sent?

The Employer CHIP Notice must be sent to all employees, regardless of their plan enrollment status, who reside in States in which the premium assistance is available. As noted in the regulations issued by the DOL, if it is administratively easier to send the notice to all employees, rather than identify employees by residency, the employer is permitted to do so. The Notice must be provided free of charge.

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Content of the Notice

The Employer CHIP Notice must provide information regarding State premium assistance that is *currently* available in the applicable States. To this end, the DOL's model Notice includes information concerning all forty States that currently provide premium assistance. The model notice is available on DOL's Web site at:

<http://www.dol.gov/ebsa/chipmodelnotice.doc>

Employers may use the DOL Notice in its current form, or may tailor it to include information only regarding the applicable States for that employer's employees.

The DOL intends to update its website annually to reflect changes in the number of States offering these premium assistance programs and/or the contact information for the applicable States, so as to enable employers to provide complete and up-to-date information.

Timing and Delivery of the Notice

Timing

Employers must provide the initial annual notice to its employees by the date that is the later of (i) the first day of the first plan year after February 4, 2010 (i.e., the date the model Notice was issued), or (ii) May 1, 2010. Accordingly, for calendar year plans, the Notice must be provided by January 1, 2011. If an employer's plan year begins between February 4, 2010 and April 30, 2010, the notice must be provided by May 1, 2010. For employers whose next plan year begins on or

after May 1, 2010, the notice must be provided by the first day of that next plan year.

The Employer CHIP Notice must be sent annually thereafter. As noted, the DOL intends to include updated information on its website so that employers may update their notices, as necessary, on an annual basis.

Delivery

The Employer CHIP Notice may be sent by first class mail. Alternatively, the notice may be furnished electronically, provided that the requirements of DOL Regulation § 2520.104b-1(c) are satisfied.

The DOL has specifically stated that the Notice may be sent to employees along with health plan eligibility information and enrollment packets, open enrollment materials, or the plan's summary plan description (all of which may be provided in advance of the upcoming year), provided that the notice is furnished in a timely manner and appears as a separate notice in a manner that ensures that employees will reasonably be expected to appreciate the significance of the notice.

The logo for Proskauer, featuring the word "Proskauer" in a sans-serif font followed by a stylized blue double arrow pointing to the right.

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