



One Minute Memo[®]

CHIP Reauthorization Act Expands Special Enrollment Rights and Creates New Notice and Disclosure Obligations for Group Health Plans

On February 4, 2009, President Obama signed into law the Children's Health Insurance Program Reauthorization Act of 2009 (the "Act") which extends the State Children's Health Insurance Program established under the Social Security Act (CHIP). The Act allows states to subsidize premiums for employer-provided group health coverage for eligible children and families. The Act also amends the Employee Retirement Income Security Act of 1974 (ERISA) to provide for special enrollment rights, new notice and disclosure obligations, and penalties for non-compliance.

Premium Assistance Subsidies. Under the Act, states may elect to provide premium assistance subsidies ("Subsidy") to low-income employees who want to change their single coverage to family coverage in order to cover a CHIP- or Medicaid-eligible dependent. The Subsidy is an amount equal to the difference between the employee contribution required for single coverage and the employee contribution required for the coverage of a both the employee and a child. The Subsidy can be provided as either a reimbursement to the employee or a direct payment to his or her employer. The employer may "opt-out" of receiving the direct payment, and may require the employee to be reimbursed. A state may only offer Subsidies for "qualified employer-sponsored coverage," which includes group health plans for which the employer contributes at least 40% toward the cost of coverage, but excludes health flexible spending accounts and high deductible health plans.

Under this arrangement, the state becomes the secondary payor for any services provided under the group health plan for which the state provides child health assistance.

The Act places the following obligations on sponsors of group health plans:

Special Enrollment Rights. Beginning **April 1, 2009**, group health plans must permit employees and dependents who are "eligible but not enrolled for coverage" under an employer plan to enroll in two additional circumstances: 1) the employee's or dependent's Medicaid or CHIP coverage is terminated as a result of loss of eligibility; and 2) the employee or dependent becomes eligible for a Subsidy under Medicaid or CHIP. The employee or dependent must request coverage within 60 days after the employee or dependent is terminated from, or determined to be eligible for, such assistance. Plan administrators should note that this period is different than the existing special enrollment rules (for loss of private plan coverage and changing family events such as birth or marriage) under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as those rules provide for only a 30-day period in which to request coverage due to a change in status. Plan documents should be reviewed and, if necessary, amended to reflect these new rules.

Notice to Employees. Although the notice requirements have a later effective date, group health plans will have to notify all employees of their potential eligibility for the new Subsidies. Group health plans will be required to distribute notices when an employee becomes eligible for enrollment under the plan, with the open enrollment materials, or in the Summary Plan Description. Model notices are to be developed by the Department of Labor (DOL) and the Department of Health and Human Services (HHS) by February 4, 2010. Plans will be required to distribute notices during the first plan year beginning after the date on which model notices are first issued (i.e., January 1, 2011 for calendar year plans).

Disclosures to States. Plan administrators will be required to disclose information about their plans to states upon request to help states determine the cost-effectiveness of providing the Subsidy. HHS and the DOL will establish a working group to develop a model disclosure form for plan administrators to use. States cannot request plan information until the first plan year after the date on which the model form is issued. The model disclosure form will request information such as eligibility information, contact information for the Plan Administrator, benefits offered under the group health plan, information regarding premiums and cost-sharing, and any other necessary information.

Penalty for Non-Compliance. Employers will face penalties of up to \$100 a day for failure to comply with the notice and disclosure requirements of the Act. The \$100 penalty applies for each violation per participant or beneficiary.

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