

EMPLOYEE BENEFITS

Alert

NEWS FOR THE CLIENTS AND FRIENDS OF BASS, BERRY & SIMS PLC

CHIP Adds New Special Enrollment Rights – Effective April 1, 2009

March 17, 2009

The Children's Health Insurance Program Reauthorization Act of 2009 ("CHIP"), signed by President Obama on February 4, 2009, adds two new special enrollment events to employer sponsored group health plans. Unlike existing special enrollment events (e.g., marriage, birth of a child, loss of coverage under another plan), which allow enrollment within 30 days of the triggering event, enrollment under the new events must be allowed for up to 60 days.

The first new special enrollment event is loss of eligibility under a state children's health insurance program ("SCHIP") or Medicaid. Losses of eligibility typically result when an individual's income exceeds a certain amount. The result of the new requirement is that employees and dependent children who lose Medicaid or SCHIP eligibility must be permitted to enroll in their employer's health plan provided that the request for enrollment is made within 60 days and the employee is otherwise eligible for coverage (i.e., within the covered class of eligible employees, has met the eligibility waiting period, etc.).

The new legislation also allows states to offer a premium assistance subsidy for low-income children and their parents in lieu of providing health coverage to these individuals. This subsidy may be provided as a reimbursement to the employee or as a direct payment to the employer (unless the employer opts out of receiving direct payments). Initial eligibility for a premium assistance subsidy is the other special enrollment event, thus allowing enrollment in an employer's health plan within the 60 day special enrollment period.

The new law also imposes new disclosure obligations on employers. Employers are required to provide written notices to their employees, informing the employees of the potential opportunities for premium assistance in their state of residence. Fortunately, this disclosure obligation is not required until after the Department of Health and Human Services has issued state-specific model notices. The earliest this notice will be required for calendar year plans is January 1, 2010.

Employers must also report information to states regarding the coverage and benefits available under their health plans. These disclosures are intended to allow states to determine the cost-effectiveness of their subsidy programs and to identify coverage gaps which may exist between an employer's health plan and the state's program. The Department of Labor, in conjunction

with the Department of Health and Human Services, will develop a model disclosure form for this purpose. States may not request the model form until the first plan year that begins after the form is first issued (again, not earlier than January 1, 2010 for calendar year plans).

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

Because all 50 states maintain some form of Medicaid and/or SCHIP program, all employer sponsored health plans will need to be amended to reflect the new special enrollment events. The amendments should be implemented before April 1, 2009. Cafeteria plans will also need amending in order to allow election changes consistent with the two new special enrollment rights.

Please contact any of the attorneys in the Bass, Berry & Sims Employee Benefits Practice listed below for assistance.

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