

Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA)

WHAT IS IT?

On February 4, 2009, the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) was signed into law by President Obama. CHIPRA expands special enrollment rights and allows states to subsidize premiums for employer-provided group health coverage for eligible children. Employers with employees residing in states that adopt the subsidy program will be subject to new employer notice and disclosure requirements.

SPECIAL ENROLLMENT RIGHTS

Effective April 1, 2009, the law establishes new special enrollment rights by amending the HIPAA special enrollment rules to add two new trigger events. A plan sponsor of a group health plan must permit employees and dependents who are eligible but not enrolled for coverage to enroll in the employer's group health plan under two scenarios:

- The employee's or dependent's Medicaid or CHIP coverage is terminated as a result of loss of eligibility; or
- The employee or dependent becomes eligible for a premium assistance subsidy under Medicaid or CHIP.

An employee must request this special enrollment within 60 days of the loss of coverage in the first scenario, and within 60 days of when eligibility is determined in the second scenario.

These rules must be implemented as of April 1, 2009. Employer plans will need to be amended to address this within this plan year. Notice of these expanded rights should be communicated to employees as soon as administratively feasible to avoid coverage errors. This change is not tied to a state election as are the balance of the changes described in this notice.

STATE SUBSIDY FOR EMPLOYEE COVERAGE COSTS

Many states provide coverage to uninsured children whose family income falls under a certain level. These programs are known as the state's Child Health Insurance Program (CHIP). Under CHIPRA, a state CHIP program now may elect to offer premium assistance to subsidize employer-provided coverage for eligible low-income children and families. The subsidy can either be provided directly to the employee or paid to the employer. The amount of the subsidy is equal to the difference between the employee's share of the cost for employer-provided single coverage and the cost of the employee + child or family coverage. Certain employer sponsored plans are excluded under the Act, including Section 125 flexible spending accounts, high deductible health plans, discriminatory plans, and plans under which the employer pays less than 40% of the premium.

Each state in which your employees reside will choose whether or not it will implement this optional subsidy. It will then decide whether the subsidy will be paid: (i) directly to employees as a reimbursement of their portion of the group health plan premium and other out-of-pocket expenditures; or (ii) directly to employers on behalf of the employees. In this latter instance, an employer may opt-out of receiving the premium assistance subsidy so that the subsidy would be paid directly to the employee. This opt-out will permit the employer to continue to withhold the employee's full premium obligation and avoid direct involvement with the subsidy program.

DISCLOSURE TO EMPLOYEES

Plan sponsors that maintain group health plans in states that provide Medicaid or CHIP assistance in the form of premium assistance subsidies will be required to provide written notices to their employees, informing them of the potential opportunities for premium assistance. CHIPRA directs Health and Human Services (HHS) to develop national and state-specific model notices by February 4, 2010. These notices will then be used by employers to satisfy their disclosure obligations. Employers must begin distributing the notice with the first plan year after the model notice is published.

The disclosure may be included in the employer's open enrollment materials, as part of a summary plan description, or in materials notifying an employee of his or her health plan eligibility. For employers that provide group health coverage to employees in a number of states, this obligation may become cumbersome.

DISCLOSURE TO STATE AGENCIES

CHIPRA requires plan sponsors to disclose information about its group health plan's benefits to the states when a plan participant or beneficiary is covered under its plan and Medicaid or CHIP. This disclosure is designed to assist states in determining the cost-effectiveness of providing the premium assistance subsidies rather than just covering them under CHIP. The law directs HHS and the U.S. Department of Labor to develop a model disclosure form for this purpose. Again, the employer will be under no obligation to make this disclosure until the first plan year that begins after the model form is made available.

PENALTIES FOR FAILURE TO COMPLY

CHIPRA provides for civil penalties of up to \$100 a day for failure to comply with the new notice and disclosure requirements.

WHAT SHOULD PLAN SPONSORS DO?

Plan sponsors should implement the special enrollment rights as of April 1, 2009, and notify their employees of this right as soon as administratively feasible. It will also be necessary to amend plan documents which describe available special enrollment rights. Once the states have determined whether or not they will use the subsidy program and HHS has issued the model notice, the employer will need to communicate the appropriate model notice to each of its business locations. Plan administrators will then need to complete the disclosure forms developed for the state agencies after HHS and the Department of Labor issue those model forms.

For more information on complying with CHIPRA, contact the **Conrad Siegel** Actuaries Health and Welfare Compliance Committee at 717-652-5633 or email the committee at hwcompliance@conradsiegel.com.

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