



Compliance Alert

March 24, 2009

TOPIC: THE CHILDREN'S HEALTH INSURANCE PROGRAM REAUTHORIZATION ACT OF 2009 (CHIPRA)

General Description:

On February 4, 2009, President Obama signed the Children's Health Insurance Program Reauthorization Act of 2009 into law. CHIPRA reauthorized and significantly expanded the Children's Health Insurance Program ("CHIP"), which provides health coverage to children whose families do not otherwise qualify for Medicaid. CHIPRA impacts employers that sponsor group health plans. Employers must be aware of any state premium assistance subsidies and disclosure obligations. More information regarding this new ruling is described throughout this Alert.

The Children's Health Insurance Program Reauthorization Act (the Act) of 2009:

1. requires a group health plan subject to the Employee Retiree Income Security Act of 1974 (ERISA) or the Public Health Service Act (PHSA) to provide new Special Enrollment Rights effective April 1, 2009.
2. establishes a new premium assistance program for individuals enrolled in an employer-sponsored plan.
3. imposes new notice and disclosure requirements on employers and plan administrators.

Special Enrollment Rights:

Beginning April 1, 2009, group health plans will need to begin to provide two additional new Special Enrollment events. The right to enroll will need to be available when an employee or dependent child if:

1. there is a loss of eligibility for coverage under Medicaid or CHIP; or
2. they become eligible for group health plan premium assistance under Medicaid or State Plan.

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The Act changes the time frame for enrollment for the Special Enrollment Rights. The Act gives such employees 60 days to request enrollment in the group health plan under the two scenarios documented above.

There are Cafeteria Plan implications with the new Special Enrollment events. IRS regulations currently allow a mid-year change in a cafeteria plan election in connection with any HIPAA special enrollment. The Special Enrollment events created by the CHIP expansion automatically falls within the scope of the current regulations. So, if a cafeteria plan document provides that a mid-year election change is allowed in connection with any HIPAA special enrollment event (without describing those events), it may not be necessary to amend the plan document to allow an employee to pay his or her share of the premium on a pre-tax basis.

However, if a cafeteria plan document does describe the special enrollment events (which do not include the two events added by the CHIP expansion), the employer who wants to allow an employee or child who enrolls under the new rules to pay his or her share of the premiums on a pre-tax basis will likely have to amend the cafeteria plan document.

The CHIP expansion applies to nearly all employer health plans however, a few plans are excluded. The changes described in this document do not apply to voluntary insurance arrangements or to employee-pay-all plans. These rules do not apply to health flexible spending accounts (FSAs) or to high deductible health plans.

Notification Obligation:

Employers must provide a new notice to employees in states that offer premium assistance subsidies.

The notice must be in writing and may be provided in any of the following ways:

1. In materials provided to an employee when they first become eligible for the employer's plan.
2. With materials provided to eligible employees during the open enrollment period.
3. In the plan's summary plan description.

The Department of Labor (DOL) is required to provide a model notice by February 4, 2010. Once the model notice is available, the employer is required to comply with the notice requirements beginning with the first plan year after the date the model notice is issued. The DOL may impose a civil penalty against an employer of up to \$100 a day from the date the employer's failure to meet the employee notice requirements.

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Until the model notices are issued, employers will need to decide what information to provide to employees, if any, about the state programs.

NOTE: If Group Benefit Services, Inc. is responsible for maintaining and amending your Summary Plan Description, you will receive an amendment within the next 45 days.

Premium Assistance Program:

Under the new rules, group health plans as well as health insurers offering group health coverage must give employees and dependents who are eligible but not enrolled for coverage under the plan the opportunity to enroll, when the employee or dependent becomes eligible for a premium assistance subsidy under Medicaid or CHIP, and the employee requests coverage under the plan with 60 days after the date the employee or dependent is determined eligible for the premium assistance.

States are permitted (but not required) to offer a premium assistance subsidy for coverage under certain employer-sponsored health plans. The subsidy would only be available if the employer-sponsored group health plan meets the following requirements:

1. The plan qualifies as “creditable coverage” as a group health plan under the Health Insurance Portability & Accountability Act (HIPAA);
2. The employer pays at least 40% of any premium for such coverage;
3. The group health plan is available to a reasonable classification of employees that does not violate the nondiscrimination requirements of Internal Revenue Code Section 105(h)(3)(A)(ii); and
4. The group health plan is not a health flexible savings account (health FSA) or a high deductible health plan.

States can either reimburse employees the amount paid for employer-sponsored group health plan coverage **or** pay employers directly. The subsidy will generally equal the difference between the employee contribution required for employee-only coverage and the employee contribution required for employee and child coverage.

The employer may opt-out of receiving direct payments from the state however the employer must still allow eligible individuals to enroll in the group health plan. If the employer opts out,

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employees pay their share (full cost) of the premium through payroll withholding and the state will pay the premium assistance subsidies directly to the employee.

Disclosure Obligation:

States may request information from group health plans for the purposes of determining whether the plan qualifies for the premium subsidy and if the purchase of such coverage would be cost-effective.

Upon receipt of this request, the group health plan is required to disclose information, such as benefits, premiums and cost-sharing to the state.

A model form is to be developed for collecting this information and is scheduled to be finalized no later than August 2010. Therefore, states will not begin to request this information until the first plan year after the date on which the model form is issued.

The DOL may assess a penalty against employers of up to \$100 per day per plan participant for failure to timely provide the requested information to a state.

Next Steps for Employers:

1. Update initial enrollment materials to include the new special enrollment rights. **This information must be available to eligible individuals effective April 1, 2009.** Example of wording you may use:

I understand that effective April 1, 2009, I and/or my dependents have the right to enroll into the Plan if:

- *coverage is lost under Medicaid or CHIP (Children's Health Insurance Program); **or***
- *I or my dependent become eligible for group health plan premium assistance under Medicaid or State Plan.*

If I am able to enroll into the plan because of one of the two reasons above, under these conditions only, I understand that I have 60 days to request enrollment into the group health plan.

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2. Determine if the state in which your employees reside provides premium assistance subsidies for coverage under the employer-sponsored group health plan.
3. Decide if you (as the employer) want to 'opt-out' of receiving premium payments directly from the state. If you decide to 'opt-out' you must notify the state(s) of your decision.
4. Amend the Summary Plan Description, effective April 1, 2009. If GBS is responsible for your Summary Plan Description, you will receive your amendment within the next 45 days. The amendment must ensure that the plan is primary to coverage under the state's child health plan.
5. You should update your Special Enrollment Rights Notice.

Below are some links where you will find more information regarding this new ruling.

Should you have any questions concerning this new ruling, your GBS Account manager will be happy to provide answers. They can be reached at the numbers found at the end of this Compliance Alert.

http://www.hewittassociates.com/_MetaBasicCMAssetCache_/Assets/Legislative%20Updates/2009/Obama_Signs_CHIPRA.pdf

http://www.uhc.com/news_room/health_care_policy/policy_update/march_2009/requirements_for_group_health_plans_under_chipra.htm

This communication is not intended to be legal advice and should not be construed as legal advice. If you have any legal questions or concerns about your plan, GBS recommends seeking counsel from an ERISA attorney.

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