

Massachusetts Law Reform Institute

99 Chauncy Street, Suite 500, Boston, MA 02111-1703

PHONE 617-357-0700 ■ FAX 617-357-0777 ■ www.mlri.org

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The Children's Health Insurance Program Reauthorization Act of 2009: What does it mean for Massachusetts?

On Feb. 4, 2009 President Obama signed into law the Children's Health Insurance Program Reauthorization Act of 2009, Pub. L. No. 111-3. (The full text can be found on the Library of Congress website, Thomas.gov, as H.R. 2). The Act is some 70 pages and includes provisions amending the Medicaid statute generally as well as the CHIP law. We'll wait for the Office of Medicaid to break down the new funding formula for us, but it looks like it will enable MA --in recent years a "shortfall state" spending more than its available allotment of enhanced 65% federal matching funds-- to obtain enhanced CHIP funding for all CHIP-eligible children. The Act is effective April 1, 2009 except as otherwise specified. Listed below are some highlights of the new legislation:

- **Outreach & enrollment.** \$100 million for outreach and enrollment grants for 2009-2013. § 201
- **Enhanced match for interpreters.** 75 % federal matching funds for translation or interpretation services in connection with enrollment, retention or use of services in Medicaid or CHIP for children in families for whom English is not the primary language. § 201
 - To take full advantage of the generous federal reimbursement for interpreters in connection with children's use of services, the Office of Medicaid will need a new mechanism in its provider reimbursement methodology to capture these provider costs.
- **Express Lane option.** New state option to enroll children based on the eligibility findings of "Express Lane Agencies" --public agencies making eligibility determinations for families with children for other benefit programs like food stamps, TAFDC, housing subsidies, etc. §203
- **Verification required of U.S. Citizens.** Changes in the verification of citizenship & identity requirements for U.S. citizens --these changes apply to all Medicaid applicants & recipients not just children in CHIP. § 211
 - Changes effective retroactively to July 1, 2006 (as if enacted as part of the DRA of 2005)-

- Applicants who declare US citizenship & are otherwise eligible must be granted benefits & allowed a reasonable opportunity to submit verification of citizenship & identity.
 - Currently in MA only US citizen children & pregnant women receive benefits right away & are allowed 60 days to get in citizenship verification. Now most other adult applicants will also be able to get coverage for at least 60 days pending receipt of citizen & identity verification.
 - Infants born to mothers enrolled in Medicaid/CHIP are automatically enrolled in Medicaid/CHIP without the need for further verification of citizenship or identity
 - This is consistent with current MassHealth policy for children born to mothers on MassHealth, & Healthy Start & makes clear no further verification is needed even after the 1-year automatic enrollment period for these infants ends, and they have to complete a renewal form (ERV) to remain enrolled.
 - Certain Indian tribal documents are proof of US citizenship & identity.
 - Changes effective January 1, 2010-
 - Option for states to verify citizenship & identity through a data match with the Social Security Administration (SSA); if name, SSN, & declaration of US citizen status is inconsistent with SSA data, applicant must be allowed 90 days to submit verification. For designing & setting up such a system, states can obtain 90% federal reimbursement & 75% federal reimbursement for operations
 - The Office of Medicaid should elect this option and be ready to go on Jan. 1, 2010!
 - US citizens required to verify citizenship & identity in non-Medicaid CHIP
 - This is not now required but at least the change is timed to go with the less burdensome SSA match system.
- **Legal immigrant children & pregnant women.** Option for states to provide Medicaid and CHIP eligibility for children and pregnant women who are lawfully residing in the U.S. notwithstanding §§ 401(a), 402(b), 403 & 421 of PRWORA (8 U.S.C. §§ 1611(a), 1612(b), 1613 & 1631). § 214
 - Currently MA provides state-funded benefits to lawfully residing children who are not federally eligible for Medicaid. It provides Family Assistance if the children's family income is under 200% FPL, or CommonHealth if the children are disabled. The state will now be able to receive federal matching funds for this coverage, and children in families with income under 150% FPL will be able to upgrade to MassHealth Standard. The Office of Medicaid estimates about 7000 children will be affected for whom the state will receive an additional \$16 million in federal revenue.

Also, lawfully residing children with income over 200% FPL, now only eligible for state-funded CMSP, will be eligible for Family Assistance at the 65% enhanced CHIP matching rate.

- Currently MA provides federally reimbursed prenatal care to all pregnant women not otherwise eligible for Medicaid with family income up to 200% FPL in the Healthy Start program under a Bush-era CHIP regulation recognizing the fetus as an eligible child. The state now has the option to upgrade the coverage of lawfully residing pregnant women to MassHealth Standard at the Medicaid matching rate.
 - The title & purpose section of this provision refer to allowing states to avoid a 5-year delay in coverage. Section 403 (8 USC §1613) imposes a 5-year wait on legal permanent residents and persons granted parole who enter the U.S. after 8-22-96. It is clear states can now provide benefits notwithstanding §403. However, it appears that the scope of coverage is not limited to only those subject to the 5-year bar but also to others who are lawfully residing but currently excluded under Sections 401 and 402 (8 USC §§ 1611 and 1612); we'll be looking for more detailed analysis of the scope of this section. (§ 605 of the Act confirms that nothing in the Act is intended to newly extend federal benefits to any aliens not lawfully residing in the US).
 - Under existing state law, the Office of Medicaid is required to provide full benefits to legal immigrants unless they are not eligible for federally reimbursed services. G.L. c. 118E, § 16D. See also, G.L. c. 6A, §16C. Under the CHIP reauthorization, previously barred children and pregnant women are now eligible for federally reimbursed services. The Office of Medicaid requires no further legislative authorization to elect the new state option to provide MassHealth benefits to children and pregnant women lawfully residing in US on the April 1, 2009 effective date of the Act
- **Group health plans.** Special enrollment period in group health plans when Medicaid or CHIP is terminated or eligibility for premium assistance is established. §311
 - State law provides that group health plans must recognize eligibility for MassHealth Premium Assistance as a qualifying event enabling the Premium Assistance recipient to enroll outside the regular open enrollment period. G.L. c. 176N, § 2. However, the state had no power to impose such requirements on self-funded plans under ERISA or on out of state carriers. The Act amends federal law to require special enrollment period for premium assistance eligibility as well as the loss of Medicaid or CHIP coverage. This provision is not limited to children.
 - The Act also requires employers offering group health plans in states with Medicaid/CHIP premium assistance to inform their employees of the premium assistance option, and to cooperate in supplying information about coverage to the state. A national working group is set up to develop a model notice, and coverage coordination disclosure form. Employer notice is not required until the year after such model forms are developed.

- **Dental benefits.** Dental benefits are required in CHIP plans effective October 1, 2009, and a new option is created to provide dental-only supplemental coverage, § 501. The Act also includes new premium assistance options, § 301. In the new options, premium assistance must be voluntary, and generally must provide supplemental coverage for items not covered in the group plan.
 - MA already includes dental in all of its direct coverage CHIP plans. However, dental is not required in the plans for which it pays premium assistance, and families do not have the option of direct coverage if premium assistance is available.
 - We need to do a more careful analysis to determine whether MA is now required to include dental in its premium assistance coverage, but MA should do the right thing: either provide supplemental dental coverage where the parents' plan doesn't include it or allow parents to choose direct coverage if the available employer plan does not cover dental.

- **Other new provisions on quality improvement, reporting & more...** Stay tuned for more detailed analysis of the new Act from our colleagues in D.C.

- **Last and least –a CHIP off the old SCHIP.** The state children's health insurance program was enacted in 1996 and the most popular acronym for the program in the early years was CHIP. This didn't sit well with those who didn't like the idea of a big new federal program for children and wanted instead to emphasize the states' role. In 1999, Congress actually passed legislation directing all federal employees to call the program SCHIP. After 9 years of pronunciation challenges (Ship? S-Chip?), Congress has again weighed in repealing the 1999 legislation & officially readopting the CHIP acronym. §§ 1 & 612.