

EMPLOYEE BENEFITS CLIENT ALERT

MARCH 2009

CHILDREN'S HEALTH INSURANCE PROGRAM REAUTHORIZATION ACT OF 2009

The Children's Health Insurance Program ("CHIP") is an existing program that primarily provides health coverage to low-income children through coordination of the federal and state governments. The Children's Health Insurance Program Reauthorization Act of 2009, which was recently signed into law, extends CHIP through 2013. It also includes new provisions that will affect employers sponsoring group health plans.

Special Enrollment Rights

Effective as of April 1, 2009, group health plans must provide special enrollment rights to employees or dependents who are eligible for coverage in the health plan but not enrolled if the employee or dependent (1) loses Medicaid or CHIP eligibility or (2) gains eligibility for state premium-assistance (as discussed more fully in the "State Option" section below).

1. Loss of Medicaid or CHIP Eligibility. Special enrollment rights are available under the employer's group health plan if the employee or dependent is covered by Medicaid or CHIP, such coverage is terminated because the employee or dependent loses eligibility and the employee requests coverage under the group health plan within 60 days after Medicaid or CHIP coverage terminates.
2. Eligibility for Premium Assistance Subsidy. Special enrollment rights are available under the employer's group health plan if the employee or dependent becomes eligible for a premium assistance subsidy under Medicaid or CHIP (discussed in the "State Option" section below) and the employee requests coverage under the group health plan within 60 days after the date the employee or the dependent is determined to be eligible for the subsidy.

Employer Action Required

- Employers (or insurers) must permit these special enrollment rights beginning on April 1, 2009. Although the normal time period for requesting special enrollment is generally 30 days, that time period is extended to 60 days for the two new rights described above.
- Health plans should be reviewed to determine whether amendments are required to provide for these new special enrollment rights. Cafeteria plans also should be reviewed to determine whether amendments are required to permit election changes with respect to these new special enrollment rights. Finally, summary plan descriptions should be reviewed to determine whether summaries of material modifications are required to explain the new special enrollment rights. In any event, employees should be notified of these new rights as soon as possible and any special enrollment rights notices should be revised.
- Finally, employers should confirm that any insurers or stop-loss carriers will comply with these new rules. Contracts should be revised if necessary.

State Option to Subsidize Employer-Provided Coverage

State Option

Effective as of April 1, 2009, each state may elect whether to subsidize “qualified employer-sponsored coverage” for low-income children who are eligible for the CHIP or Medicaid. For these purposes, “qualified employer-sponsored coverage” means a group health plan or health insurance offered through an employer (1) that qualifies as creditable coverage under HIPAA, (2) for which the employer contributes at least 40% toward premiums and (3) that is offered to all individuals in a manner that would be considered a nondiscriminatory eligibility classification under Code Section 105(h). Qualified employer-sponsored coverage does not include benefits under a health FSA or a high-deductible health plan.

If the state elects to subsidize employer coverage, employers will receive the subsidy directly from the state. In general, the amount of the state subsidy will be the difference between the employee contribution for employee-only coverage and the employee contribution for the employee and the child. In addition, employers can “opt out” of being paid the subsidy directly from the state, in which case the state will pay the subsidy to the employee.

Coordination of Benefits

If a state elects to subsidize employer-provided coverage, then the state will be a secondary payor for any services provided under the employer’s plan for which the state provides child health assistance under CHIP.

Notice and Reporting Requirements

If a state elects to subsidize employer-provided coverage, employers must comply with certain notification requirements. However, employers will not have to comply with the notice requirements until the beginning of the first plan year after a model notice is issued. Health and Human Services is required to develop national and state-specific model notices no later than February 4, 2010. If the notice requirements are not satisfied, the employer will be subject to a \$100 per day penalty for each violation.

Also, if a state elects to subsidize employer-provided coverage, plans will be required to provide certain required information to the state. If these reporting requirements are not satisfied, the plan administrator will be subject to a \$100 per day penalty. These disclosures are not required to be made until a model disclosure form is issued by the government.

Employer Action Required

- No employer action is required unless or until the state elects to provide premium subsidies.
- To date, Missouri has not elected to subsidize employer-provided coverage.
- A few states, including Illinois, already have assistance programs in place. Because these programs were in place prior to the enactment of this new law, it is unclear how they will interact with the new premium assistance requirements. In any event, states are required to implement outreach programs to notify employers and eligible employees of the availability of premium assistance. Also, as noted above, employers are not required to provide notices to employees or disclosures to the state until the first plan year after model notices and forms are issued by the federal government.

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