

NEW HEALTH CARE LAW REQUIRES ADDITIONAL SPECIAL ENROLLMENT RIGHTS, NOTICE, AND DISCLOSURE OBLIGATIONS FOR EMPLOYER-PROVIDED GROUP HEALTH PLANS

The Children's Health Insurance Program (CHIP) Reauthorization Act of 2009 extends and expands the State Children's Health Insurance Program. Under the new law, states are allowed to subsidize premiums for employer-provided group health coverage for eligible children and families. The new law also requires employer-provided group health plans and insurers to permit employees and their dependents that are eligible for coverage but not enrolled in coverage but not enrolled under the plan to enroll if they become ineligible for coverage under Medicaid or a SCHIP. Besides these new additional special enrollment rights, the law provides new notice and disclosure obligations for employers that maintain group health plans.

The new law impacts employer-provided group health plans in three ways:

- **Subsidized Employer-Sponsored Coverage.** Instead of providing health coverage directly to qualified families, states may elect to offer a premium assistance subsidy to eligible low-income children to subsidize employer-provided group coverage (excluding certain plans, such as high-deductible health plans, Health Flexible Spending Accounts (Health FSAs), and plans for which the employer does not cover at least 40 percent of the cost). The subsidy may be provided as a reimbursement to the employee or as a direct payment to the employer (unless the employer opts out of receiving direct payments). The cost of covering the child under the plan or even the cost of employee plus child or family coverage may be subsidized by the state if the state finds this method cost effective. In addition, the state may also have to provide supplemental coverage (on a secondary basis) up to a baseline level if a state program subsidizes coverage.

Note: According to a recent Kaiser Family Foundation study, six states currently have state assistance programs. These states are Florida, Idaho, Illinois, Oregon, Utah, and Virginia. With the new law, this number will grow

- **Additional Special Enrollment Rights.** The new law establishes new special enrollment rights for those employees and dependents that are eligible but not enrolled in coverage under employer-provided group health plan. Plans must allow them to enroll under two additional circumstances, which are:
 - termination of Medicaid or CHIP coverage resulting from loss of eligibility and the employee requests coverage under the plan; or
 - becoming eligible for a premium assistance subsidy in the employer-provided group health plan under Medicaid or CHIP.

An employee must request coverage within 60 days of termination or the date it is determined the parent or child is eligible for assistance in order to be entitled to these special enrollment rights. This period is twice as long as provided under the present HIPAA special enrollment rights.

These new special enrollment rights are effective April 1, 2009.

- **New Notice and Disclosure Requirements.** Employer-provided group health plans are required to provide written notices to their employees in states that provide Medicaid or CHIP assistance in the form of premium assistance subsidies. These notices must inform employees of the potential opportunities for premium assistance in the states in which they reside to help pay for health coverage for employees or dependents.

The Department of Health & Human Services (HHS) is directed to develop national and state-specific model notices by February 4, 2010 to enable plans to comply with the notice requirement. These notices must be provided along with other plan materials when (1) notifying the employee of health plan eligibility, (2) open enrollment materials are distributed, or (3) furnishing the Summary Plan Description. This notice is not required to be distributed until the plan year beginning after the date on which the model notices are first issued.

Group health plan administrators are also required to report information that a state needs in order to determine:

- whether participants in the employer-provided group health plan are eligible for premium assistance;
- the CHIP's program's duty to provided supplemental benefits.

HHS and the Department of Labor have been directed to establish a working group to develop a model coverage coordination disclosure form for plan administrators to complete that would provide certain information for this purpose. States may not request the model coverage coordination disclosure form until the first plan year that begins after the date on which the form is first issued.

The new law establishes penalties of up to \$100 a day for failure to comply with the new notice and disclosure requirements.

What should employers do?

Before April 1, 2009, employers will need to amend their health plans and cafeteria plans to accommodate the new special enrollment rights. In addition, employers should review with their insurance companies the plan's coordination of benefit rules to determination whether it must be updated to reflect that CHIP supplemental coverage will pay secondary to the employer--provided group health plan.

In addition, HHS will push to have the notice and disclosure forms out sometime in 2009 and employer should be advised to be ready for these requirements in the plan year beginning in 2010.