



CHILDREN’S HEALTH INSURANCE PROGRAM REAUTHORIZATION ACT OF 2009 AND YOUR HEALTH CARE PLAN

by Cheri D. Green

The Children’s Health Insurance Program Reauthorization Act of 2009, signed February 4, 2009, reauthorizes and expands children’s health care. Fortunately, the impact on Mississippi employer sponsored group health plans is not as great as it may be for states whose state CHIP program has premium assistance availability.

Effective April 1, 2009, all employer group health plans are required to allow any eligible employee or eligible dependent to enroll under the employer’s group health plan if that employee/dependent loses coverage under a Medicaid plan or a state CHIP plan and if he/she requests enrollment under the employer’s group health plan. The eligible employee/dependent has within 60 days of loss of coverage under the Medicaid or state CHIP plan to request enrollment in the employer’s group health plan.

Further, in states which provide premium assistance to Medicaid or CHIP eligible persons for coverage under a qualified employer sponsored group health plan,¹ the Medicaid or CHIP eligible employee/dependent will be covered under the qualified employer sponsored group health plan, if he/she requests coverage no later than 60 days after the date he/she is determined to be eligible for such assistance. See ERISA §701(f)(3)(A)(i) and (ii).

1

¹ Section 301(a)(1)(10)(A) In general.--A State may elect to offer a premium assistance subsidy (as defined in subparagraph (C)) for qualified employer-sponsored coverage (as defined in subparagraph (B)) to all targeted low-income children who are eligible for child health assistance under the plan and have access to such coverage in accordance with the requirements of this paragraph. No subsidy shall be provided to a targeted low-income child under this paragraph unless the child (or the child’s parent) voluntarily elects to receive such a subsidy. A State may not require such an election as a condition of receipt of child health assistance.

(B) Qualified employer-sponsored coverage.--

(i) In general.--Subject to clause (ii), in this paragraph, the term ‘qualified employer-sponsored coverage’ means a group health plan or health insurance coverage offered through an employer--

(I) that qualifies as creditable coverage as a group health plan under section 2701(c)(1) of the Public Health Service Act;

(II) for which the employer contribution toward any premium for such coverage is at least 40 percent; and

(III) that is offered to all individuals in a manner that would be considered a nondiscriminatory eligibility classification for purposes of paragraph (3)(A)(ii) of section 105(h) of the Internal Revenue Code of 1986 (but determined without regard to clause (i) of subparagraph (B) of such paragraph).

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With an effective date of April 1, 2009, employers should amend group health plan documents immediately or, at the very least, notices need to be provided to all persons covered under the group health plan to inform them of this (these) right(s). The employer cannot wait for an open enrollment period under its group health plan to allow the newly eligible employees/dependents to enroll. In essence, CHIP creates a “special enrollment” period for Medicaid/CHIP eligible employees/dependents.

THE STATE OF MISSISSIPPI DOES NOT OFFER PREMIUM ASSISTANCE UNDER CHIP SO THE ASSISTANCE CONDITION IS NOT APPLICABLE AT THIS TIME. However, to the extent a group health plan may cover employees/dependents in other states whose CHIP programs offer premium assistance, the employer should amend the group health plan to provide for the assistance eligibility as well as to provide NOTICE of the premium assistance to employees.² An employer, in a premium assistance position, will also be required to provide information to the state concerning its group health plan so the State and Federal governments can determine what type of coverage is available for “creditable coverage,” cost analysis related to the premium assistance and to study whether the State needs to provide supplemental benefits. See ERISA §701(f)(3)(B)(ii).

Failure to provide the required notices may result in a \$100 a day fine to the employer beginning with the date the notice was required to be given and a \$100 a day fine to the plan administrator for failing to provide the State with the required information concerning the group health plan. See ERISA §502(c)(9)(A) and (B). The \$100 a day fine is per participant. Id. Finally, the Internal Revenue Service can assess an excise tax of \$100 for a group health plan that fails to follow the special enrollment provisions. I.R.C. §9801(f).

In summary, plan documents should be amended immediately to notify employees/dependents of their right to enroll in the employer sponsored group health plan after they lose coverage under Medicaid or a state CHIP program.

If you have any questions, please contact Cheri Green at (601) 960-6864 or cgreen@brunini.com or Chris Fontan at (601) 973-8753 or cfontan@brunini.com or other members of Brunini’s Health Care Law Group.

²The Secretary of Health and Human Services is directed to provide a model NOTICE no later than February 4, 2010, for purposes of premium assistance eligibility. The employer is to provide the initial annual notice “beginning with the first plan year that begins after the date on which such initial model notices are first issued.” §701(f)(3)(B)(i)(II).