



Legislative Update

March 17, 2009

Children's Health Insurance Program Reauthorization Act of 2009

February 4, 2009 marked the effective date of the Children's Health Insurance Program Reauthorization Act (CHIPRA) of 2009. While the legislation extends coverage to an estimated four million additional children by expanding financial eligibility guidelines, it also includes laws that affect employer provided group health plans. The new statute establishes new HIPAA enrollment rights, gives states the option to provide premium assistance to specific individuals for certain employer provided coverage, institute employer notice requirements, and clearly outlines penalties for employers who do not comply. Each of the mentioned topics are discussed in more detail below.

New HIPAA Enrollment Rights

Under CHIPRA, group health plans are required to allow special enrollment for employees or dependents that are covered under Medicaid or the Children's Health Insurance Program (CHIP). Group health plans must permit an employee or dependent, eligible for coverage under the group health plan but not enrolled, to enroll in coverage if:

- 1) The employee or dependent is covered by CHIP or Medicaid and their coverage is terminated as a result of loss of eligibility and the employee requests coverage under the group health plan within **60** days of losing coverage.
- 2) The employee or dependent becomes eligible for assistance under Medicaid or a state CHIP, and the employee requests coverage under the group health plan no later than **60** days after the date the employee or dependent is eligible for assistance.

Under the new law, states must also establish a process for permitting parents of low income children receiving a premium assistance subsidy to dis-enroll the child(ren) from the employer's plan and enroll the child(ren) in a state child health plan.

These provisions, which allow employees eligible for Medicaid and CHIP to opt in and out of the group health plans, amended the Internal Revenue Code, ERISA, and the Public Health Service Act so that these laws permit these additional enrollment rights introduced with CHIPRA.

Employers are required to notify employees about the new special enrollment rights that begin on 4/1/2009. Notices must be provided to all plan participants including COBRA beneficiaries and participants under Qualified Medical Child Support Orders (QMCSO).

Employers Notice Requirements to Employees

A notice must be sent to every employee of employers who maintain a group health plan in a state where Medicaid or CHIP offers benefits in the form of premium assistance to individuals to purchase group health coverage. **State specific model notices may be used and the new law affirms the Department of Labor (DOL), and The Department of Health and Human Services (HHS) will work with state Medicaid and CHIP agencies to produce model notices no later than April 1, 2010. Employers are required to provide employees with the initial notice beginning with the first plan year that begins after the date the initial notices are issued.** Notices must educate employees on the potential availability of benefits in the state. Employers may choose to provide this notice with initial health plan eligibility notices, when annual open enrollment materials are provided, or the notice may be furnished in the Summary Plan Description (SPD).

ERISA has been amended and requires the inclusion of the model notice in the summary plan description. It is expected that notices will include instructions on how an employee may contact the state in which the employee lives for information regarding premium assistance and how to apply for such assistance.

Employer Disclosure Requirements to the State

If an employer has a participant (employee or dependent) who is covered by Medicaid or CHIP, the employer is required, if requested by the state, to provide information about the benefits available under the group health plan. In the Act, states must provide this data in “sufficient specificity”, a term to be further defined in the regulations expected to come from HHS. The state will use this information to make a determination regarding the cost-effectiveness of providing assistance and supplemental benefits. The DOL and HHS are expected to work with state CHIP and Medicaid agencies to create an “Employer Sponsored Coverage Coordination Working Group” to develop a model disclosure form to assist plan sponsors with meeting this disclosure obligation. Employers will be required to use this form the first day of the plan year after the form is first issued.

State Premium Assistance Subsidy

CHIPRA now gives states the **option** to provide a premium subsidy for qualified employer sponsored coverage for low-income children who have access to the coverage and are eligible for CHIP. Qualified employer sponsored coverage must:

1. Qualify as credible coverage under the Public Health Service Act
2. Have an employer contribution of at least 40%
3. Be offered on a non-discriminatory basis

Flexible spending accounts and high deductible health plans are not considered qualified employer sponsored plans under the law. The child (or the child’s parents) must voluntarily elect to receive the subsidy. Should the employer choose, it may opt out of receiving the subsidy on behalf of the eligible individual, and in this case, the state will pay the subsidy directly to the qualifying employee.

This premium assistance subsidy will generally be calculated as the difference between employee only coverage and employee plus child coverage.

The Act also permits states to offer supplemental coverage to qualifying children enrolled in an employer sponsored plan. The supplemental coverage will cover items or services not covered, or are partially covered by the employer's plan. For employers with less than 250 employees, who have at least one pregnant employee eligible to receive assistance, states may now establish an employer family premium assistance purchasing pool.

Non-Compliance Penalties

Under the new Act, should an employer fail to notify an employee of available state assistance, the DOL may assess an employer a penalty of up to \$100 a day from the date the employer failed to meet this requirement. Each violation will be treated as a separate violation. Additionally, the DOL may assess a plan administrator who fails to notify the state of the required information related to participants eligible for assistance, a fee of \$100 per day. Each violation will be treated separately in this case as well.

Effective Date

The provisions under CHIPRA are effective April 1, 2009.

Additional Considerations

CHIP eligibility guidelines and rules vary from state to state. States are not **required** to offer premium assistance and many do not. Since CHIP is administered through the individual state where coverage is offered, state CHIP and Medicaid agencies will work with the DOL and HHS to establish updated procedures in accordance with the changes the Children's Health Insurance Program Reauthorization Act of 2009 bring to existing CHIP programs. To learn more about CHIP in your state, visit your state's CHIP website. Also you may contact your Conner Strong representative if you have questions specific to your state's program.

Employer's Action Steps toward Compliance

We realize that complying with the requirements of a legislative change may be an overwhelming experience for our Clients. At Conner Strong, we are here to help you. To ensure that you are in compliance with this new law, it would be advisable to:

- Amend plan documents –
 - Fully Insured Plans - contact carriers to confirm they will administer the new HIPAA special enrollment provisions and will amend insurance contracts accordingly. Insurance carriers may also provide a sample Notice for the new HIPAA special enrollment rights.
 - Self Insured Plans – update your plan document to ensure it is compliant with the new Act. Contact stop loss carriers to be sure the contract is amended to comply with CHIPRA.

- Provide notices to employees about the new special enrollment rights that begin on 4/1/2009. Notices must be provided to all plan participants including COBRA beneficiaries and participants under Qualified Medical Child Support Orders (QMCSO).

To assist with meeting compliance obligations, Conner Strong has worked with the law firm of Palmieri & Eisenberg to provide a sample Employee Notice which is an example of the notice employers are required to send to plan participants regarding the new special enrollment rights in accordance with revised CHIP laws. [Click here for a sample employee CHIP notice.](#)

*Please note that the attached sample assumes the employer will not accept premium assistance from the state on behalf of the employee and the employee will receive assistance directly from the state. This is an area that may be customized by the employer, as the law permits the employer to receive the assistance directly from the state, or the employer may opt **not** to receive the assistance and the assistance will be paid directly to the employee.*

Please contact your Conner Strong representative with any questions, toll-free at 1-877-861-3220.

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