

CHIPRA UPDATE

This is a reminder that the newly revised special enrollment rights under the Children's Health Insurance Program Reauthorization Act of 2009 ("CHIPRA") were effective April 1, 2009. From a practical perspective, many employers are already allowing employee elections for the kinds of changes in coverage that CHIPRA affects right now.

Under CHIPRA, employers will have to allow otherwise eligible employees and dependents to enroll in their insured or self insured group health plan outside of open enrollment under the following circumstances:

- Loss of eligibility for Medicaid or a State child health plan ("CHIP"); and
- Eligibility for a state subsidy funded under Medicaid or CHIP that would cover an employee's or dependent's premium cost under the employer plan.

The special enrollment rights relating to possible State subsidies are not effective until the States adopt such subsidies. Guidance from the U.S. Department of Labor on these issues is not expected until later this year, at the earliest.

Enrollment rights related to losses of eligibility under Medicaid or CHIP already exist under the current cafeteria plan regulations. While most employers adopt the entire list of permitted election changes under the cafeteria plan regulations, they are not mandatory, whereas, the new CHIPRA changes are. In addition, the CHIPRA changes allow employees and dependents up to 60 days to request special enrollment for loss of coverage under Medicaid or CHIP or subsidy eligibility, as opposed to the normal 30 day period.

What Do You Need to Do and When?

Operational Compliance. The first and most important thing is to be sure that you and your insurance carrier and/or administrator will appropriately comply with any new requests for enrollment due to losses of coverage under CHIP or Medicaid. As discussed above, most plans already allow for these elections, but will now have to honor requests made within the longer notification period (60 days) provided by CHIPRA. As a practical matter, you may not see a request for enrollment due to loss of coverage under Medicaid or CHIP in the immediate future and may have never experienced one up until now. Just be sure that those who handle special enrollments and other mid-stream election changes are aware of the new rules.

Plan Documents and Employee Communications and Notices. Since most employers and carriers currently allow for election changes due to losses of coverage under Medicaid and CHIP, changes to current materials and documents will depend on how they are now written. Current use of references to Internal Revenue Code section 9801(f) – the section where special enrollment rights, including the new CHIPRA rights, are set forth – may continue to work. However, employers may want to consider sending a generic communication now that refers to the new CHIPRA rights. The Department of Labor indicated they intend to revise their sample special enrollment rights notice, but have not yet provided a new version. Following is an example of the kind of wording that could be used:

Effective April 1, 2009, you may have expanded special enrollment rights under the [Name of Plan] if you or a dependent:

- ***lose coverage under Medicaid or a State child health plan; or***
- ***become eligible for assistance with the cost of participating in the Plan through the Medicaid plan or the State child health plan in which you and/or your dependent participate.***

In either case, you or your dependent will have 60 days from the loss of coverage or the date of eligibility for the subsidy to elect to be covered under the Plan. If you believe that you may be entitled to any of these special enrollment rights, please contact [contact information for Plan administrator].

Next Steps. Based on the above, you should consult with your benefits providers and advisers to review your current materials and decide what changes need to be made. It is our understanding that most carriers and administrators are reviewing their current materials and will be forwarding revisions in the near future.

A notice of special enrollment rights is required prior to enrollment on the plan. You should review and, if necessary, revise materials for enrollment on or after April 1, 2009 to include language on the new CHIPRA requirements.

As noted above, you may consider sending employees a generic advisory on the new special enrollment opportunity in the same manner as you currently communicate benefits matters.

Issues for the Future. The special enrollment rights related to subsidies provided by the various States will carry with them increased notice requirements to employees and disclosure obligations to the States. Guidance on these responsibilities is not expected until later this year or early next year. We will continue to monitor these issues and will provide additional information as it develops.

For more information, see Sections 301 and 311 of the law at:

http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h2eas.txt.pdf

CMS's SCHIP site:

<http://www.cms.hhs.gov/home/schip.asp>

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