



HR & BENEFITS UPDATE

Employers, Group Health Plans Subject To New CHIP/Medicaid Notice, Coordination of Benefits & Special Enrollment Requirements

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By Cynthia Marcotte Stamer

On February 14, 2010, the U.S. Department of Labor (DOL) issued a model notice (CHIP Notice) for employers and unions sponsoring health plans in states offering Medicaid or Children's Health Insurance Program (CHIP) participants group health plan premium subsidy assistance to inform employees of Medicaid and CHIP premium subsidy opportunities available in their state of residence. The duty to provide notice is part of various new obligations imposed on group health plans and employers under the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA). Covered health plans and health insurers, their sponsoring employers and unions, fiduciaries, administrations and other contracted service providers should take steps to update their employee benefit plan enrollment and coordination provisions, communications, processes and procedures to comply with these new requirements including, where applicable and permitted, specific policies and procedures defining when and how premium subsidies may be paid to the group health plan.

CHIPRA Notice & Other CHIPRA Group Health Plan Mandates

CHIPRA imposes new obligations on employers and group health plans when dealing with individuals eligible for or enrolled in coverage under state Medicaid or CHIP programs. Among other things, CHIPRA requires:

- Employers offering group health plans to notify employees of their potential rights to receive premium assistance under a state's Medicaid or CHIP program for plan years beginning after February 4, 2010, which is the date the Labor Department published the model notice;
- Group health plans to treat Medicaid and CHIP program coverage and benefits as secondary to group health plan benefits and coverage for purposes of coordination of benefits; and
- Covered group health plans generally to treat CHIP and Medicaid coverage as health coverage for purposes of the special enrollment rules of the portability requirements of the Health Insurance Portability & Accountability Act (HIPAA) for periods after March 31, 2009 when:
 - ✓ The Medicaid or CHIP coverage of an employee or dependent covered under terminates as a result of the loss of eligibility or that individual becomes eligible for Medicaid or CHIP premium assistance to purchase coverage under the group health plan under the applicable state Medicaid or CHIP program; and
 - ✓ The employee requests enrollment in coverage within 60 days of the date of eligibility loss or determination of premium assistance eligibility

The CHIPRA requirements supplement already existing federal group health plan rules prohibiting discrimination in eligibility for Medicaid eligible persons and requiring that Medicaid generally be treated secondary to group health plan benefits.

The requirement to provide notification of the availability of CHIP or Medicaid premium assistance generally applies to employers with employees that reside in any state that provides premium assistance. Currently, the following 40 states offer such premium assistance to Medicaid or CHIP participants:

Alabama	Iowa	Nevada	Rhode Island
Alaska	Kansas	New Hampshire	South Carolina
Arizona	Kentucky	New Jersey	Texas
Arkansas	Louisiana	New Mexico	Utah
California	Maine	New York	Vermont
Colorado	Massachusetts	North Carolina	Virginia
Florida	Minnesota	North Dakota	Washington
Georgia	Missouri	Oklahoma	West Virginia
Idaho	Montana	Oregon	Wisconsin
Indiana	Nebraska	Pennsylvania	Wyoming

Employers in states offering premium assistance can design their health plans only to receive payments from the applicable CHIP Program through employee salary reduction under a cafeteria plan rather than directly from the CHIP Program. When an employer properly drafts its health plan and cafeteria plan to elect this option, a CHIP assistance eligible employee's contributions may be withheld from pay and the employee thereafter be required to collect available CHIP premium assistance directly from the state. Otherwise, employers generally will be required to accept payment directly from the CHIP program.

Other Changing Health Plan Requirements Also Merit Attention

Employer and other group health plans sponsors, insurers, fiduciaries, administrators and service providers should timely update their group health plan terms, practices, notices, policies and procedures in response to these new requirements. At the same time, health plans, their employer or other sponsors, insurers, fiduciaries, administrators and service providers also should not overlook the need to review and update their health plans in response to a host of other changes in federal health plan mandates. The highly volatile health plan regulatory environment makes it likely that many health plans are not appropriately updated to comply with these and other federal requirements. In recent months, health plans, their employer or other sponsors, administrators and others also have become obligated to comply with a host of other expanded federal health plan rules and requirements. See e.g., [New Mental Health Parity Regulations Require Health Plan Review & Updates; New Labor Department Rule Allows Employers 7 Days To Deliver Employee Contributions To Employee Benefit Plans; Newly Extended COBRA Subsidy Rules Require Employers, Administrators Send Required Notices & Update Health Plan Documents & Procedures Quickly; Employer & Other Health Plans & Other HIPAA-Covered Entities & Their Business Associates Must Comply With New HHS Health Information Data Breach Rules By September 23; COBRA, HIPAA, GINA, Mental Health Parity or Other Group Health Plan Rule Violations Trigger New Excise Tax Self-Assessment & Reporting Obligations.](#) These and other developments make it imperative that health plans, their sponsors, administrators, insurers, fiduciaries and service providers get serious about complying with HIPAA.

Curran Tomko Tarski LLP Can Help

If your organization need advice or assistance in reviewing, updating, administering or defending its health plan, HIPAA or other privacy policies, practices, business associate or other agreements, notices or other related activities, consider contacting Curran Tomko Tarski LLP Partner Cynthia Marcotte Stamer.

A widely published author and speaker on HIPAA and other employee benefit and human resources related matters, Ms. Stamer has extensive experience advising health plans, their employer and other sponsors, health insurers, TPAs and other business associates and others about HIPAA and other health plan and privacy matters. Currently serving as both Chair of the American Bar Association (ABA) RPTE Employee Benefits & Other Compensation Group and as an ABA Joint Committee on Employee Benefits Council representative and Former Chair of the ABA Health Law Section Managed Care & Insurance Interest Group, Ms. Stamer has more than 23 years experience assisting employers, insurers, plan administrators and fiduciaries and others to design, implement, draft and administer health and other employee benefit plans and to defend audits, litigation or other disputes by private parties, the IRS, Department of Labor, Office of Civil Rights, Medicare, state insurance regulators and other federal and state regulators. A nationally recognized author and lecturer, Ms. Stamer also speaks and writes extensively on these and other related matters. For additional information about Ms. Stamer and her

experience or to access other publications by Ms. Stamer see [here](#) or contact Ms. Stamer directly. For additional information about the experience and services of Ms. Stamer and other members of the Curran Tomko Tarksi LLP team, see [here](#).

Other Information & Resources

We hope that this information is useful to you. If you or someone else you know would like to receive future updates about developments on these and other concerns, please be sure that we have your current contact information – including your preferred e-mail – by creating or updating your profile [here](#) or e-mailing this information [here](#) or registering to participate in the distribution of our Solutions Law Press HR & Benefits Update distributions [here](#). Examples of other recent updates that may be of interest include:

- [Health Plans & Business Associates Face 2/17 Deadline To Update Policies, Contracts & Procedures For HIPAA Privacy Rule Changes](#)
- [COBRA, HIPAA, GINA, Mental Health Parity or Other Group Health Plan Rule Violations Trigger New Excise Tax Self-Assessment & Reporting Obligations](#)
- [Inapplicability of HIPAA Privacy To Disability Insurer Not License To Impose Unreasonable Claims Requirements](#)
- [New Mental Health Parity Regulations Require Health Plan Review & Updates](#)
- [Health Plans & Employers Can Expect Pressure To Pay For Childhood Obesity Counseling From New American Academy of Pediatrics Report](#)
- [New Labor Department Rule Allows Employers 7 Days To Deliver Employee Contributions To Employee Benefit Plans](#)
- [St. Louis Employer's OSHA Violations Trigger Contempt Order and Penalties](#)
- [Labor Department Final H-2A Certification Procedures Tighten Requirements For Employment Of Temporary Agricultural Employment Of Workers](#)
- [Certain Workforce Reductions Trigger Plant Closing Notice & Other Obligations](#)
- [Newly Extended COBRA Subsidy Rules Require Employers, Administrators Send Required Notices & Update Health Plan Documents & Procedures Quickly](#)
- [Rising Enforcement and Changing Rules Require Prompt Review & Update of Health Plan Privacy & Data Security Policies & Procedures](#)
- [Mishandling Employee Benefit Obligations Creates Big Liabilities For Distressed Businesses & Their Business Leaders](#)
- [DOL Plans To Tighten Employment Protections For Disabled Veterans & Other Disabled Employees Signals Need For Businesses To Tighten Defenses](#)
- [Employee Benefit Plan Sponsors & Fiduciaries Urged To Review Bonding, Credentials of Staff & Service Providers Under ERISA](#)
- [Added IRS Guidance For Correcting Employment Tax Overpayments Released](#)
- [Employer H1N1 Virus Risk Management Requires Employer Care To Manage Virus Risks Without Violating Employment Discrimination or Other Laws](#)
- [New GINA Genetic Information Based Employment Discrimination & Confidentiality Mandates Take Effect](#)
- [EEOC Prepares To Broaden “Disability” Definition Under ADA Regulations](#)

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