



SPECIAL Alert

In This Issue

In this third McGraw Wentworth Special Alert for 2009, we discuss the Children's Health Insurance Program Reauthorization Act of 2009. This Act expands the eligibility and coverage provisions of the Federally funded, state run health program for low-income children.

The new law will also impact employer group health plans. Employers will need to amend documents to recognize new HIPAA special enrollment rights and provide notices about the CHIP program to employees. Employers will also need to respond to state requests for information about plan coverage.

We welcome your comments and suggestions regarding this issue of our Special Alert. For more information on this article, please contact your Account Manager or visit the McGraw Wentworth web site at www.mcgrawwentworth.com.

"Children's Health Insurance Program Reauthorization Act of 2009"

On February 4, 2009 President Obama signed the Children's Health Insurance Program Reauthorization Act of 2009. The Democrats had long lobbied for an expansion of the Children's Health Insurance Program (CHIP), but the Republicans defeated multiple attempts to pass this expansion over the last year.

The expansion of CHIP will be a step toward universal health care for children. (The program is commonly referred to as the SCHIP program, but this new legislation formally changes the name to CHIP.) Most of the provisions of this Act will be effective on April 1, 2009. This *Special Alert* will address the following:

- Basics of the CHIP Program
- Impact on Employer Health Plans
- Health Care Reform Provisions

Employers will need to take action in order to comply with the new rules.

Basics of the CHIP Program

The CHIP program is administered by each state, and provides comprehensive medical coverage to low-income children and pregnant women in the state. This program provides health care for children who may not be eli-

gible for Medicaid, but come from low-income families that cannot afford employer-sponsored health coverage. The Act expands the CHIP program and authorizes funding of the program through 2013.



The program receives funding from the Federal government, which also provides general guidelines for the plans. However, each state has tremendous flexibility in determining benefits and delivery

systems. CHIP programs vary significantly from state to state. For example, in Michigan, the program is referred to as the MiChild program. The MiChild program provides comprehensive health coverage to eligible children for \$10 per month.

The Act expanded both the funding and the provisions of the program. One of the key improvements is an expansion of the eligibility provisions:

- The CHIP program is a needs-based program. Originally, a child or pregnant woman could not be eligible for the state CHIP program unless the family income was less than 200% of the Federal Poverty Level (FPL). The FPL is annually set by the Federal government, and in 2009

is \$22,000 in annual earnings for a family of four. The new Act increases the income level for the CHIP program to 300% of the FPL, which equates to earnings of approximately \$66,000 for a family of four.

- Some states have slightly different eligibility provisions. It is best to check with the state to verify eligibility requirements.

If your employees have questions about the CHIP program, the best approach is to direct the employee to the state program.

The expanded benefits and eligibility will be funded by new taxes assessed on tobacco products, including cigarettes, cigars, and chewing tobacco.

Impact on Employer Health Plans

The new CHIP program impacts employer group health plans in three major ways:

- Potential premium assistance
- Amends HIPAA special enrollment rights
- Communication requirements at open enrollment

Potential Premium Assistance

The new regulations recognize that even if an individual qualifies for coverage under the CHIP program, it may be more cost-effective for the state to subsidize an employer to continue providing coverage under the group health plan. The state can provide CHIP coverage through the employer plan by subsidizing the employee contributions for group coverage and, in some rare cases, by providing assistance with out-of-pocket

costs associated with deductibles, co-insurance, and copays.

While it sounds simple, there are several requirements for this premium assistance, which will impact employers. First, the employer's group health plan must be considered "qualified employer coverage." Qualified employer coverage must meet the following requirements:

1. The employer must pay a minimum of 40% of the cost.
2. The coverage must be considered "creditable coverage" under HIPAA. (Most group health plans will be considered creditable.)
3. High deductible health plans and medical flexible spending accounts are not considered qualified coverage. High deductible health plans specifically refer to HSA-qualifying high deductible health plans.
4. The health plan must be available to a non-discriminatory class of employees as defined by Section 105(h) of the Internal Revenue Code.

If the employer offers qualified coverage, then the state can offer premium assistance. The employer can accept this assistance directly from the state, or can opt out of receiving premium assistance directly. If the employer opts out of receiving the assistance directly, the state can reimburse eligible employees for their contributions for coverage.

The state can request information about plan benefits, employee contributions, and other information that may be deemed relevant. The employer needs to disclose this information so the state can determine if it makes more fiscal sense to offer premium assistance than to offer coverage under the CHIP program.

The new Act also requires employers to allow members that qualify for the CHIP program to disenroll from the group health plan mid-year.

If a member is receiving premium assistance, the member can also decide to disenroll from the employer group health plan mid-year, to be covered under the state CHIP program.

The premium assistance provisions impact health plans as of April 1, 2009. Employers

will probably need to amend their plans to address any disenrollment situations. In addition, employers will need to be prepared to respond to any state inquiries. Finally, your organization should decide if premium assistance will be accepted directly from the state.

Amends HIPAA Special Enrollment Rights

When HIPAA (Health Insurance Portability and Accountability Act) passed in 1996, one of the requirements was that health plans allow eligible individuals to enroll in a health plan in two circumstances:

- Acquisition of a new dependent, such as through birth, adoption, or marriage.



- The loss of other coverage or the expiration of COBRA coverage.

Health plans must allow employees a minimum of 30 days to notify the plan of the above situations. The employees are then permitted to enroll themselves and any affected dependents under the plan.

The Children’s Health Insurance Program Reauthorization Act of 2009 amends HIPAA, PHS (Public Health Service Act), and the IRC (Internal Revenue Code) to create two new special enrollment rights:

1. Plans must allow eligible employees and eligible dependents to enroll in the plan if they experience a loss of coverage under Medicaid or the CHIP program due to a loss of eligibility.
2. Plans must also allow eligible employees and eligible dependents to enroll in the plan if they become eligible for premium assistance under the CHIP program. This event is a little tricky. If a child is not enrolled in the group health plan, and is approved for premium assistance, the group health plan needs to allow the child to enroll in the plan in order to be covered by the employer plan to receive the premium assistance.



The plan must give the employee **60 days** to notify the plan if either of these two situations arise.

These new special enrollment rights must be recognized by health plans effective April 1, 2009. The regulations merely specify that employer plans must recognize these enrollment rights; it does not specifically say the plan’s SPDs must be amended by that date. However, your organization will need to amend the SPDs of both the medical plan and the Section 125 plan.

Communication Requirements At Open Enrollment

The Act also includes new communication requirements for employers, the intent of which is to advise employees about the CHIP program and the premium assistance provisions.

The section on communication requirements is a little confusing. It appears that employers will have to comply with an annual notice requirement regarding coverage available through the CHIP program:

- The Department of Health and Human Services will release model notice language within a year of the passage of this Act. It is thought that the model notice will be state-specific and contain pertinent information about the CHIP program. The employer will have to deliver a notice to employees using the model notice for the state in which they reside.
- The regulations do not include any details regarding the notice content or the delivery requirements for the notice.
- The employer will have some time to comply with this notice requirement. The notice must be delivered before the first day of the first plan year

following the release of the model notice language.

The communication section also implies that employers should include basic information on the CHIP program in the health plan’s SPD and in other plan communication materials, such as open enrollment newsletters and new hire newsletters. This section is not particularly detailed, and it is not clear whether the model notice language must be included in plan communications or if employers can provide a generic summary of the CHIP provisions.

Hopefully, the Department of Health and Human Services will clarify how employers should handle the notification requirements when the model notice language is released.

Health Care Reform Provisions

The Act also adds several health care reform provisions to the CHIP program.

The health care reform provisions address some of the key programs discussed for years as ways to improve the delivery of health care in the U.S., including:

- The Act stipulates that the government will form a quality committee comprised of health care providers, payers and other parties. The quality committee will determine how procedures and treatments will be measured for quality and effectiveness. Once the committee comes to a consensus on quality measures, the quality measures and reporting will become part of the program. The regulations did not include language on disclosing the measures.

Hopefully as these measures are developed, the government will disclose the quality measures.

- The Act requires the creation of electronic medical records. Once a format for the electronic medical records is developed, the electronic records are mandated to be used on children in the program. The Act does not include a discussion on how to measure the effectiveness of the use of electronic medical records.
- The Act includes funding for the states to develop various demonstration projects that address childhood health and wellness issues. The programs specifically discussed include nutrition education and obesity management programs.

Many states are questioning if the funding will be sufficient to effectively launch the measures discussed. If the states are able to launch these health reform measures, it will be interesting to see the impact these key programs have on health care cost and quality.

Concluding Thoughts

The changes to the CHIP program not only expanded the eligibility provisions under the plan, but also created a number of requirements for employers. Employers will have to act on many of these provisions by April 1, 2009.

Your organization should address the following issues to comply with these regulations:

- **Special enrollment rights:** Your plan needs to recognize the special enrollment rights for members that lose coverage under the CHIP program or become eligible for premium assistance under the CHIP program. Your organization needs to amend your SPDs, but it is not clear if these amendments need to be completed by April 1. The key is to make sure your plan recognizes these special enrollment rights as of April 1, 2009.
- **Mid-year disenrollment:** Your organization must also amend your plan to allow a mid-year disenrollment if a member becomes eligible for the CHIP plan mid-year or chooses to elect coverage under the CHIP program instead of receiving premium assistance.
- **Premium assistance:** Decide if it makes sense to accept premium assistance directly from the state. This will create an administrative hassle. The state can provide the assistance directly to the employee, which would be a reimbursement of

the premiums the employee has already paid via pre-tax deductions.

- **Open enrollment materials:** Your organization should update your communication materials to discuss the new CHIP provisions. The Department of Health and Human Services will release model notice language within a year of the passage of this Act. Hopefully more detailed information will be released on the communication requirements so employers will better understand what information to include.

The Act includes a \$100 per day per incident penalty for any employer that fails to meet the employees' notice requirements or fails to respond to any state request for disclosure of health plan information. These penalties can add up quickly, especially if an employer fails to provide a key notification to all employees.

If you have any questions regarding this *Special Alert*, please contact your McGraw Wentworth Account Director. McGraw Wentworth will keep you posted of any additional developments. **MW**



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