

August 4, 2010

The Honorable Kathleen Sebelius  
Secretary  
Department of Health and Human Services  
200 Independence Avenue S.W.  
Washington, D.C. 20201

The Honorable Hilda Solis  
Secretary  
Department of Labor  
200 Constitution Avenue, NW  
Washington, D.C. 20210

Dear Secretary Sebelius and Secretary Solis,

Attached is the CHIP Coverage Coordination Disclosure Form and Instructions (together the “Model Form”) as well as a report prepared by the Medicaid, CHIP, and Employer-Sponsored Coverage Coordination Working Group (the “Working Group”) pursuant to Section 311(b)(1)(C) of the Children’s Health Insurance Program Reauthorization Act of 2009 (CHIPRA).

### **Model Form**

CHIPRA tasked the Working Group with formulating the Model Form based on certain parameters established by CHIPRA. Based on those parameters, the Working Group prepared the Model Form. The Model Form is the best that the Working Group can formulate currently given CHIPRA’s parameters. However, we advise the Department of Health and Human Services and the Department of Labor (together the “Departments”) that the Model Form should be periodically revisited in light of events that have occurred after passage of the CHIPRA, including the enactment of the Affordable Care Act (ACA).

When officially releasing the Model Form, we suggest that the Department of Labor perform educational outreach with respect to employers and plan sponsors who will be receiving and completing the Model Form. With respect to plan administrator educational outreach, we suggest that the Department of Labor distribute fact sheets and frequently asked questions regarding how the Model Form can be completed. Specifically, even though the plan administrator is ultimately responsible for completing and returning the Model Form (and must sign the Model Form), the plan administrator can delegate to the plan’s insurer, broker or third party administrator completion of one or more portions of the Model Form. Similarly, plan administrators for small employer plans may have difficulty in obtaining needed information from an insurer or broker, and in that event the employer should be instructed to contact the Department of Labor for assistance.

During our development of the Model Form, we also noted the following considerations—

- Employee Consent. Although consent from the employee is not needed in order for plan sponsors to complete and return the Model Form, states may want to obtain consent regarding the disclosure of the information as part of the Medicaid application process.
- Electronic Distribution Methods. States should be encouraged to authorize electronic methods to complete the Model Form, such as allowing plan sponsors to return the completed Model Form and attachments via electronic mail, or uploading them to a dedicated website.
- Scope of Information Required. The Model Form attempts to balance the need for administrative simplicity with the need for States to have information to make informed decisions about the cost effectiveness of providing coverage through a premium assistance program. The model is being provided to the Secretaries for review and consideration when adopting regulations. Ultimately, plan administrators will be required to provide, upon request, the notices required under regulations or penalties may be assessed under ERISA section 502(c)(9)(B). When regulations are issued, the Working Group suggest that the Departments issue guidance regarding State flexibility to add to or delete items from any model form included in regulations based on what information a State determines it needs and any penalty implications with respect to changes made to such model form by the States.
- State Privacy Laws. States may have privacy laws that are more stringent than the federal HIPAA privacy laws. If any state privacy laws apply in a particular state, states should addresses these issues in the instructions to the Model Form.

These considerations may be relevant to the Departments, as they work to develop regulatory guidance. In addition, these considerations might be relevant to educational outreach.

## **Report**

The Working Group was also charged with writing a report that identifies the impediments to the effective coordination of Medicaid, CHIP and employer-sponsored coverage and makes recommendations for overcoming these challenges.

The Working Group identified several challenges for the various stakeholders involved in premium assistance programs: (1) challenges for families with enrolling in premium assistance programs and accessing essential benefits, (2) challenges for employers, insurance companies, and third-party plan administrators with responding to State data collection requirements and increasing employer participation, and (3) challenges for States and the Federal government in achieving cost savings after administrative costs are taken into account. Additionally, limited access to employer sponsored coverage for low-income families who are eligible for Medicaid and CHIP, the declining availability of employer-sponsored coverage overall, and other factors of the private health insurance market may pose underlying challenges for premium assistance programs.

CHIPRA includes new provisions designed to improve the viability of premium assistance programs, but there has been little time for implementation, and thus it is difficult to assess whether these new provisions are working effectively. Moreover, the passage of ACA introduces new coverage options and policy changes that further change the role of premium assistance programs in providing access to affordable health coverage for low- and moderate-income families.

As a result of this changing health care landscape, the Working Group recommends that States exercise caution in establishing entirely new premium assistance programs. States with existing premium assistance programs should explore opportunities to coordinate their programs with new provisions in ACA in order to reduce administrative burdens and achieve the larger ACA goals of quality, affordable health care for all Americans families. Regardless of the final role of premium assistance programs after ACA has been implemented, the lessons from over fifteen years of implementing premium assistance programs are important to consider as States explore new options for providing public subsidies for private coverage.

Sincerely,

/S/

Mark L. Stember, Esq.  
Co-chair  
Medicaid, CHIP, and Employer-Sponsored  
Coverage Coordination Working Group

/S/

Rhonda Medows, MD, FAAFP  
Co-chair  
Medicaid, CHIP, and Employer-Sponsored  
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cc:

Ms. Cynthia Mann, Director, Center for Medicaid, CHIP, and Survey & Certification  
Ms. Phyllis Borzi, Assistant Secretary for Employee Benefits Security, Department of Labor

Enclosures