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LEGAL ALERT



Legal Alert: Expansion of CHIP Reauthorization Act Creates New Burdens for Group Health Plans

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The Children's Health Insurance Program ("CHIP") Reauthorization Act of 2009 (the "Act"), signed by President Obama on February 4, 2009, maintains and expands health coverage to low income and uninsured pregnant women and children. The Act, which generally is effective April 1, 2009, affects employers and group health plans in several ways.

First, the Act gives states the option to provide a premium assistance subsidy for qualified employer-sponsored coverage to all CHIP-eligible children. If the parents or children voluntarily elect to receive such a subsidy, CHIP will pay the employee's portion of the premium. The Act also allows employers to opt out of being paid the premium assistance directly. In such cases, the state would pay the subsidy directly to the employee.

Second, the Act effectively creates two new special enrollment events with regard to group health plans and policies. Group health plans and insurance providers must allow eligible employees (or dependents of the employees) to enroll for group health insurance coverage if: (1) they lose coverage under their respective state Medicaid or child health plan; or (2) they become eligible for premium assistance under the Medicaid or child health plan. Coverage must be requested no later than sixty (60) days after the new qualifying event(s).

Third, employers that maintain group health plans in states that provide medical assistance under a state Medicaid or CHIP plan must provide state-specific notices to each employee about the premium assistance option. Notice may be given as part of the annual open enrollment, the initial hire packet, or with the summary plan description. The Departments of Labor and Health and Human Services have been directed to issue a model notice by February 4, 2010. Employers must comply with this notice requirement beginning with the first plan year after the model notice is issued. Civil penalties of up to \$100 per day may be assessed on employers who do not provide the requested notice.

Fourth, the Act requires plan administrators to disclose to states, upon request, information about their group health plans. The disclosure must be sufficiently specific to allow states to determine employees' eligibility for benefits, the benefits available under the plan, the name and contact information for the plan administrator, and the premiums and cost-sharing required under the plan. A national working group has been created to develop model forms for the disclosures. Employers must comply with this

disclosure requirement beginning with the first plan year after the model form is created. Civil penalties of up to \$100 per day may be assessed upon employers who do not provide the requested disclosures.

Fifth, the Act requires that dental coverage be provided to CHIP enrollees, and authorizes states to allow CHIP-eligible children having private coverage except for dental insurance to receive dental benefits through CHIP. The Act also requires parity in CHIP between mental health and medical and surgical benefits.

The Bottom Line: As of April 1, 2009, plans must inform employees about, and administer, the new rights created by the Act. Employers and plan administrators would be prudent to review and, if necessary, amend their plan documents, implement procedures, and otherwise take steps now to make sure they comply with the Act. If you have any questions regarding this new law or other benefits related issues, please contact the author of this Alert, Joelle Sharman, jsharman@fordharrison.com, 404-888-3975 or any member of Ford & Harrison's Employee Benefits practice group.