

Changes to Group Health Plans Required by CHIPRA Take Effect April 1, 2009

by Lori Partrick

The Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) extends and expands the State Children's Health Insurance Program (CHIP). CHIP is a federal-state program designed to reduce the number of low-income children without health coverage.¹ The legislation permits (but does not require) states to subsidize premiums for employer-sponsored group health coverage for eligible children and families. The new law also establishes two new special enrollment rights for employees and their dependents who gain or lose Medicaid or CHIP coverage. In addition to these new special enrollment rights, CHIPRA establishes new notice and disclosure obligations for employers that maintain group health plans.

Premium Assistance Subsidies

CHIPRA authorizes states to subsidize some or all of the cost of "qualified employer-sponsored coverage" for eligible children, and in some cases their families. "Qualified employer-sponsored coverage" is coverage where: (i) the employer contribution toward the premium is 40% or more; (ii) the coverage is "credit-able coverage" under the Health Insurance Portability and Accountability Act of 1996 (HIPAA); and (iii) the coverage is available to a reasonable classification of employees (as defined in Section 105(h) of the Internal Revenue Code). Health flexible spending arrangements and high deductible health plans are excluded from the definition of qualified employer coverage.

The state may provide the premium assistance subsidy either directly to the employer or as a reimbursement to the employee. The employer may opt out of receiving direct premium payments from the state.

¹ CHIP was established in 1997 (under the acronym SCHIP) to provide affordable health coverage to children in working families who cannot afford private health coverage, but whose earnings are too high for purposes of eligibility for Medicaid. CHIP was originally authorized for 10 years and had been extended through March 31, 2009. CHIPRA extends the program through 2013.

An employer choosing to opt out of direct payment must still permit eligible individuals to enroll in the group health plan, in which case the state will pay the premium assistance amount directly to the employee, and the employer will continue to withhold the full amount of the employee contribution required for coverage of the employee and the low-income child under the employer's group health plan. The premium assistance subsidy applies to both insured and self-insured health plans.

The premium assistance subsidy established by CHIPRA relates to group health plan coverage for low-income working families. The American Recovery and Reinvestment Act of 2009 enacted a COBRA premium subsidy and special COBRA election period for individuals involuntarily terminated from employment between September 1, 2008 and December 31, 2009. Those rules are discussed in our Client Alert, "Stimulus Bill Includes Health Care Continuation Coverage Premium Assistance for Involuntarily Terminated Employees – Immediate Action Required," dated February 24, 2009.

Additional Special Enrollment Rights

Effective April 1, 2009, new special enrollment rights are available to employees and their dependents who are eligible but not enrolled in coverage under an employer-sponsored group health plan. Plans must allow mid-year enrollment under the following additional circumstances:

- The employee or dependent is covered under a Medicaid or CHIP plan and coverage of the employee or dependent is terminated as a result of loss of eligibility for such coverage, and the employee requests coverage under the group health plan not later than 60 days after the date of termination of such coverage;
or,
- The employee or dependent becomes eligible for premium assistance, with respect to coverage under the employer's group health plan under a Medicaid or CHIP plan, if the employee requests coverage under the employer's group health plan not later than 60 days after the employee or dependent is determined to be eligible for such assistance.

Note that while eligibility for a premium assistance subsidy gives the employee or dependent a right to enroll in the employer's group health plan, the new law does not authorize employees already participating in the plan to make changes to their cafeteria plan elections based on eligibility for the subsidy. For example, if an employee enrolls a dependent for health coverage through a cafeteria plan, and during the course of the year the employee becomes eligible for a premium assistance subsidy, the employee's cafeteria plan election cannot be reduced in order to take the amount of the subsidy into account.

Also note that the employee must request enrollment within 60 days of either of the above events. This is double the minimum 30-day period required for special enrollment events already available.

New Notice and Disclosure Requirements

Employers that maintain group health plans in states that provide Medicaid or CHIP premium assistance subsidies must provide their employees with a notice describing the state premium assistance program and the potential for using premium assistance to pay for health coverage. The new notice can be included in the summary plan description or with other plan materials provided to employees upon initial eligibility or during open enrollment. The Departments of Labor and Health and Human Services (HHS) are to issue national and state-specific model notices by February 4, 2010. Employers must comply with the new notice requirement beginning with the first plan year after the date model notices are first issued.

Plan administrators must disclose to the state, upon request, sufficient information about health plan benefits to allow a determination of the cost-effectiveness of providing premium assistance and in order for the state to provide certain supplemental benefits. Future regulations issued by HHS will determine the content of this disclosure notice.

CHIPRA establishes penalties of \$100 per day for failure to comply with these notice and disclosure requirements.

Action Items

Employers should review their health plans and cafeteria plans to determine whether amendments are needed to accommodate the new special enrollment rights. If amendments are required, plan amendments should be adopted by April 1, 2009. Summary plan descriptions may need corresponding revisions.

Employers should also update their special enrollment right notices and include such updated notices in enrollment materials for newly eligible employees beginning April 1, 2009. CHIPRA does not address how or when employers are to provide notice of the new special enrollment rights. However, because HIPAA currently requires notice of special enrollment rights to be provided at or before the time of enrollment in a group health plan, and the HIPAA special enrollment provisions have now been amended to add the new Medicaid/CHIP special enrollment rights, it is believed that employers must revise their current notices of special enrollment rights accordingly. The revised notices should describe the new Medicaid/CHIP provisions and the 60-day period to request enrollment under those provisions. Employers may wish to notify all employees about the new special enrollment rights on or before April 1, 2009.

Procedures to accommodate requests for special enrollment under CHIPRA should be in place by April 1, 2009. Employers should confirm that vendors are prepared to enroll qualifying employees and family members in group health plans.

Employers should review any coordination of benefit provisions in their health plans to determine whether updates are needed to cover situations where CHIP supplemental coverage will pay secondary to the employer's group health plan.

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