

Baum, Beth - EBSA

From: Joffe, B. David [DJoffe@BABC.COM]
Sent: Monday, March 15, 2010 11:54 AM
To: EBSA, E-OHPSCA - EBSA
Subject: Comments Regarding Model Notice

I would urge the Department of Labor to revise its guidance regarding the model notice of premium assistance to permit such notice to be included "within" a summary plan description or enrollment brochure. The statute states that the notice may be provided "concurrent with materials provided to the employee in connection with an open season or election process . . . or concurrent with the furnishing of the summary plan description." It does not prohibit including the notice in an enrollment brochure or summary plan description.

While I understand the Department's interest in making sure that the notice is highlighted to employees, it is administratively burdensome on many employers, particularly employers with a large number of employees, to have to produce a separate document as part of a mass mailing or distribution. For large employers, the cost of producing and processing a separate page for distribution can be costly.

One suggestion would be to permit the employer to include the notice in the enrollment brochure or summary plan description if there was a notice on the front of the document indicating that the premium notice was included within the document. For example: "This document contains the enrollment materials and a notice of premium assistance under Medicaid or the Children's Health Insurance Program."

In addition, the guidance provides that the notice may be delivered by first-class mail or electronically. It would presumably be permissible to provide the notice by hand delivery, but the guidance does not expressly provide for it. It should be permissible to provide the notice by hand delivery or any other method generally available under the Department of Labor regulation 2520.104b-1. I would also urge the Department to revise its guidance accordingly.

Thank you for your consideration of this matter.

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