



HEFFERNAN INSURANCE BROKERS

A Member of the Heffernan Group

DATE: March 18, 2009

TO: Our Valued Client Partners & Friends

FROM: HIB Account Team

RE: **LEGISLATIVE UPDATE 2009-07**
Children's Health Insurance Program Reauthorization Act of 2009
Plan Sponsors ACTION REQUIRED by April 1, 2009

We are pleased to bring you our **Legislative Update 2009-07: Children's Health Insurance Program Reauthorization Act of 2009**. Please note, action is required of Plan Sponsors by April 1, 2009. Although guidance and model forms have not yet been provided, it is important that you review the suggested Employer Action Plan to comply with this new legislation.

In the meantime, we hope you find this informative, and please, and as usual, if you have any questions, contact your HIB Account Team for assistance.

**CHILDREN'S HEALTH INSURANCE PROGRAM REAUTHORIZATIN ACT OF 2009
PLAN SPONSORS ACTIN REQUIRED BY APRIL 1, 2009**

As many of us were ruminating over the prospect of potential COBRA changes, ultimately adopted into law through the Stimulus Bill (American Recovery and Reinvestment Act of 2009) on February 17, 2009, President Obama signed H.R. 2 into law on February 4, 2009: **The Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA)**, which contains additional employer obligations becoming generally effective on April 1, 2009.

AN OVERVIEW

1. **New Enrollment Rights.** CHIPRA requires employer/plan sponsors to offer a new special enrollment right to those employees and/or dependent children who:
 - a. Either lose coverage under a Medicaid or State Plan (such as California's Medi-Cal);
 - b. Or, become eligible for group health premium assistance under a Medicaid plan or State Plan.

The plan must allow employees 60 days to request enrollment in a group health plan as of April 1, 2009.

2. **Formal Notice Requirements.** Upon the production of model notices prepared by the U.S. Department of Labor (DOL) and of Health and Human Services (HHS), slated to be sometime prior to February 4, 2010, employers who offer group health plan coverage must distribute the Formal

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Notice to each employee eligible for health coverage. This obligation applies to employers doing business in a state where the state's Medicaid program provides premium assistance to Medicaid eligible individuals. Currently, California provides premium assistance through its State Plans. The Formal Notice will include information on how to apply for state premium assistance and will provide a state contact. Employers must provide the notices to employees as of the first plan year beginning after the date the notices are issued. This notice can be included in open enrollment/new enrollment materials, or with the summary plan description as required under the Employee Income Security Act (ERISA). In the meantime, we would recommend that employers subject to ERISA provide a Summary of Material Modification announcing the new eligibility rules as soon as practicable. For non-ERISA plans, employers may want to provide a similar announcement to eligible plan participants.

3. **Applicability.** CHIPRA applies to all employer sponsored group health plans that constitute Qualified Employer Sponsored Coverage, whether subject to ERISA or not, **regardless of the number of plan participants**. The notice requirement does not apply to flexible spending accounts or other excepted benefits as defined by the Health Insurance Portability and Accountability Act (HIPAA), since Medicaid typically does not provide premium assistance with regard to these benefits. It is worth noting that some Medicaid programs do provide premium assistance for dental benefits. We expect impending regulations will provide more guidance.
4. **Qualified Employer Sponsored Coverage.** Qualified Employer Sponsored Coverage means group health plans or health insurance coverage offered through an employer that (i) qualified as creditable coverage for purposes of HIPAA portability; (ii) for which the employer contribution toward any premium for such coverage is at least 40 percent; and (iii) is offered to all individuals in a manner that would be considered a nondiscriminatory eligibility classification for purposes of the nondiscrimination rules applicable to self-funded health plans. It is unclear under the Act if the nondiscriminatory eligibility classification requirements in Code Section 105(h) would apply to fully insured group coverage or whether regulations will provide a testing standard. Qualified Employer Sponsored Coverage does not include a health flexible spending arrangement or an HSA eligible high deductible health plan as defined in Code Section 223(c)(2).

OTHER DETAILS

1. **Mental Health Parity.** CHIPRA requires plans to provide equal coverage for mental and physical illnesses. Based on the delivery date of the model notices, it is possible that certain plans may require mental health parity prior to the actual effective date of MHPA and without regard to the one percent opt-out test.
2. **Medicaid Changes.** CHIPRA eliminates a five year waiting period for documented immigrant children and pregnant women to become eligible for the program. The measure requires states to verify that SCHIP beneficiaries are documented immigrants or citizens, but it allows states to try to verify eligibility by matching an applicant's name and social security number against federal records, rather than requiring documents proving citizenship.

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3. **Premium Assistance.** The state subsidy is the amount equal to the difference between the employee contribution required for employee-only coverage and the employee contribution required for employee and child coverage under the employer coverage, less any applicable premium cost-sharing applied under the state's statutory children's health plan. The state may pay the premium assistance subsidy either as a reimbursement to the employee for out-of-pocket expenses or directly to the employer. If the employer opts out of direct state payment, the state would pay the subsidy directly to the employee. The employer could then charge the employee the full cost of the coverage. The limiting age for children covered by Medicaid is age 19.
4. **Supplemental Benefits.** CHIPRA also requires states to provide supplemental coverage for qualifying children enrolled in an employer sponsored plan. The supplemental coverage will consist of items or services not covered or only partially covered under the employer sponsored plan. Obviously, to be clear on the details of this provision of CHIPRA, we must wait for HHS regulations.
5. **Disclosure.** CHIPRA will require employer plan sponsors to disclose information to the state regarding the health plan so that the state can determine the cost effectiveness of the premium assistance and establish the level of state sponsored supplemental benefits.
6. **Penalties.** IRC Section 9801 allows for a fine up to \$100 per day for failing to comply with the Formal Notice requirement with each employee or beneficiary treated as a separate violation. In addition, any plan administrator failing to provide to state officials with information required to be disclosed would be fined as much as \$100 a day. We expect the IRS could assess penalties no earlier than the first plan year following the issuance of the Formal Notice.

EMPLOYER ACTION PLAN

1. Amend all existing group health plans to include the new special open enrollment rights granted under this new legislation. I have attached a sample Amendment intended for that purpose (Attachment A). The sample is not offered as legal advice, but intended for review by the employer's own legal counsel.
2. Review all existing group health plans to assure that they will pay benefits which are secondary to any Medicaid or State Plans through which the plan participant receives premium assistance or supplemental coverage. I have included an optional provision entitled "Secondary Coverage" in my sample Amendment.
3. Provide a Summary of Material Modification (as defined by ERISA) or a notice of amendment (for plans not subject to ERISA) announcing the new special enrollment provisions within a reasonable period of time.
4. Watch for announcement materials from the state regarding the availability of premium assistance and supplemental benefits under state Medicaid rules pursuant to CHIPRA.

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5. Seek the advice of your benefits consultant or legal counsel as needed.

We will keep you informed of developments. You can also find copies of the sample Amendment and Summary of Material Modification in our client library at <http://www.abferisa.com/members> .

To access archived Legislative Updates please log into www.heffgroup.com and clicking on the link for HIB Client Community. If you need information on your Username and Password please contact your HIB Account Team.

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