

## Public Sector Plans Must Review CHIP Reauthorization Requirements for Special Enrollment and Notices

President Obama signed the Children's Health Insurance Program Reauthorization Act of 2009 into law on February 4, 2009.<sup>1</sup> While the primary purpose of the new law is to reauthorize the State Children's Health Insurance Program (SCHIP or CHIP)<sup>2</sup> through 2013, it also includes provisions aimed at coordinating group health plan coverage with CHIP and Medicaid coverage. This *Bulletin* discusses those provisions.

One of the law's provisions — the new 60-day group health plan special enrollment period — appears to take effect on April 1, 2009, the general effective date of the new law. As such, it will necessitate immediate action by plan sponsors.

Like other health care legislation, self-insured state and local governmental health plan sponsors appear to be able to opt-out of the new requirements.<sup>3</sup> However, even plan sponsors that have opted-out of other rules should carefully review the new requirements and determine whether they must be implemented.

<sup>1</sup> When the law, Public Law No.111-3, is available online it will be accessible from the following page of the Government Printing Office Web site: <http://www.gpoaccess.gov/plaws/111publ.html>

<sup>2</sup> The SCHIP (now CHIP) program (created in 1997) provides federal funds to states to permit states to provide health coverage for certain uninsured children (and some parents) who do not qualify for Medicaid.

<sup>3</sup> For information on the opt-out process for self-insured governmental plans, see the following page on the Centers for Medicare & Medicaid Services Web site: <http://www.cms.hhs.gov/SelfFundedNonFedGovPlans/>

## NEW 60-DAY SPECIAL ENROLLMENT PERIOD

The law creates a new special enrollment period that applies to group health plans, similar to those currently in effect for loss of other coverage and acquiring a new dependent. Group health plans must permit employees and dependents who are eligible for group health plan coverage to enroll in the plan if they (1) lose eligibility for Medicaid or CHIP coverage or (2) become eligible to participate in a premium assistance program under Medicaid or CHIP.<sup>4</sup> In both cases, the employee must request special enrollment within 60 days (of the loss of Medicaid/CHIP or of the eligibility determination). The law follows the same structure as the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and amends the Internal Revenue Code (IRC), Employee Retirement Income Security Act (ERISA) and the Public Health Service Act (PHSA).<sup>5</sup> Because the new law amends the HIPAA special enrollment rules, any applicable regulations would apply to these new events. The most significant difference between this new rule and existing rules is that individuals who lose or gain Medicaid or CHIP have a 60-day enrollment period, while other special enrollment periods are limited to 30 days.

Under existing rules, a notice of special enrollment rights must be provided at or before the time an individual is initially offered the opportunity to enroll in a group health plan. Consequently, the new special enrollment right will need to be added to existing notices and summary plan descriptions (SPDs).<sup>6</sup> Plan sponsors should review their

<sup>4</sup> A premium assistance program is an optional state program under Medicaid or CHIP that pays the employee's share of the premium for group health plan coverage.

<sup>5</sup> Of these laws, only the IRC and the PHSA apply to states.

<sup>6</sup> The HIPAA special enrollment rules require group health plans to permit individuals to enroll within 30 days of experiencing a loss in other coverage or acquiring a new dependent. There is model language for HIPAA special enrollment rules, so it is likely that model language will be issued for these events, as well.

cafeteria plan documents as well, to assure that they provide for change of status events under the new law.

## PREMIUM ASSISTANCE AND PURCHASING POOLS

The new law contains additional provisions that may have a particularly significant impact on group health plans that provide benefits to low-income populations (*e.g.*, incomes up to 300 percent of the Federal Poverty Level — \$66,150 for a family of four):

- **Premium Assistance** States may adopt a premium assistance program that would pay the employee's share of the premium for certain group health plan coverage for a low-income child (and, in some cases, coverage for the parent and other family members, as well).
- **New Disclosure to Participants** Where there is a state premium assistance program in place, each employer that maintains a group health plan would be required to give notice to participants about the program. This notice may be provided with group health plan enrollment materials or open enrollment materials, or concurrent with the furnishing of the plan's SPD. The law requires various government agencies to develop the model notices within one year after enactment. It also requires employers to distribute these notices beginning with the first plan year that begins after the agencies issue the model notices.
- **New Disclosure Requirement to States** The law requires plan administrators of group health plans to disclose to a state, upon request, information about the benefits available under the plan when the group health plan covers an employee or dependent who is also covered by Medicaid or CHIP. The disclosure is to help states design and implement premium assistance programs. A model disclosure form will be developed by a working group over the next 18 months, and the form applies to requests made by states beginning with the first plan year that begins after the date on which the form is issued.
- **Purchasing Pools** In addition, states would be able to create purchasing pools for certain employers (*e.g.*, those with fewer than 250 employees where at least one employee or family member is eligible for CHIP or Medicaid). The purchasing pools would need to offer at least two private health plans meeting certain standards and could be designed to subsidize low-income coverage.

Since all of these additional provisions depend on state action, they will not be effective until the relevant state programs are implemented.

## WHAT PLAN SPONSORS NEED TO DO SOON

With an effective date of April 1, 2009, plan sponsors will need to act quickly to amend plan documents, SPDs and enrollment materials to provide for the new special enrollment period. Even plans that provide for continuous enrollment throughout the year will likely be required to amend plan materials to provide notice. Plan sponsors that have opted-out of previous special enrollment or other rules may wish to revisit that process for these requirements.

As states begin to develop premium assistance programs, plan sponsors that provide benefits to significant numbers of low-income populations should be prepared to look carefully at the public programs available to these individuals and consider how state health programs can be coordinated with group health plan coverage.



*As with all issues involving the interpretation or application of laws and regulations, plan sponsors should rely on their attorneys for authoritative advice on the interpretation and application of the Children's Health Insurance Program Reauthorization Act of 2009. The Segal Company can be retained to work with plan sponsors and their attorneys to amend plan documents, SPDs and enrollment material to provide for the new special enrollment period.*



ATLANTA	678.306.3100
BOSTON	617.424.7300
CALGARY	403.692.2264
CHICAGO	312.984.8500
CLEVELAND	216.687.4400
DENVER	303.714.9900
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RALEIGH	919.233.1220
SAN FRANCISCO	415.263.8200
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