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## Employers Take Note: Federal Benefit Legislation Impacting Employer-Sponsored Programs

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Employers that sponsor welfare and fringe benefit programs should be aware of federal benefit compliance changes and deadlines. Some changes and deadlines are effective now; others, are effective on or after January 1, 2010. Below are highlights of the major changes.

1. The American Recovery and Reinvestment Act of 2009 (ARRA) – COBRA Continuation Subsidy. ARRA modified COBRA to provide for a subsidy and second-election opportunity for “assistance eligible individuals” (AEIs) for a period of up to nine months. The law was effective on February 17, 2009, and in order for AEIs to receive the subsidy, they must elect COBRA between Sep-

tember 1, 2008 and December 31, 2009.

2. ARRA – Health Information Technology for Economic and Clinical Health (HITECH). HITECH imposes new HIPAA privacy and security requirements on employer-sponsored health plans, which are “covered entities” under HIPAA. The relevant requirements include (a) extending HIPAA’s privacy and security rules to business associates (effective February 17, 2010); (b) a new duty to notify, effective as soon as implementing regulations are proposed, requiring covered entities to notify an individual if his or her unsecured protected health (PHI) information is breached; (c) accounting for treatment, payment, or healthcare operations disclosures of electronic health records (effective after 2010); and (d) a duty to agree to a PHI disclosure restriction when an individual requests a restriction, but only if services have been paid in full (effective February 17, 2010).

3. ARRA – Increase in Transit Benefits. Under ARRA, the maximum tax-free transit benefits employers can make available temporarily increases from \$120 to \$230 per month. This increase is effective March 1, 2009 through December 31, 2010. Employers

can pay the increase to the transit provider directly, allow employees to fund with pretax contributions, or choose to do a combination of both. Transit benefits include commuting on public transportation systems.

4. Children’s Health Insurance Program Reauthorization Act of 2009 (CHIPRA). CHIPRA raised the state minimum allowable eligibility standard to 185% of the Federal Poverty Level (FPL) for pregnant women, 200% of the FPL for children under age 19, and set the cap at 300%. CHIPRA increased coverage for dental care and permits children covered by a group health plan with no dental care to receive dental care. CHIPRA also imposes new obligations on employers and plans, as follows:

(a) Allows, but does not require, states to provide premium assistance for qualifying children to pay employer group health plan premiums; and

(b) Creates a new 60-day special enrollment period for employees and dependents when they (i) lose Medicaid or CHIP eligibility or (ii) first become eligible for state premium assistance for group health plan coverage.

5. Medicare Secondary Payer Program. The Medicare, Medic-

aid, and SCHIP Extension Act of 2007 added new mandatory reporting requirements for group health plans, effective January 1, 2009. Insurers and third-party administrators are responsible for reporting.

6. Mental Health Parity and Addiction Equity Act of 2008. The Mental Health Parity Act expanded rules for mental health and substance abuse benefits. It prohibits group health plans from (a) having separate cost-sharing or treatment limits for covered mental health benefits than from medical and surgical benefits and (b) imposing more restrictive financial requirements or treatment limits for mental health and substance abuse benefits than for medical and surgical benefits.

The Mental Health Parity Act is effective on January 1, 2010 (for

calendar-year plans) and regulations are expected very soon.

7. Michelle's Law. This law requires group health plans to extend coverage when a dependent child loses student eligibility because of a medically necessary leave of absence. Coverage must continue for up to one year, unless coverage would otherwise end for another reason. In addition, plans that require verification of student status must provide notice as to how and when coverage extension is available.

Michelle's law is effective on January 1, 2010 and regulations are expected soon.

8. Genetic Information and Nondiscrimination Act of 2008 (GINA). GINA prohibits the use of an individual's genetic information for certain group health plan and employment-related purposes.

GINA contains two titles: Title I applies to plans and addresses the use of genetic information in health insurance, and Title II applies to employers and prohibits the use of genetic information in employment, the intentional acquisition of genetic information about applicants and employees, and imposes strict confidentiality requirements.

Under Title I, effective January 1, 2010, group health plans are prohibited from (a) requesting family medical history or other genetic information prior to plan enrollment; (b) using family medical history or other genetic information to adjust premiums or contributions; and (c) requesting family medical history or other genetic information to determine eligibility rules, compute premium, determine contribution amounts, apply

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preexisting condition limitations, and conduct underwriting activities. Regulations are expected in 2009.

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