

# CHILDREN'S HEALTH INSURANCE PROGRAM REAUTHORIZATION ACT OF 2009

(Expansion to the STATE CHILDREN'S HEALTH INSURANCE PROGRAM)

## The Bottom Line

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On Wednesday, February 4, 2009, President Obama signed into law the bill expanding and improving what was formerly known as, the STATE CHILDREN'S HEALTH INSURANCE PROGRAM (SCHIP). The new federal law, the CHILDREN'S HEALTH INSURANCE PROGRAM REAUTHORIZATION ACT OF 2009 (CHIP), generally becomes effective April 1, 2009.

The purpose of CHIP is to provide dependable and stable funding for medical and dental insurance for uninsured eligible children and pregnant women who fall within 300% of the federal poverty level but yet do not qualify for Medicaid. States are generally permitted to design their own CHIP program to subsidize premiums for employer-sponsored group health coverage in accordance with federal guidelines.

While much about the new law still needs clarification, there are certain steps that require quick action by employers now!

### Special Enrollment Rights

Effective April 1, 2009, the new law requires employers and insurers to allow eligible employees and dependents who are or become eligible under CHIP or Medicaid or who lose eligibility for such coverage, to enroll in an employer's group health plan within 60 days of that event.

This means enrollment is allowed even though application for coverage falls outside of the Open Enrollment period or even if the employee previously refused employer-provided coverage.

Under the Health Insurance Portability and Accountability Act (HIPAA), employer-sponsored group health coverage already affords an eligible employee and his/her dependents a special enrollment period of 30 days due to marriage, birth/adoption, etc. CHIP now provides an additional basis for allowing employees and dependents to enroll outside of the usual enrollment period, extending the time period for this type of special enrollment only, to 60 days from the date of the change in CHIP/Medicaid eligibility.

### Premium Assistance

Each State may elect to offer a premium assistance subsidy for qualified employer-sponsored coverage. CHIP defines "qualified employer-sponsored coverage" to mean a group health plan or health insurance offered through an employer (both fully insured and self-insured). Such coverage must qualify as "creditable coverage" as defined under the Health Insurance Portability and Accountability Act of 1996 (HIPAA); the employer contribution must be at least 40%; and the coverage must be available to a reasonable non-discriminatory eligibility classification. Health FSAs and high deductible plans are excluded from the definition of qualified employer coverage.

CHIP also requires States to create a process whereby the parent of a child receiving premium assistance may disenroll the child from the employer coverage during any month and enroll the child in the State's child health plan.

The premium subsidy assistance offered by each State may be paid to the employer or directly to the employee, at the option of the employer. If the employer chooses to opt-out, then the employer may require the employee to pay the usual employee contribution while the State pays the premium assistance directly to the employee. Employers also will need to consider how to administer an employee's request to disenroll from the group health plan, which may involve changing the employee's election under the employer's cafeteria plan as well.

### Disclosure Requirements and Model Notices

Employers will be required to provide each employee a written notice informing the employee of potential opportunities available from the State in which the employee resides for premium assistance. The employer will be able to rely on State-specific model notices (that will be developed at a later date), and may notify employees through incorporating the model language into a separate notice, open enrollment communications, or summary plan

descriptions (SPDs).

Likewise, the plan administrator will also need to disclose information about the benefits available under the group plan to individual States, if requested.

The Secretary of Health and Human Services and the Secretary of Labor will jointly establish a "Working Group" to develop the model notices and disclosure forms. Model notices are to be made available to employers no later than February 4, 2010 (but could be sooner) and employers will then be required to provide the annual notices beginning with the first plan year that begins after the date on which the model notice is first issued. So, depending on how quickly the model notices and disclosure forms are created by the Working Group, employers may be required to provide them as early as 1/1/2010 but no later than 1/1/2011 for calendar year plans.

As with any change in eligibility to employer-sponsored health coverage, summary plan descriptions and plan documents will require updating; however, the law is unclear as to the due date for amending such plan documents.

### **Penalties for Non-Compliance**

This new law includes an employer penalty of up to \$100 a day for not providing the required notice to employees. (Note: Failure to notify each employee is considered a separate violation.) Similarly, the same penalty would apply to employers for not providing the required disclosure form(s) to the individual States.

For a complete copy of the **CHILDREN'S HEALTH INSURANCE PROGRAM REAUTHORIZATION ACT OF 2009**, visit:

[http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111\\_cong\\_bills&docid=f:h2eas.txt.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h2eas.txt.pdf)

***Laurus Strategies will continue to monitor the progress of this new law and will keep you informed of any new developments. In the meantime, please feel free to contact your Laurus Strategies Client Manager if you have any questions.***

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