

BENEFITS ALERT

Rose & Kiernan, Inc.

February, 2010



New Notice Requirements for the Children's Health Insurance Program Reauthorization Act of 2009

On February 4, 2009, President Obama signed into law the **Children's Health Insurance Program Reauthorization Act of 2009** (the "Act"). The state children's health insurance program ("CHIP") provides health insurance for children whose families cannot afford private healthcare but do not qualify for federal Medicaid. The Act expands CHIP by providing additional special enrollment rights related to group health plan coverage. The new law also permits state subsidies of employer-provided group health premiums for eligible children and families and **imposes new notice and disclosure obligations for employers that maintain group health plans.**



This **RK Benefits Alert** provides you with an updated overview of the Act.

I. Special Enrollment Rights

Currently, group health plans must provide special enrollment rights to certain individuals who lose eligibility for other health coverage or who acquire a new spouse or dependent. The Act extends these special enrollment rights to employees and dependents who lose eligibility under a Medicaid plan or CHIP and employees and dependents who become eligible for a premium assistance subsidy under Medicaid or CHIP, as described below. These individuals must be given 60 days after the loss of coverage or determination of eligibility for assistance to request coverage under the group health plan. The effective date for these new special enrollment rights was April 1, 2009 as previously communicated by R&K.

II. Premium Assistance Subsidy

The Act allows states to offer eligible low income children and their families a premium assistance subsidy to help pay for qualified employer-sponsored coverage. Qualified employer-sponsored coverage means a group health plan or health insurance coverage offered by an employer that (i) qualifies as creditable coverage as a group health plan under the Public Health Service Act, (ii) for which the employer contribution for the coverage is at least 40% and (iii) that is offered in a non-discriminatory manner. Benefits provided under a health flexible spending arrangement or high deductible health plan are not considered qualified employer-sponsored coverage.

As of February 2010, New York State has not re-applied for a premium subsidy for the Child Health Plus. There is a Medicaid or Family Health Plus Premium Assistance Plan, however.

States that do provide a premium assistance subsidy may choose to pay the subsidy as a reimbursement to an employee for out-of-pocket expenses or directly to the employer. However, employers may choose to opt out of being directly paid a premium assistance subsidy on behalf of an employee.

III. Notice Requirements

The Act requires employers that maintain group health plans in states that provide medical assistance under a Medicaid plan or child health assistance under a CHIP in the form of a premium assistance subsidy to notify their employees in writing of the potential opportunities available for premium assistance. The Department of Health and Human Services ("HHS") has developed the model form which is available on their website. Employers may provide the notice along with plan materials notifying the employee of health plan eligibility, open enrollment materials or the summary plan description. **The effective date of the notice requirement is the first day of the plan year beginning after February 4, 2010. Therefore employers with renewal dates of 3/1/2010 and after must issue the notice on their renewal date.**

Last year, Rose and Kiernan provided our clients with a notice of special open enrollment rights which satisfied HIPAA requirements. This new notice requirement, although very similar in nature, needs to be sent to employees as well to satisfy the notice requirement in the CHIPRA legislation. A sample "Model Notice" is attached to this e-mail distribution.

IV. Disclosure to States

Under the Act, administrators of group health plans must disclose to the state, upon request, information about the benefits available under the plan if the plans' participants and beneficiaries are also covered by Medicaid or CHIP. This information is required so that the state may determine the cost-effectiveness of providing premium assistance subsidies and may provide supplemental coverage. The Act directs HHS and the Department of Labor to jointly establish a Medicaid, CHIP, and Employer-Sponsored Coverage Coordination Working Group that will develop a model coverage coordination disclosure form for use by plan administrators. The effective date for use of the model form is the first day of the first plan year beginning after the date on which the form is first issued.

V. Penalty for Noncompliance with Notice and Disclosure Requirements

The Act provides for civil penalties of up to \$100 a day for failure to comply with the new notice and disclosure requirements.

This Summary is provided to you for general information purposes only and does not include references to other legal resources (e.g., supporting regulations, or formal or informal opinions) unless specifically noted. Please seek qualified and appropriate counsel for further information and/or advice regarding the application of the topics discussed herein to your employee benefits plan.

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