

Legislative Brief

Children's Health Insurance Program Reauthorization Act of 2009



On February 4, 2009, President Obama signed into law the Children's Health Insurance Program Reauthorization Act of 2009 (the "Act"). The state children's health insurance program ("CHIP") provides health insurance for children whose families cannot afford private healthcare but do not qualify for federal Medicaid. The Act expands CHIP by providing additional special enrollment rights related to group health plan coverage. The new law also permits state subsidies of employer-provided group health premiums for eligible children and families and imposes new notice and disclosure obligations for employers that maintain group health plans.

Special Enrollment Rights

Currently, group health plans must provide special enrollment rights to certain individuals who lose eligibility for other health coverage or who acquire a new spouse or dependent. The Act extends these special enrollment rights to employees and dependents who lose eligibility under a Medicaid plan or CHIP and employees and dependents who become eligible for a premium assistance subsidy under Medicaid or CHIP, as described below. Therefore, group health plan documents must be amended to provide the new special enrollment rights.

Appropriate notices of the amendment, such as a Summary of Material Modifications, should be provided to participants in accordance with the plan's existing procedures for providing such notices. Existing special enrollment notices provided to new enrollees should also be revised to contain information regarding the new provisions.

Eligible individuals must be given 60 days after the loss of coverage or determination of eligibility for assistance to request coverage under the group health plan. The effective date for these new special enrollment rights is **April 1, 2009**.

Premium Assistance Subsidy

The Act allows states to offer eligible low income children and their families a premium assistance subsidy to help pay for qualified employer-sponsored coverage. Qualified employer-sponsored coverage means a group health plan or health insurance coverage offered by an employer that (i) qualifies as creditable coverage as a group health plan under the Public Health Service Act, (ii) for which the employer contribution for the coverage is at least 40% and (iii) that is offered in a non-discriminatory manner. Benefits provided under a health flexible spending arrangement or high deductible health plan are not considered qualified employer-sponsored coverage.

States that provide a premium assistance subsidy may choose to pay the subsidy as a reimbursement to an employee for out-of-pocket expenses or directly to the employer. However, employers may choose to opt out of being directly paid a premium assistance subsidy on behalf of an employee.

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Premium Assistance Notice Requirements

The Act requires employers that maintain group health plans in states that provide medical assistance under a Medicaid plan or child health assistance under a CHIP in the form of a premium assistance subsidy to notify their employees in writing of the potential opportunities available for premium assistance. The Department of Health and Human Services ("HHS") must develop national and state-specific model notices for use by employers in notifying employees of premium assistance opportunities by February 4, 2010. Employers may provide the notice along with plan materials notifying the employee of health plan eligibility, open enrollment materials or the summary plan description. The effective date of the premium assistance notice requirement is the first day of the plan year beginning after the date on which model notices are first issued. This premium assistance notice requirement differs from the existing requirement to provide a notice of special enrollment rights that is mentioned above.

Disclosure to States

Under the Act, administrators of group health plans must disclose to the state, upon request, information about the benefits available under the plan if the plans' participants and beneficiaries are also covered by Medicaid or CHIP. This information is required so that the state may determine the cost-effectiveness of providing premium assistance subsidies and may provide supplemental coverage.

The Act directs HHS and the Department of Labor to jointly establish a Medicaid, CHIP, and Employer-Sponsored Coverage Coordination Working Group that will develop a model coverage coordination disclosure form for use by plan administrators. The effective date for use of the model form is the first day of the first plan year beginning after the date on which the form is first issued.

Penalty for Noncompliance with Premium Assistance Notice and Disclosure Requirements

The Act provides for civil penalties of up to \$100 a day for failure to comply with the new requirements to notify employees of premium assistance opportunities provided by their states and to disclose to the state information about the plan's benefits if participants and beneficiaries are covered by Medicaid or CHIP.

Please contact your Scott Insurance representative with any questions.

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