Background of Legal Rights

As a result of federal and state legislation established several years ago, discrimination by health insurance carriers against adopted children is prohibited in most situations. Prior to 1993, however, numerous problems existed. For example, insurance carriers could delay coverage until an arbitrary date, such as the finalization of the adoption in court. Carriers would also refuse to cover adopted children based on pre-existing conditions.

The Omnibus Budget Reconciliation Act of 1993 (OBRA), Public Law 103-66, amended the Employee Retirement Income Security Act of 1974 (ERISA) to require any group health plan providing coverage for dependent children to provide adopted children with the same benefits and coverage given to biological children of a plan participant. OBRA specifically eliminated any requirement that the adoption be finalized in court before coverage could begin. The new law also prohibited carriers from restricting coverage of adopted children on the basis of a preexisting condition.

HEALTH INSURANCE FOR ADOPTED CHILDREN

by Mark McDermott, J.D.
with Elisa Rosman, Ph.D.

The changes implemented by OBRA apply to the medical benefit plans of all employers subject to ERISA. Since ERISA covers almost all employers except government employers, OBRA provided broad coverage to families with adopted children.

Even the gap in coverage for federal employees has been closed. The Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-91, which also amended ERISA, extended the prohibition against discrimination to governmental employers. As a result, health insurance coverage for adopted children is now available to all families covered by group health plans as soon as those families assume financial responsibility for the children.

HIPAA included several other important reforms. For example, HIPAA mandates that group health plans must offer the employee the right to enroll an adopted child in the plan immediately. Under prior law, immediate enrollment was not always possible if the adopted child joined the family at a time when the employee was not eligible to elect for or alter coverage; i.e., when it was not “open season.”
With the exception of a small number of states that have special new laws, adoptive parents cannot purchase insurance to cover the birthmother’s medical expenses because she is not one of their dependents. The insurance coverage discussed in this article only applies to the separate medical expenses of the child. If the adopted child is a newborn, he or she will incur medical charges separate from the birthmother’s for hospital care from the time of birth until discharge from the hospital, and these are the expenses eligible for coverage by the adoptive parents’ carrier.

Under the law, as amended by OBRA and HIPAA, coverage does not commence until the time of “placement.” The term “placement,” however, is defined in the statute as the time when the adoptive parent assumes financial responsibility for the child.

Non-employer-sponsored health insurance plans (i.e., individual plans) are not subject to federal regulation; instead, they are regulated by state law. Fortunately, many states have their own laws that prohibit health insurance discrimination against adopted children. According to the Council for Affordable Health Insurance, there are mandates in 45 states requiring health insurance plans to cover adopted children. The states that lack such statutes are Alabama, Delaware, Michigan, Missouri, New Jersey, and the District of Columbia. If you are covered by an individual plan, you should check the laws of your own state to determine your rights. (See below for a list of state resources.)

To make sure you are eligible for HIPAA’s protections, apply for health insurance for your child within 30 days of your child’s adoption or placement for adoption.

Nuts and Bolts

As soon as you have made the decision to adopt, contact your health plan administrator to find out how to enroll your child. To make sure you are eligible for HIPAA’s protections, apply for health insurance for your child within 30 days of your child’s adoption or placement for adoption. As long as you apply within 30 days, your child cannot be excluded based on a pre-existing condition.

If your insurance company denies your child coverage, Deborah Ghose, offers the following advice via the Web site www.adopting.org:

“In 1995, Mr. Melbinger wrote to the Department of Labor on behalf of [Adoptive Families of America] AFA, requesting specific guidance from the Department on various questions that had arisen following the introduction of 609(c). In response, the Department issued a 6-page Advisory Opinion that addressed in detail such questions as: how is "placement for adoption" defined? Must a plan cover the birth expenses of the mother or the hospitalization expenses of a premature baby? A copy of this letter would go a long way with an employee benefits person who was questioning the eligibility of an adoptive child for health coverage.” The letter Ms. Ghose references can be found at: http://www.dol.gov/ebsa/programs/ori/advisory95/95-18a.htm

If your insurance company denies payment for post-adoptive lab work (required for many internationally adopted children), the Adoptive Families magazine Web site has a letter that your pediatrician can customize to send to your insurance company. This can be found at: http://www.adoptivefamilies.com/medical under “Insurance Coverage for Medical Screening Tests.”

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State Resources

**Alabama**
Alabama Department of Insurance
http://www.aldoi.gov/

**Alaska**
Alaska Division of Insurance, Consumer Information
http://www.dced.state.ak.us/insurance/

**Arkansas**
Arkansas Insurance Department
http://www.insurance.arkansas.gov/

**Arizona**
Arizona Department of Insurance
http://www.id.state.az.us/index.html

**California**
California Department of Insurance
http://www.insurance.ca.gov/

**Colorado**
Colorado Division of Insurance
http://www.dora.state.co.us/insurance/

**Connecticut**
Connecticut Insurance Department
http://www.ct.gov/cid/site/default.asp

**Delaware**
Delaware Insurance Department
http://www.delwareinsurance.gov/

**District of Columbia**
District of Columbia Department of Insurance, Securities and Banking
http://disr.dc.gov/dist/site/default.asp

**Florida**
Florida Department of Financial Services
http://www.myfloridacfo.com/

**Georgia**
Office of Insurance & Safety Fire Commissioner
http://www.inscomm.state.ga.us/

**Hawaii**
Hawaii Department of Commerce & Consumer Affairs
http://hawaii.gov/dcca/areas/ins

**Idaho**
Idaho Department of Insurance

**Illinois**
Illinois Department of Insurance
http://insurance.illinois.gov/

**Indiana**
Indiana Department of Insurance
http://www.in.gov/idoi/

**Iowa**
Iowa Insurance Division
http://www.iid.state.ia.us/

**Kansas**
Kansas Insurance Commissioner
http://www.ksinsurance.org/

**Kentucky**
Kentucky Department of Insurance
http://insurance.ky.gov/kentucky/

**Louisiana**
Louisiana Department of Insurance
http://www.ldi.la.gov/

**Maine**
Maine Bureau of Insurance
http://www.state.me.us/pfr/insurance/

**Maryland**
Maryland Insurance Administration
http://www.mdinsurance.state.md.us/sa/jsp/Mia.jsp
Massachusetts
Massachusetts Division of Insurance
http://www.state.ma.us/doi

Michigan
Michigan Department of Energy, Labor & Economic Growth, Office of Financial and Insurance Regulation
www.michigan.gov/ofir

Minnesota
Minnesota Department of Commerce, Insurance Gateway
http://www.insurance.mn.gov

Mississippi
Mississippi Insurance Department
http://www.mid.state.ms.us/

Missouri
Missouri Department of Insurance, Financial Institutions & Professional Registration
http://insurance.mo.gov/

Montana
Montana Commissioner of Securities and Insurance
http://sao.mt.gov/

Nebraska
Nebraska Department of Insurance
http://www.doi.ne.gov/

New Mexico
New Mexico Public Regulation Commission, Insurance Division
http://www.nmprc.state.nm.us/id.htm

New York
New York State Insurance Department
http://www.ins.state.ny.us/

North Carolina
North Carolina Department of Insurance
http://www.ncdoi.com/

North Dakota
North Dakota Insurance Department
http://www.nd.gov/ndins/

Ohio
Ohio Department of Insurance
http://www.insurance.ohio.gov/Pages/default.aspx

Oklahoma
Oklahoma Insurance Department
http://www.ok.gov/oid/

Oregon
Oregon Insurance Division
http://www.cbs.state.or.us/ins/

Pennsylvania
Insurance Department
http://www.insurance.pa.gov/

Rhode Island
Rhode Island Department of Business Regulation
http://www.dbr.state.ri.us/

South Carolina
South Carolina Department of Insurance
http://www.doi.sc.gov/

South Dakota
South Dakota Division of Insurance
http://www.state.sd.us/drr2/reg/insurance/
Tennessee
Tennessee Department of Commerce and Insurance
http://www.state.tn.us/commerce/index.shtml

Texas
Texas Department of Insurance
http://www.tdi.state.tx.us/

Utah
Utah Insurance Department
http://www.insurance.state.ut.us/

Vermont
Vermont Department of Banking, Insurance, Securities & Health Care Administration, Insurance Division
http://www.bishca.state.vt.us/InsurDiv/insur_index.htm

Virginia
Virginia State Corporation Commission
Bureau of Insurance
http://www.scc.virginia.gov/division/boi/

Washington
Washington State Office of the Insurance Commissioner
http://www.insurance.wa.gov/

West Virginia
West Virginia Offices of the Insurance Commissioner
http://www.wvinsurance.gov/

Wisconsin
Wisconsin Office of the Commissioner of Insurance
http://oci.wi.gov/oci_home.htm

Wyoming
Wyoming Insurance Department
http://insurance.state.wy.us/

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This paper was adapted from Mark McDermott’s article originally published in the March-April 2002 edition of Adoptive Families Magazine. For more articles like this, visit www.adoptivefamilies.com.