

May 14, 2013

U.S. Department of Labor Issues Model Notices Due to Health Care Reform

I. INTRODUCTION

Many provisions of the Patient Protection and Affordable Care Act (commonly known as the “Affordable Care Act” or “PPACA” or more generically as “health care reform”) that become effective beginning in 2014 are designed to expand access to affordable health coverage. The Affordable Care Act includes provisions for coverage to be offered through a Health Insurance Marketplace (“Marketplace”), premium tax credits to assist individuals in purchasing such coverage, employer notice to employees of coverage options available through the Marketplace, and other related provisions.

Beginning January 1, 2014, individuals and employees of small businesses will have access to affordable coverage through a new competitive private health insurance market – the Health Insurance Marketplace. The Marketplace offers “one-stop shopping” to find and compare private health insurance options. Open enrollment for health insurance coverage through the Marketplace begins October 1, 2013. The Affordable Care Act requires employers to provide a notice to employees of coverage options available through the Marketplace.

Recently, the U.S. Department of Labor (“DOL”) issued a Model Notice to Employees of Coverage Options. The DOL also issued an updated model election notice for group health plans for purposes of the continuation coverage provisions under the Consolidated Omnibus Budget Reconciliation Act of 1985 (“COBRA”) to include additional information regarding health coverage alternatives offered through the Marketplace.

II. NOTICE TO INFORM EMPLOYEES OF COVERAGE OPTIONS

A. EMPLOYERS SUBJECT TO THE NOTICE REQUIREMENT

The requirement to provide a notice to employees of coverage options applies to employers subject to the Fair Labor Standards Act (“FLSA”). In general, the FLSA applies to employers that employ one or more employees who are engaged in, or produce goods for, interstate commerce. For most firms, a test of not less than \$500,000 in annual dollar volume of business applies. The FLSA also specifically covers the following entities: hospitals; institutions primarily engaged in the care of the sick, the aged, mentally ill, or disabled who reside on the premises; schools for children who are mentally or physically disabled or gifted; preschools, elementary and secondary schools, and institutions of higher education; and federal, state and local government agencies.

B. PROVIDING NOTICE TO EMPLOYEES

Employers must provide a notice of coverage options to each employee, regardless of plan enrollment status (if applicable) or of part-time or full-time status. Employers are not required to provide a separate notice to dependents or other individuals who are or may become eligible for coverage under the plan but who are not employees.

C. FORM AND CONTENT OF THE NOTICE

The notice to inform employees of coverage options must include information regarding the existence of a new Marketplace as well as contact information and a description of the services provided by a Marketplace. The notice must also inform the employee that the employee may be eligible for a premium tax credit if the employee purchases a qualified health plan through the Marketplace; and a statement informing the employee that if the employee purchases a qualified health plan through the Marketplace, the employee may lose the employer contribution (if any) to any health benefits plan offered by the employer and that all or a portion of such contribution may be excludable from income for Federal income tax purposes.

D. TIMING AND DELIVERY OF NOTICE

Employers are required to provide the notice to each new employee at the time of hiring beginning October 1, 2013. For 2014, the DOL will consider a notice to be provided at the time of hiring if the notice is provided within 14 days of an employee's start date.

With respect to employees who are current employees before October 1, 2013, employers are required to provide the notice no later than October 1, 2013. The notice is required to be provided automatically, free of charge.

The notice must be provided in writing in a manner calculated to be understood by the average employee. It may be provided by first-class mail. Alternatively, it may be provided electronically if the requirements of the DOL's electronic disclosure safe harbor are met.

E. MODEL NOTICE

To satisfy the content requirements for the notice to inform employees of coverage options, model language is available on the DOL's website: <http://www.dol.gov/ebsa/healthreform/>. There is one model for employers who do not offer a health plan and another model for employers who offer a health plan for some or all employees. Employers may use one of these models, as applicable, or a modified version, provided the notice meets the content requirements very generally described above.

III. MODEL COBRA ELECTION NOTICE

In general, under COBRA, an individual who was covered by a group health plan on the day before a qualifying event occurred may be able to elect COBRA continuation coverage upon a qualifying event (such as termination of employment or reduction in hours that causes loss of coverage under the plan). Individuals with such a right are called qualified beneficiaries. A group health plan must provide qualified beneficiaries with an election notice, which describes their rights to continuation coverage and how to make an election. The election notice must be provided to the qualified beneficiaries within 14 days after the plan administrator receives the notice of a qualifying event.

Some qualified beneficiaries may want to consider and compare health coverage alternatives to COBRA continuation coverage that are available through the Marketplace. Qualified beneficiaries may also be eligible for a premium tax credit (a tax credit to help pay for some or all of the cost of coverage in plans offered through the Marketplace).

The DOL has issued a model election notice that plans may use to satisfy the requirement to provide the election notice under COBRA. This notice is being revised to help make qualified beneficiaries aware of other coverage options available in the Marketplace. In order to use this model election notice properly, the plan administrator must complete it by filling in the blanks with the appropriate plan information. Use of the model election notice, appropriately completed, will be considered by the DOL to be good faith compliance with the election notice content requirements of COBRA.

The model election notice is available in modifiable, electronic form on the DOL's website:

<http://www.dol.gov/ebsa/cobra.html>.

If you have any questions regarding these DOL model notices - or questions regarding health care reform in general, and how it impacts your business - please contact the author of this Client Alert, a member of the Butzel Long Employee Benefits Group, or any member of the Butzel Long Health Care Group.

Thomas L. Shaevsky, Esq.

248 258 7858

shaevsky@butzel.com

Butzel Long Employee Benefits Practice Group

Alexander B. Bragdon

248 258 7856

bragdon@butzel.com

Lynn F. McGuire

734 213 3261

m McGuire@butzel.com

Thomas L. Shaevsky

248 258 7858

shaevsky@butzel.com

Butzel Long Health Care Practice Group

Jennifer A. Dukarski

734 213 3427

dukarski@butzel.com

Debra A. Geroux, CHC

248 258 2603

geroux@butzel.com

Mark R. Lezotte

313 225 7058

lezotte@butzel.com

Thomas R. McAskin

248 258 2511

mcaskin@butzel.com

Susan H. Patton

734 213 3432

patton@butzel.com

Robert H. Schwartz

248 258 2611

schwartzrh@butzel.com

Copyright 2013, Butzel Long, a professional corporation
Any reproduction without permission of the author is prohibited.

The above news is only intended to highlight some of the important issues. This e-mail has been prepared by Butzel Long for information only and is not legal advice. This information is not intended to create, and receipt of it does not constitute, a client-lawyer relationship. Readers should not act upon this information without seeking professional counsel. This electronic newsletter and the information it contains may be considered attorney advertising in some states. If you feel you have received this information in error, or no longer wish to receive this service, please follow the instructions at the bottom of this message.

Attorney Advertising Notice - The contents of this e-mail may contain attorney advertising under the laws of various states. Prior results do not guarantee a similar outcome.

For previous e-news or to learn more about our law firm and its services, please visit our website at: www.butzel.com

Butzel Long Offices:

Ann Arbor
Bloomfield Hills
Detroit
Lansing
New York
Washington D.C.

Alliance Offices:

Beijing
Shanghai
Mexico City
Monterrey

Member:

Lex Mundi