

## Expansion of the Children's Health Insurance Program: New Requirements for Employer-Sponsored Group Health Plans

by [B. David Joffe](#)

On February 4, 2009, President Obama signed into law the Children's Health Insurance Program Reauthorization Act of 2009 (the "Act"), which extends and expands the state children's health insurance program (commonly known as "SCHIP"). Each state's program, jointly financed by the state and the federal Medicaid program, provides low-cost health insurance coverage and assistance for eligible children. In part, the Act amends certain provisions of the Employee Retirement Income Security Act to provide new special enrollment rights for eligible employees and dependents as well as new notice and disclosure obligations for employers that sponsor group health plans.

### Special Enrollment Rights

Effective April 1, 2009, group health plans must permit eligible employees and dependents who are not enrolled for coverage to enroll under two new circumstances: (1) the employee's or dependent's Medicaid or SCHIP coverage is terminated as a result of loss of eligibility *and* the employee requests coverage within 60 days after the termination, or (2) the employee or dependent becomes eligible for a premium assistance subsidy under Medicaid or SCHIP *and* the employee requests coverage within 60 days after eligibility is determined. The Health Insurance Portability and Accountability Act already provides for certain special enrollment rights upon certain losses of eligibility for group health coverage or health insurance coverage and upon the acquisition of a new spouse or dependent by marriage, birth, adoption, or placement for adoption. However, the current special enrollment rights require enrollment for at least 30 days while the new enrollment rights allow for a 60-day period. Depending on how their group health plans are worded, employers may need to amend their plans as of April 1, 2009, to comply with the new requirements.

### Notice to Employees

Some states provide premium assistance subsidiaries under SCHIP. For employers with group health plans in those states, the employers must now provide written notices to their employees that inform them of the premium assistance. Under the Act, HHS must first develop model notices for employers. Employers may provide these notices along with other plan documents notifying employees of eligibility, with open enrollment materials, or when furnishing a summary plan description. The notice requirement is effective for plan years beginning after the date on which model notices are first issued. Depending on when

the model notices are issued, for calendar-year plans, the requirements could be effective on January 1, 2010. However, it is important to note that even though the notice requirement is not yet effective, plans must still accommodate requests for the new special enrollment rights beginning April 1, 2009.

### **Disclosure to States**

Under the Act, group health plan administrators must disclose information about plan benefits to the states upon request when a plan participant or beneficiary is covered under Medicaid or SCHIP in order to allow them to determine the cost-effectiveness of providing premium assistance and to provide supplemental benefits. The Departments of Health and Human Services and Labor are required to develop a working group within 60 days of the passage of the Act to develop a model disclosure form for plan administrators to complete for this purpose. The working group does have 18 months to submit the model form to the Secretaries of the Departments of Health and Human Services and Labor. States may not request the form until the first plan year that begins after the date on which the form is first issued.

### **Premium Assistance Subsidy**

States may elect to offer a premium assistance subsidy to eligible low-income children and their families for "qualified employer-sponsored coverage" as defined under the Act. Such coverage specifically does not include health flexible spending accounts and high-deductible health plans. The subsidy may be provided as a reimbursement to the employee or as a direct payment to the employer (unless the employer opts out of receiving such payments).

### **Penalties**

The Act provides for civil penalties of up to **\$100 a day** for failure to comply with the new notice and disclosure requirements as well as failing to provide state officials the required notice. Each violation related to any single employee or beneficiary would be treated as a separate violation. Therefore, the extended failure to comply could result in substantial penalties.

If you have any questions about the requirements under the Act, please contact [David Joffe](#) at 615.252.2368 or one of the other Employee Benefits & Executive Compensation attorneys at [Bradley Arant Boult Cummings LLP](#).

Charles M. Cain II - Nashville  
615.252.2330  
[ccain@ba-boult.com](mailto:ccain@ba-boult.com)

Martha L. Boyd - Nashville  
615.252.2357  
[mboyd@ba-boult.com](mailto:mboyd@ba-boult.com)

J.S. Christie, Jr. - Birmingham  
205.521.8387  
[jchristie@ba-boult.com](mailto:jchristie@ba-boult.com)

Andrew Elbon - Nashville  
615.252.2378  
[aelbon@ba-boult.com](mailto:aelbon@ba-boult.com)

B. David Joffe - Nashville  
615.252.2368  
[djoffe@ba-boult.com](mailto:djoffe@ba-boult.com)

Kevin J. Henderson - Birmingham  
205.521.8346  
[khenderson@ba-boult.com](mailto:khenderson@ba-boult.com)

Gordon Earle Nichols - Nashville  
615.252.2387

Peter C. Sales - Nashville  
615.252.2365

[gnichols@ba-boult.com](mailto:gnichols@ba-boult.com)

[psales@ba-boult.com](mailto:psales@ba-boult.com)

John M. Scannapieco - Nashville  
615.252.2352  
[jscannapieco@ba-boult.com](mailto:jscannapieco@ba-boult.com)

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No representation is made that the quality of the legal services to be performed is greater than the quality of legal services performed by other lawyers. Contact: John B. Grenier, Esq., 1819 Fifth Avenue North, Birmingham, Alabama 35203 or John B. Hardcastle, Jr., Esq., 1600 Division Street, Suite 700, Nashville, Tennessee 37203.

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