# INSIGHTS

**March, 2009** **2009-05**

## CHILDREN'S HEALTH INSURANCE PROGRAM REAUTHORIZATION ACT OF 2009

On February, 4 2009, President Obama signed the Children's Health Insurance Program and Reauthorization Act of 2009 ("CHIPRA") that expands the provisions of the State Children's Health Insurance Program ("CHIP") previously established under the Social Security Act and set to expire on March 31, 2009**.**

Under CHIP, which originally was created by the Balanced Budget Act of 1997, states may receive federal matching funds in order to provide subsidies to insure low-income children who are ineligible for Medicaid but who cannot afford private insurance.

CHIPRA requires that group health plans provide **Special Enrollment Rights effective April 1, 2009.**

### Special Enrollment Rights

CHIPRA creates two scenarios in which group health plans must allow employees and their dependents the right to enroll in an employer-sponsored group health plan which include:

- an employee or dependent child is no longer eligible for benefits under Medicaid or CHIP (e.g. State Plan), or
- The employee or dependent child becomes eligible for a group health plan subsidy under Medicaid or CHIP.

An employee must request group health plan coverage within 60 days of the special enrollment events noted above which is different than the 30 day notification requirement for other HIPAA status changes and special enrollment events.



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## General Provisions

CHIPRA allows the States to use CHIP funds to provide premium assistance subsidies to low-income employees who wish to cover a child under an employer's group health plan, if the State determines that employer-provided coverage would be more cost-effective than the State-sponsored plan. The subsidy would be determined as follows:

- cost of employee + child coverage under the group health plan, less the
- cost of single coverage under the group health plan, less
- any cost-sharing premium for the child under the State plan.

The premium assistance subsidy can be paid either to the employer or the employee; however, the employer can elect to have the State pay the employee directly. If so elected, the employer would be able to charge the employee the full cost of coverage, as the State-provided subsidy will help the employee defray the additional expense under the group health plan.

The premium assistance subsidy will apply to "qualified employer-sponsored coverage" defined as a group health plan or health insurance coverage offered by the employer that:

- qualifies as creditable coverage with regard to HIPAA portability, and
- contributes at least 40% toward any premium for such coverage.

The subsidy is not available for Flexible Spending Account plans or High Deductible Health Plans (i.e. individual and family deductibles at least $1,150 and $2,300, respectively) regardless as to whether the plan is purchased in conjunction with a Health Savings Account.

## New Notice and Disclosure Requirements

The Department of Health & Human Services has one year to create model forms and notices. Plan sponsors will then be required to utilize these employee communication materials as well

as report required information to the State beginning with the first plan year on or after the forms are available (January 1, 2011 for calendar year plans). Employees must receive the required notices as follows:

- upon first becoming eligible for the plan,
- with open enrollment materials, or
- contained in the Summary Plan Description.

Reporting to the State will include:

- identifying premium assistance eligible employees, and
- providing plan information such as eligibility, benefits that are offered, premium and cost sharing information and a plan contact.

Employers will be subject to penalties of up to $100 per day per participant for failure to comply with the notice and disclosure requirements

**Next Steps**

Group health plan documents including enrollment materials and cafeteria plan (Section 125) documents will need to be amended to incorporate the new special enrollment rights. We have included an updated "Special Enrollment Rights" model notice to use on or after April 1, 2009. Group health plans should be prepared to accommodate these special enrollment requests for coverage beginning April 1, 2009.

Contact your Chernoff Diamond representative for more information.



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**This brief summary is not intended to be a comprehensive legislative analysis. Chernoff Diamond is a benefits advisory firm and does not provide tax or legal advice. Employers should consult with qualified legal and/or tax counsel for guidance in respect of matters of law, tax and related regulation**

**Model Description of Special Enrollment Rights**

If you are declining enrollment for yourself or your dependents (including your spouse) because of other health insurance or group health plan coverage, you may be able to enroll yourself and your dependents in this plan if you or your dependents lose eligibility for that other coverage (or if the employer stops contributing towards your or your dependents' other coverage). However, you must request enrollment within [*insert "30 days" or any longer period that applies under the plan*] after your or your dependents' other coverage ends (or after the employer stops contributing toward the other coverage).

If you have a new dependent as a result of marriage, birth, adoption, or placement for adoption, you may be able to enroll yourself and your dependents. However, you must request enrollment within *[insert "30 days" or any longer period that applies under the plan*] after the marriage, birth, adoption, or placement for adoption.

Effective on or after April 1, 2009, you may be able to enroll yourself and your dependents in the plan if they:

1) Lose Medicaid or CHIP coverage; or
2) Become eligible to participate in a Medicaid or CHIP assistance program.

Individuals gaining or losing Medicaid or CHIP coverage will have 60 days from the date of loss of coverage or the date of eligibility in order to request special enrollment in the group health plan.

To request special enrollment or obtain more information, contact [*insert the name, title, telephone number, and any additional contact information of the appropriate representative.]*