



EMPLOYEE BENEFITS PRACTICE

# ALERT

## DOL ISSUES MODEL CHIPRA NOTICE

By Theresa Borzelli

The Department of Labor (DOL) issued a model Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) notice on February 4, 2010. As described in an ErisaAlert-2, CHIPRA requires employers that maintain a group health plan in states that offer assistance for health care to provide employees with a written notice of the availability of premium assistance programs under Medicaid or state child health plans. In addition, the administrator of a group health plan must provide information upon request of a state regarding the benefits available under the plan with respect to a participant or beneficiary who is covered under a Medicaid or state child health plan. Further, the DOL and Health and Human Services (HHS), in consultation with state, Medicaid and Children's Health Insurance Program (CHIP) agencies, were charged with issuing a model notice.

### Who Has To Provide the Notice?

Group health plans must provide the notice if the group health plan provides medical care benefits in a state that provides medical assistance under a state Medicaid plan or child health assistance under a state health plan, in the form of premium assistance for the purchase of group health plan coverage. The regulations contain a list of the 40 states providing medical assistance. New York, New Jersey and Pennsylvania are among those states.

**Note:** It doesn't matter where the plan sponsor or

principal place of business is located; it only matters where the plan participants reside.

### When Is the Notice Required?

The notice must be provided by the later of:

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

Therefore, if a plan's next plan year begins after February 4, 2010, and before May 1, 2010, the notice must be provided by May 1, 2010. For all other plans the notice must be provided by the first day of the next plan year, January 1, 2011, for calendar year plan years. Do not confuse policy year with plan year. It is not unusual for health and welfare plans to have a policy year that differs from the plan year; look to your 5500, if one is required, to confirm your plan year.

### How Must the Notice Be Provided?

The notice must be provided to all employees entitled to receive the notice and may be provided concurrently with other materials, including open enrollment packages or the summary plan description. The notice must appear separately and in a manner that ensures that an employee who may be eligible for premium assistance could reasonably be expected to appreciate its significance. As with all participant communications, the notice must be

written in a manner calculated to be understood by the average plan participant.

The notice can be provided by first class mail or electronically, provided the DOL's electronic criteria are satisfied.

**What Steps Should You Be Taking Now:**

- (1) Determine if you have participants residing in any of the 40 states provided in the regulations.
- (2) If you have employees in many states, decide if you will send to all plan participants instead of selectively to the affected plan participants.

- (3) If you have a non-calendar year plan year, be sure to include the notice with your open enrollment material.

**Note:** All links are active as of this Alert's issue date.

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