



CHIP Reauthorization Signed Into Law

On February 4, 2009, President Obama signed the Children's Health Insurance Program Reauthorization Act of 2009 into law. The new law significantly expands the Children's Health Insurance Program (now referred to as CHIP rather than SCHIP) and imposes new notice and disclosure obligations on employers.

Background

Congress created the State Children's Health Insurance Program (SCHIP) in 1997 to provide health insurance to children of families with incomes 200 percent below the federal poverty line. SCHIP was designed as a federal/state partnership with the goal of providing health insurance to children whose parents earn too much to qualify for Medicaid, but not enough to purchase private health insurance.

Without Congressional action, SCHIP was set to expire on March 31, 2009.

CHIP Reauthorization

On February 4, 2009, Congress approved the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA). President Obama immediately signed the bill into law, reauthorizing the program through 2013. CHIPRA is effective April 1, 2009.

Premium Assistance Subsidy

The reauthorization allows states to use CHIP funds to offer a "premium assistance subsidy" to all targeted low-income children who are eligible for child health assistance under a qualified employer-sponsored plan, if the state determines that it is more cost effective to enroll them in the employer plan than maintain them in the state plan. The subsidy amount equals the difference between the price of the employee's single coverage and the price of family coverage under a qualified employer-sponsored plan less "any applicable premium cost-sharing applied under the State child health plan." The state may either pay the subsidy to the employer or directly to the parent of the qualifying child. An employer may opt out of receiving the payment from the state, in which case the employer will withhold the full amount of the premium from the employee's wages and the state will pay the subsidy to the employee.

CHIPRA defines qualified employer-sponsored coverage as a group health plan or insurance coverage that –

- qualifies as creditable coverage as defined under the Health Insurance Portability and Accountability Act (HIPAA)
- provides employer contributions that are at least 40 percent of the premium
- is nondiscriminatory under the rules of Section 105(h) of the Internal Revenue Code.

Qualified employer-sponsored coverage does not include health flexible spending accounts or high deductible health plans (HDHP) as determined under Section 223(a)(2), regardless of whether the HDHP is in conjunction with a health savings account.

Group health plans must, upon request, provide plan information to a state so that it can determine the “cost-effectiveness” of the premium assistance subsidy. Specifically, the plan must provide information regarding participant eligibility, plan contact information, offered benefits, and premiums. The Secretaries of Labor and Health and Human Services must develop a model coverage coordination disclosure form for this purpose.

***BUCK COMMENT.** Because CHIPRA makes it easier for states to establish premium assistance subsidies, some employers may see an increase in enrollment by individuals who otherwise may have opted out of the employer plan because of state coverage. In addition, plan administrators may see increased state requests for information to determine whether the plan is cost-effective, which could be particularly burdensome for multistate employers.*

Special Requirements for Employers

CHIPRA adds a new HIPAA special enrollment right. Specifically, it requires employers maintaining group health plans to provide a 60-day special enrollment period to employees who are not enrolled in the plan and who lose Medicaid or CHIP coverage or become eligible for the premium assistance subsidy.

Employers are required to provide a written notice to all employees that they may potentially be eligible for the premium assistance subsidy. The notice must include information about how an employee may contact the state agency for additional information. The Secretaries of Labor and Health and Human Services are to develop a model notice within one year of CHIPRA’s enactment and employers must provide the notice to their employees beginning with the first plan year after the initial model notice is issued. As a result, the latest employers with a calendar year plan will likely have to issue an initial model notice is January 1, 2011, assuming that the model notice is not issued this year.

Employers who do not comply with the notice and disclosure requirements can be fined up to \$100 per day, and as to the notice requirement, each violation with respect to a single participant or beneficiary is treated as a separate violation.

BUCK COMMENT. CHIPRA allows the notice to be provided in a variety of ways, including in summary plan descriptions (SPDs). Because state specific information must be included in the notice, this may be burdensome for multistate employers, unless the employer decides to include the contacts for all states and territories in the SPD.

Conclusion

CHIPRA places some significant new burdens on employers, by mandating additional special enrollment periods and imposing new notice and disclosure requirements. Although as of this date model notices have not been issued, employers may want to notify their employees of the special enrollment rights before April 1, 2009.

Buck's consultants would be happy to assist you in complying with these new requirements.

This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.