

# New Requirements for Employer-Sponsored Group Health Plans Take Effect April 1

On February 4, 2009, President Obama signed the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) into law. Among many things, CHIPRA extends the Children's Health Insurance Program (CHIP) through September 2013, expands CHIP to provide health insurance benefits to significantly more children, and confers new requirements on most employer-sponsored group health plans and multi-employer plans. In particular, CHIPRA amends ERISA by establishing new "special enrollment rights" that are available to group health plan participants as of April 1, 2009. Plan sponsors should immediately plan for these new special enrollment rights and should update plan documents and enrollment materials as soon as practicable to comply with the new law.

## Special Enrollment Rights Effective April 1, 2009

Under CHIPRA, as of April 1, 2009 employees and their dependents will be allowed to enroll in the employer's group health plan if one of the two following events occur:

1. The employee or dependents' Medicaid or CHIP coverage is terminated due to loss of eligibility for those programs; or
2. The employee or dependent becomes eligible for subsidized coverage under Medicaid or CHIP.

In order to avail themselves of these special enrollment rights, employees must notify the group health plan within 60 days of (a) the effective date of the loss of Medicaid or CHIP coverage or (b) becoming eligible for the premium subsidy. Note that this 60-day special enrollment period is longer than the 30-day enrollment period required under the special enrollment provisions of HIPAA, which govern enrollment in cases where an employee or his or her dependent(s) lose eligibility for or employer contributions toward other group health plan coverage or exhaust COBRA coverage, or where the employee adds a dependent as a result of marriage, birth, adoption or placement for adoption.

Special enrollment notices used for new hires or during open enrollment periods after April 1, 2009 should reflect these new CHIPRA special enrollment rights. In addition, current employees can be notified of these rights through supplements to existing health plan materials. Unless employers are planning on issuing restated Summary Plan Descriptions in the near future, a Summary of Material Modifications should be sent to plan participants no later than 210 days following the end of the employer's current plan year describing these special enrollment rights.

## Premium Assistance

Under CHIPRA, states can develop programs that provide "premium assistance" subsidies to eligible employees that will enable them to enroll their children in employer-sponsored health plans rather than CHIP or Medicaid. Plan sponsors will be required to provide information about their plans to states to allow the states to determine whether to offer such a program. CHIPRA requires the Department of Health and Human Services and the Department of Labor to draft a model coordination disclosure form within 18 months of the law's enactment date which group health plans can use to make the required disclosures to the states.

Employers who maintain a group health plan in a state that provides medical assistance under Medicaid or CHIP must provide notice to their employees about any premium assistance program offered by the state in which each employee resides. Employers may choose not to receive premium subsidies directly from the state, in which case the state will reimburse the employee directly for the share of the premium the employee pays for employer-provided coverage. HHS and the DOL are required to issue model premium subsidy notices by February 4, 2010. Employers are required to distribute them beginning with the first plan year following the year in which the model notices are issued.

Employers failing to comply with the state disclosure requirement or the employee notice requirement may be fined up to \$100 per day for each participant or beneficiary.

### Action Required

Plan sponsors should take the following steps now to ensure compliance with CHIPRA:

- Begin allowing CHIPRA special enrollment rights as of April 1, 2009;
- Update special enrollment rights notices to include the CHIPRA provisions;
- Amend plan documents, as needed, to provide for new special enrollment rights effective April 1, 2009;
- Prepare a Summary of Material Modifications or restated Summary Plan Description to reflect the new special enrollment rights;
- Respond in a timely manner to any state requests for information relating to the premium assistance subsidy, including information about your group health plan; and
- Prepare to distribute annual notices of premium assistance subsidies to plan participants once model notices have been issued.

If you would like to learn more about the issues raised in this alert or if you have any questions about your plan documents or disclosure obligations, please contact your Ropes & Gray attorney.

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