INSTITUTE FOR HEALTH POLICY SOLUTIONS
ROUNDTABLE DISCUSSION
FAIR SHARE FOR KIDS: COORDINATING CHILD HEALTH INITIATIVE WITH EMPLOYER COVERAGE

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On January 22, 1998, the Institute for Health Policy Solutions (IHPS) held a day long roundtable discussion to work through operational and administrative questions for states intending to establish subsidies toward the cost of employer sponsored health coverage. Attendees included executives from state health agencies, health plans, HMOs, and private industry. The goal was to assess alternate approaches for meeting minimum benefits standards and cost-sharing ceilings, pricing benefits, and making subsidy payments that are simple and will meet the overall purpose of such programs, to maximize health insurance coverage of uninsured children and their families. The following report was developed following the discussions and addresses approaches for meeting benefits and cost sharing standards of Title XXI; the State Child Health Insurance Program. All of the states attending the roundtable plan to implement subsidies toward the cost of employer coverage for children eligible for the federal-state health initiatives. Several of the states will expand their approach to subsidize the cost of covering other family members using funding from federal and state sources under a Medicaid 1115 comprehensive demonstration waiver or state-only funding under state legislation.[1]

Special Enrollment Periods

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Under the Children's Health Insurance Program (CHIP), CHIP funds can be used to provide health benefits to children who are not covered under, but have access to, employer-sponsored family coverage through a parent or guardian. This approach, in which states provide subsidies toward the cost of the employer-sponsored insurance coverage, has a number of advantages for the states and the families of CHIP covered children. A buy-in program is projected to reach more uninsured children than the public program alone because an alternative to the public plan is offered. Such programs could also reduce the average cost of insuring each child because plans that meet the cost-effectiveness test[2] are likely to have a significant employer contribution available. Families are likely to prefer such coverage since the family unit could be enrolled as a single unit, using same provider networks and other access rules.

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[1] List of attendees attached.

[2] Subsidies for purchasing employer-sponsored health insurance coverage must be "cost-effective". That is, the subsidies provided to any family must be equal to or lower than the cost of enrolling the children in the family into the state's public program of health benefits for CHIP eligible children.

Of particular concern to states that are establishing programs providing subsidies for employer-sponsored plans for CHIP eligible children is how to ensure that those children are able to receive employer-sponsored coverage when they are determined to be eligible for the subsidy program. Most employer-provided health insurance plans have limited open enrollment periods. Employees who do not opt for the coverage for themselves or their dependents generally must wait until the annual open enrollment period to join the plan or to add dependents, unless there is a special event that qualifies the family member(s) for special enrollment status. To address this concern, some states are exploring whether to require a carrier to issue family coverage when a child with access to insured employer-sponsored health plan offering family coverage becomes CHIP-eligible. Massachusetts and California[3] have enacted provisions which state that an eligible employee's dependent will not be considered a late enrollee if the request for enrollment is made pursuant to the state's CHIP program. Children in these states would become special enrollees and would not need to wait until the next open enrollment period to receive employer-sponsored health insurance coverage.

Because many of the plans that offer family coverage are governed by the Employee Retirement Income Security Act (ERISA)[4], states must carefully consider how they approach coordination between CHIP and employer-sponsored coverage. A state law that includes a provision that establishes CHIP-eligibility as a qualifying event for family coverage under an insured plan is in effect analogous to traditional state insurance laws, such as mandated coverage statutes, that are permissible under ERISA. The Supreme Court specifically upheld state mandated benefit statutes in *Metropolitan Life v. Massachusetts*, 471 U.S. 724 (1985), as permissible state insurance regulation of the substantive content of health insurance policies. The Court noted in its opinion several forms of mandated benefits and coverage laws, including a law enacted in all states requiring that coverage of infants begin at birth, rather than at some time after birth. Newly adopted children are also ensured that coverage is provided from the date of adoption. Similarly states have laws that require continuous open enrollment for a spouse who loses coverage under another group health insurance policy or that require carriers to enroll an eligible employee-parent and dependent child upon a court order that the parent provide health insurance coverage for that dependent child.

It appears that a state law can require that CHIP-eligible children with access to coverage through a health insurance carrier receive coverage before the next open enrollment period. This requirement is analogous to state laws which mandate that newborns receive coverage from the date of birth, that requires continuous open enrollment for spouses who have lost other insurance coverage, or that requires the enrollment of an eligible employee-parent and child upon a court order.

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[3] In CA, employers are not required to participate in the state's purchasing credit program for CHIP-eligible children.

[4] ERISA is a federal regulation that governs employee benefit plans, including health insurance plans, offered by employers and employee organizations (such as labor unions). ERISA expressly preempts state laws which relate to ERISA-covered plans but excepts from federal preemption state laws that regulate insurance. A state law that places requirements on health insurance coverage purchased by an ERISA-covered plan from an insurance carrier is found not to be preempted by ERISA when the state law does not relate to the ERISA-covered plan or relates to the plan but regulates the business of insurance.

An example of this legislative language can be found in the California Healthy Families' legislation, Assembly Bill No. 1126, Part 6.2, Chpt. 3, Sec.12963.27 (f). In this legislation, it states that "an applicant may begin coverage for dependents using a purchasing credit arrangement at any time. Purchasing credit members enrolling in employer-sponsored coverage shall not be considered late enrollees…"

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