

# CLIENT ALERT

TAX & BENEFITS

March 16, 2006

## Updates on Dependent Definition, Part D Notices of Creditable Coverage, and HIPAA Privacy Reminders

### Further Modifications to the Code's Definition of "Dependent"

In December 2005, the Gulf Opportunity Zone Act of 2005 ("Go Zone Act") further revised the Internal Revenue Code's definition of "dependent" for purposes of dependent care assistance plans and health savings accounts. These revisions make technical corrections to the amended definition of "dependent" that was introduced as part of the Working Families Tax Relief Act of 2004 ("WFTRA"), and are retroactively effective January 1, 2005. By way of background, WFTRA amended the Code's definition of dependent to include two dependent categories — qualifying children and qualifying relatives — and introduced, among other things, an income limitation that must be applied to anyone in the qualifying relative category. WFTRA went on to clarify that for group health plans (including health care flexible spending account plans) governed by Code section 105(b): (1) the income limitation does not apply; (2) an individual's status as another taxpayer's dependent does not preclude him from having a dependent of his own; and (3) an individual's status as a married joint tax return filer does not preclude him from being a dependent. IRS Notice 2004-79 extended these exceptions to Code section 106, which provides an exclusion from income for the value of employer-provided health coverage for employees, spouses and dependents.

The Go Zone Act provides that the same three exceptions that apply to group health plans also apply to dependent care assistance plans and health savings accounts. These exceptions are also effective retroactively to January 1, 2005. The Go Zone Act also clarifies that, in the case of divorce or legal separation, a noncustodial parent continues to be able to claim a child as a dependent if the custodial parent waives the right to do so.

Depending on your plan's current definition of "dependent," plan amendments may be advisable. Further, employee communications regarding the definition of "dependent" should be reviewed to see if any action is advisable as a result of the Go Zone Act. Please contact your Ropes & Gray attorney if you would like to discuss any issues relating to the definition of "dependent" in your employee benefit plans.

### March 31, 2006 Medicare Part D Creditable Coverage Disclosure Notification Deadline

Employers providing prescription drug coverage to Medicare Part D eligible individuals are required to provide a Disclosure Notice to CMS describing whether such coverage is creditable or non-creditable. The initial Disclosure



Notice must be filed no later than March 31, 2006. For plan years ending in 2007 or later, the notice must be filed within 60 days after the beginning of the plan year. In addition, the notice must be filed within 30 days of the termination of the prescription drug plan and within 30 days of any change in the plan's creditable coverage status. The Disclosure Notice is submitted electronically by completing the disclosure form posted on the CMS webpage (<http://www.cms.hhs.gov/creditablecoverage>). If you have any questions about the Disclosure Notice, please contact Harvey Cotton at 617-951-7272 or [harvey.cotton@ropesgray.com](mailto:harvey.cotton@ropesgray.com) or Bruce Gaffney at 617-951-7305 or [bruce.gaffney@ropesgray.com](mailto:bruce.gaffney@ropesgray.com).

### April 14, 2006 Deadline for HIPAA Notice of Privacy Practices Reminder

The HIPAA Privacy Rule requires a group health plan to remind participants of the availability of its Notice of Privacy Practices, as well as how to obtain a copy, no less frequently than once every 3 years. If your group health plan sent a Notice of Privacy Practices on April 14, 2003, that 3-year deadline is approaching.

A group health plan need not re-distribute its Notice of Privacy Practices to its participants to satisfy this reminder requirement. It may simply send a reminder to participants about the availability of the Notice and how to obtain a copy. In the alternative, plans may wish to include the reminder in a newsletter or other publication that gets distributed to employees and other participants covered under the plan. This reminder needs only to be sent to the participants; it does not need to be distributed separately to spouses and dependents.

**Please note:** You may already have satisfied this reminder requirement in a number of ways. For instance, some group health plans have adopted the practice of sending their Notice of Privacy Practices to participants and other enrollees annually. Others have substantially amended their Notices of Privacy Practices recently, and thus, sent the revised Notices to participants as required by the Privacy Rule. Still others may have included information regarding the availability of their Notices of Privacy Practices in annual communications sent to participants and enrollees, including open enrollment materials.

If you have any questions about this reminder requirement, please contact Harvey Cotton at 617-951-7272 or [harvey.cotton@ropesgray.com](mailto:harvey.cotton@ropesgray.com) or Ellen Benson at 617-951-7536 or [ellen.benson@ropesgray.com](mailto:ellen.benson@ropesgray.com).

