

# Employee Benefits and Executive Compensation Alert: Department of Labor Issues Model CHIP Notice

2/9/2010

On February 4, 2010, the U.S. Department of Labor issued a model Notice for employers to use regarding eligibility for premium assistance under Medicaid or the Children's Health Insurance Program. The model Notice may be accessed at <http://www.dol.gov/ebsa/>.

The Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA or Public Law 111-3) reauthorized the Children's Health Insurance Program (CHIP). Among other things, CHIPRA requires employers offering group health plans to notify all employees of their potential CHIPRA rights to receive premium assistance under a state's Medicaid or CHIP program. These requirements apply to employers that offer medical care benefits in any of the 40 states that provide premium assistance through employer-based plans. Section 311(b)(1)(D) of CHIPRA directs the Department of Labor to issue model Notices to assist employers with their compliance efforts. This alert reports on recently released guidance from the Department implementing this requirement.

## General Rule

An employer that maintains a group health plan in a state that provides medical assistance under a state Medicaid plan under Title XIX of the Social Security Act (SSA), or child health assistance under a state child health plan under Title XXI of the SSA, in the form of premium assistance for the purchase of coverage under a group health plan ("Medical Assistance"), is required to annually notify each of its employees of potential opportunities currently available in the state in which the employee resides for premium assistance under Medicaid and CHIP for health coverage of the employee or the employee's dependents.

## Who Must Give Notice

For purposes of the Employer CHIP Notice requirement, an employer providing medical care in a state is considered to maintain a group health plan in that state. If that state provides Medical Assistance<sup>1</sup>, the employer is required to provide the Employer CHIP Notice, regardless of the employer's location or principal place of business (or the 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).

## **Who Must Receive Notice**

A CHIP Notice must inform each employee (regardless of whether the employee is enrolled in the employer's health plan) of opportunities in the state where the employee resides. If there are no opportunities for Medical Assistance in an employee's state of residence, the employer is not required to provide the Notice to that employee. However, the Model Employer CHIP Notice was designed as a national template to cover employees in all applicable states; for ease of administration (and to avoid missing any otherwise eligible employees) an employer required to give the Notice to some of its employees may want to consider providing the national Notice to all of its employees.

## **Timing and Effective Date**

Employers are required to provide these Notices by the date that is the later of (1) the first day of the first plan year after February 4, 2010 or (2) May 1, 2010. Accordingly, for plan years beginning from February 5, 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). The Notice must be provided annually.

## **Means of Delivery**

The Employer CHIP Notice is required to be provided automatically, free of charge.

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 concurrent with enrollment packets, open season materials, or the plan 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
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 may be provided by first-class mail, or it may be provided electronically to the extent the criteria of the Department's electronic disclosure safe harbor at 29 CFR 2520.104b-1(c) are satisfied.

## **Endnotes**

<sup>1</sup> As of January 22, 2010, the following states offer one or more programs that meet this standard: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North

Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

---

For assistance in this area please contact one of the attorneys listed below or any member of your Mintz Levin client service team.

Employee Benefits and  
Executive Compensation

BOSTON

**Alden Bianchi**

*Practice Group Leader, Employee Benefits and Executive Compensation*

(617) 348-3057

[AJBianchi@mintz.com](mailto:AJBianchi@mintz.com)

**Tom Greene**

(617) 348-1886

[TMGreene@mintz.com](mailto:TMGreene@mintz.com)

**Addy Press**

(617) 348-1659

[ACPress@mintz.com](mailto:ACPress@mintz.com)

**Patricia Moran**

(617) 348-3085

[PAMoran@mintz.com](mailto:PAMoran@mintz.com)

NEW YORK

**David R. Lagasse**

(212) 692-6743

[DRLagasse@mintz.com](mailto:DRLagasse@mintz.com)

**Gregory R. Bennett**

(212) 692-6842

[GBennett@mintz.com](mailto:GBennett@mintz.com)

**Jessica Catlow**

(212) 692-6843

[JCatlow@mintz.com](mailto:JCatlow@mintz.com)