

## Legislative News

The following are brief summaries of recent legislation affecting health plans, employers and/or employees. Click on the titles for more information.

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[Michelle's Law](#)- This law allows dependent students continuing health coverage during a medical leave of absence from school for up to either one year or until the policy's age cut off.

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### [Genetic Information Nondiscrimination Act of 2008 \(GINA\)](#)-

GINA generally will prohibit discrimination in health coverage and employment on the basis of genetic information. GINA, together with already existing nondiscrimination provisions of the Health Insurance Portability and Accountability Act, generally prohibits health insurers or health plan administrators from requesting or requiring genetic information of an individual or the individual's family members, or using it for decisions regarding coverage, rates, or preexisting conditions. The law also prohibits most employers from using genetic information for hiring, firing, or promotion decisions, and for any decisions regarding terms of employment. This law extends to Wellness Programs and prevents Health Risk Assessments from asking genetic questions as well.

#### [Employment Poster](#)

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[Mental Health Parity and Addiction Equity Act](#) -This bill was signed by President Bush on October 3, 2008, and was attached to the Emergency Economic Stabilization Act (HR 1424). The federal parity law requires group health plans that include mental health and substance abuse benefits to cover treatment for those benefits on the same terms and conditions as all other illnesses. It amends the Employee Retirement Income Security Act (ERISA) and is applicable to both fully insured and self-funded plans. The law includes "Substance Use Disorder Benefits" within the definition of Mental Health Benefits.

The law provides an exemption for small employers. The definition of a "small employer" includes employers who employed an average of at least two employees but no more than 50 employees during the preceding calendar year. Part time employees must be counted in the total.

The bill's provisions will generally become effective for plan years beginning on October 3, 2009. However there is a special rule for collective bargaining agreements which states that parity until the later of (a) the date on which the last of the collective bargaining agreements relating to the plan terminates (without regard to any extension agreed to after October 3, 2008), or (b) January 1, 2010. Parity must apply for the following:

Financial requirements: includes deductibles, co-pays, co-insurance, and out-of-pocket expenses. Plans must ensure that the financial requirements that apply to mental health or substance use disorder are no more restrictive than the most common or frequent financial requirements that

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apply to all medical and surgical benefits covered under the plan. Plans may not have separate cost sharing arrangements that apply only to mental health or substance use disorder benefits.

- Treatment limitations: includes limits on the frequency of treatment, number of visits, days of coverage, or other similar limits on the scope or duration of treatment. Treatment limitations that apply to mental health and substance use disorder may not be any more restrictive than the most common or frequent limitations that apply to all medical and surgical benefits covered under the plan. Plans may not have separate treatment limitations that apply only to mental health or substance uses disorder benefits.

State Regulations

[Ohio Mental Health Parity FAQ](#)

[Ohio Mental Health and Substance Use Benefit Comparison](#)

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**The CHIP Reauthorization Act of 2009 (CHIPRA)**- The Children's Health Insurance Program Reauthorization Act of 2009 was signed into law on February 4, 2009, and reauthorizes the State Children's Health Insurance Program (SCHIP) for four and a half more years.

**New 60-day enrollment opportunities**

The legislation provided for two new special enrollment opportunities to elect coverage under group health plans. A special enrollment period of 60 days will be allowed in the following additional circumstances:

- 1) If a member or his or her eligible dependent's coverage under Medicaid or the SCHIP is terminated due to loss of eligibility; or
- 2) If a member or his or her eligible dependent becomes eligible for premium assistance under a state Medicaid or SCHIP plan.

The special enrollment rights became effective for plan years beginning on or after April 1, 2009.

**Notice requirements**

In conjunction with the special enrollment rights, the law also imposed two new disclosure requirements:

- 1) On February 4, 2010, the secretaries of Labor and Health and Human Services issued the model employer notice, designed to ensure that employees are aware of possible premium assistance opportunities that may be available to them under Medicaid or SCHIP. **Employers**

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are required to provide these notices to all employees by the date that is the later of 1) the first day of the plan year after February 4, 2010, or 2) May 1, 2010.

- a. The notice can be distributed with payroll, included in new-hire packets or open enrollment material as long as all employees receive them.
- b. The notice can be sent electronically as long as employees use the computer as an integral part of their job.
- c. Employers should keep a record of their notifications.

2) A plan administrators notice - designed to ensure that the states, upon request, have adequate information to properly coordinate coverage for individuals who are eligible for both state assistance and employer-sponsored coverage - will be issued by August 4, 2010. The secretaries of Labor and Health and Human Services will publish a model coordination of coverage disclosure form that plan administrators must use to provide the required information to the state.

Each state will develop its own guidelines as to when or if it is cost effective to provide premium assistance for people eligible for Medicaid or SCHIP to buy into their employers' 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 direct payments).

For more information on [CHIP](#)

For the [CHIPRA Model Notice](#)

[Podcast on Employers' Legal Requirements](#)

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**COBRA Premium Subsidy Extension**- The American Recovery and Reinvestment Act of 2009 (ARRA), as amended on March 2, 2010 by the “Temporary Extension Act of 2010”, and again by the “Continuing Extension Act of 2010” on April 15, providing for premium reductions for health benefits under the Consolidated Omnibus Budget Reconciliation Act of 1985, commonly called COBRA. Eligible individuals pay only 35 percent of their COBRA premiums and the remaining 65 percent is reimbursed to the coverage provider through a tax credit. To qualify, individuals must experience a COBRA qualifying event that is the involuntary termination of a covered employee’s

employment. The involuntary termination must generally occur during the period that began September 1, 2008 and ends on May 31, 2010. (An involuntary termination of employment that occurs on or after March 2, 2010 and follows a qualifying event that was a reduction of hours and that occurred at any time from September 1, 2008 through May 31, 2010 is also a qualifying event for purposes of ARRA.) The premium reduction applies to periods of health coverage that began on or after February 17, 2009 and lasts for up to 15 months

#### **New Rules**

Individuals who experienced a qualifying event that was a reduction in hours of employment, on or after September 1, 2008, and who later experienced an involuntary termination of employment as defined by ARRA between March 2 and May 31, 2010, are eligible for the subsidy if they are otherwise an Assistance Eligible Individual (AEI). This new rule only applies to periods of coverage beginning after March 2, 2010.

#### **New Election Period**

Individuals who experienced a qualifying event due to a reduction in hours of employment and did not elect COBRA coverage, or elected and then lost COBRA coverage, are entitled to a new COBRA election period if they later experience an involuntary termination of employment between March 2, 2010 and May 31, 2010.

#### **Civil Action and Penalties**

To enforce the provisions of ARRA and the Act, the Treasury and/or Department of Labor (DOL) or an affected individual may bring a civil action to enforce any determinations and/or appropriate relief. Plan sponsor or health carrier failure to comply with Treasury or DOL determinations within 10 days after receiving notice of the determination could result in \$110 a day penalty.

#### **[Fact Sheet](#)**

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**These are only brief summaries of these laws. For complete details and interpretation, please consult your benefits attorney.**

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