

## **New Children's Health Insurance Program Requirements Effective April 1**

**March 30, 2009**

The Children's Health Insurance Program Reauthorization Act of 2009 (the Act) was signed into law by President Obama on February 4 and takes effect on April 1, 2009 for all plans, regardless of plan year. In addition to extending the existing renamed Children's Health Insurance Program (CHIP) that provides federal funds to states for health insurance coverage for individuals (mostly children) who do not meet the low-income requirements for Medicaid, the Act also has a direct impact on employer-sponsored group health plans and multiemployer plans.

### **Special Enrollment Period**

The Act creates new "special enrollment rights" for individuals who lose eligibility for Medicaid or CHIP coverage or who become eligible for premium assistance (described below) for such coverage. The special enrollment period is 60 days (not the typical 30-day period that applies in the case of marriage, birth, loss of other coverage, etc.). Because group health plans are required under federal law to notify newly eligible employees of their special enrollment rights, plan sponsors should modify their special enrollment notices for use on or after April 1, 2009. Summary plan descriptions should also be revised (either directly, through a summary of material modifications, or through the next open enrollment cycle) to reflect the new special enrollment period. Such revisions should be completed within 210 days after the end of the plan year in which the new rules become effective (i.e., by July 29, 2010 for calendar-year plans).

It will also be necessary to amend group health plan and cafeteria plan documents to reflect the new special enrollment rules. While there is no required date for plan amendments in the Act, plan sponsors should amend plan documents no later than the last day of the plan year in which the changes become effective (i.e., by December 31, 2009 for calendar-year plans) with an April 1, 2009 effective date, so that there is a basis in the document for allowing pretax contributions and related midyear election changes.

### **Premium Assistance**

The Act authorizes states to develop premium assistance programs to help eligible employees pay their share of group insurance premiums to keep children in employer-sponsored plans rather than CHIP plans or Medicaid. To help states decide whether to offer premium assistance, plan sponsors are required to provide certain information about their plans to the state. In-house benefits personnel should

be made aware of this requirement and instructed how to respond. (A model coverage disclosure form will be developed within 18 months of the date of enactment.) If premium assistance is offered, the amount charged to the employee will need to be reduced accordingly. Plan sponsors can opt out of the premium assistance payment (assistance would then be paid directly to the employee), but the pretax nature of contributions under a cafeteria plan may be compromised if the employee is reimbursed, in part, for a contribution that is made on a pretax basis.

An annual notice of the availability of premium assistance will be required. The responsible government agencies have one year from the date of enactment to issue a model annual notice which must then be provided for plan years beginning on or after that date (i.e., January 1, 2011 for calendar-year plans). Failure to provide this notice can result in a \$100 per day penalty.

Morgan Lewis attorneys would be happy to help you determine the extent to which your company's notices and plan documents need to be revised to comply with these new requirements.

For more information on these and related issues, please contact any of the following Morgan Lewis attorneys:

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