

Employee Benefits E-news

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New SCHIP Law Imposes Obligations on Group Health Plans

On February 4, 2009, President Obama signed the Children's Health Insurance Program Reauthorization Act of 2009 (the "Act") into law, reauthorizing and expanding the State Children's Health Insurance Program ("SCHIP"). The Act also impacts sponsors and plan administrators of group health plans.

Premium Assistance

Under the Act, instead of providing health coverage directly to low-income children and their families, the state may elect to offer a premium assistance subsidy for group health plan or health insurance coverage offered through an employer (except health flexible spending arrangements, high deductible health plans or when the employer contribution toward any premium for group health plan or health insurance coverage is less than 40%). The state may provide the premium assistance subsidy either directly to the employer, or as a reimbursement to an employee for out-of-pocket expenditures. However, the employer may notify the state that it elects to opt-out of being paid directly, and in that event, the employee will pay the total amount of the required employee contribution for enrollment in the group health plan or health insurance coverage, and the state will pay the premium assistance directly to the employee. In all events, the state is the secondary payor for any items or services provided under the group health plan or health insurance coverage.

The Act requires each employer that maintains a group health plan in a state that provides premium assistance under Medicaid and/or SCHIP to provide each employee a written notice of the potential opportunities available for premium assistance in the state. An employer may provide this notice at the same time it provides materials notifying the employee of health plan eligibility or of open enrollment or by including it in a summary plan description. The Act specifies that the Department of Labor and the Department of Health and Human Services have until February 4, 2010 to provide a model notice for employers to satisfy this requirement. Employers are required to provide the initial annual notices to their employees beginning with the first plan year that begins after the date the initial model notices are first issued. The Act imposes a civil penalty of up to \$100 a day per employee for failure to meet the notice requirements.

Special Enrollment

The Health Insurance Portability and Accountability Act of 1996 ("HIPAA") requires group health plans to permit mid-year enrollment for employees and their dependents in certain circumstances (e.g., the birth of a new child, marriage or because the employee's or dependents' coverage under

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another group health plan terminates), otherwise known as "special enrollment." Under the Act, effective April 1, 2009, a group health plan must permit an employee or his or her dependent(s) to enroll for coverage mid-year if the employee or dependent(s) lose coverage under a Medicaid plan or under SCHIP due to loss of eligibility, or if the employee or dependents become eligible for Medicaid or SCHIP group health plan premium assistance. The Act requires a window of 60 days from the date after the termination of such coverage, or the date after the employee or dependent is determined to be eligible for premium assistance, for the group health plan to permit these mid-year enrollment requests (regular special enrollment is only 30 days). Sponsors of group health plans and cafeteria plans will need to amend their plans to provide for these new special enrollment events by April 1, 2009.

Disclosure

Finally, the Act requires the plan administrator of a group health plan with a participant or beneficiary who is covered under a state Medicaid program and/or SCHIP to disclose to the state, upon request, information about the benefits, premiums and cost-sharing required under the group health plan. The Act specifies that a model form will be available from the Department of Labor and the Department of Health and Human Services no later than August 4, 2010, and will apply with respect to requests made by states beginning with the first plan year that begins after the date the model form is first issued. The Act imposes a civil penalty of up to \$100 a day per employee for failure to meet the disclosure requirements.

For more information about these issues, or for questions regarding any aspect of your company's welfare benefit plans, contact your regular Butzel Long attorney, a member of the Butzel Long Employee Benefits Practice Group, or the author of this e-news bulletin.

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