

A CHOSEN CHILD, INC.

A Licensed Child-Placing Agency

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HEALTH INSURANCE COVERAGE FOR THE ADOPTIVE CHILD

The Omnibus Budget Reconciliation Act of 1993 (OBRA'93), Public Law 103-66, amended the Employee Retirement Income Security Act of 1974 (ERISA). The amended law requires that any group health plan which provides coverage for dependent children must provide benefits to a child placed for adoption under the same terms and conditions as apply to a child who is the biologic child of a plan participant. OBRA'93 specifically eliminated any requirement that the adoption be finalized in court before there is coverage. The new law also prohibits carriers from restricting coverage of adopted children on the basis of a pre-existing condition. The changes implemented by OBRA'93 apply to the medical benefit plans of all employers subject to ERISA.

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 child.

HIPAA mandates that group health plans must offer the employee the right to enroll the new child in the plan immediately. If the adoptee is a newborn, he or she will have a medical bill reflecting the expenses incurred for the child's care at the hospital from the time of birth until the child is discharged from the hospital. Those expenses are the ones which will be covered by the adoptive parent's carrier. Under the law, as amended by OBRA'93 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. Therefore, **health coverage for an adopted newborn baby is retroactive to birth.**

Health insurance plans that are not subject to either HIPPA or ERISA, i.e., employer-sponsored plans (i.e. individual plans) may be regulated by state law. Fortunately, many states have their own laws that prohibit discrimination against adopted children in connection with health insurance. If you are covered by a plan that is not subject to HIPPA or ERISA, you should check the laws of your own state to determine your rights.

For plans subject to Florida law, Florida Statutes §§ 627.6415 and 627.6578 provide that an adopted child, placed in compliance with Chapter 63, Florida Statutes, of the certificateholder or subscriber to a health insurance policy, including a group, blanket, or franchise policy, is to be provided health insurance benefits as to the family member's coverage from the moment of placement in the residence of the certificateholder or subscriber. **In the case of a newborn child, coverage begins at the moment of birth if a written agreement to adopt such child has been entered into by the certificate holder or subscriber prior to the birth of the child**, whether or not the agreement is enforceable at law.

627.6415 Coverage for natural-born, adopted, and foster children; children in insured's custodial care.--

- (1) A health insurance policy that provides coverage for a member of the family of the insured shall, as to the family member's coverage, provide that the health insurance benefits applicable to children of the insured also apply to an adopted child or a foster child of the insured placed in compliance with chapter 63, prior to the child's 18th birthday, from the moment of placement in the residence of the insured. Except in the case of a foster child, the policy may not exclude coverage for any preexisting condition of the child. In the case of a newborn child, coverage begins at the moment of birth if a written agreement to adopt the child has been entered into by the insured prior to the birth of the child, whether or not the agreement is enforceable. This section does not require coverage for an adopted child who is not ultimately placed in the residence of the insured in compliance with chapter 63.
- (2) A policy may require the insured to notify the insurer of the birth or placement of an adopted child within a specified time period of not less than 30 days after the birth or placement in the residence of a child adopted by the insured. If timely notice is given, the insurer may not charge an additional premium for coverage of the child for the notice period. If timely notice is not given, the insurer may charge an additional premium from the date of birth or placement. If notice is given within 60 days of the birth or placement of the child, the insurer may not deny coverage for the child due to the failure of the insured to timely notify the insurer of the birth or placement of the child.
- (3) If the policy does not require the insured to notify the insurer of the birth or placement of an adopted child within a specified time period, the insurer may not deny coverage for such child or retroactively charge the insured an additional premium for such child. However, the insurer may prospectively charge the insured an additional premium for the child if the insurer provides at least 45 days' notice of the additional premium required.
- (4) In order to increase access to postnatal, infant, and pediatric health care for all children placed in court-ordered custody, including foster children, all health insurance policies that provide coverage for a member of the family of the insured shall, as to such family member's coverage, also provide that the health insurance benefits applicable for children shall be payable with respect to a foster child or other child in court-ordered temporary or other custody of the insured, prior to the child's 18th birthday.

History.--ss. 3, 5, ch. 85-189; s. 1, ch. 88-269; s. 1, ch. 91-185; ss. 124, 149, ch. 92-33; s. 5, ch. 92-278; s. 114, ch. 92-318; s. 9, ch. 98-159.

627.6578 Coverage for natural-born, adopted, and foster children; children in insured's custodial care.--

(1) A group, blanket, or franchise health insurance policy that provides coverage for a family member of the certificateholder or subscriber shall, as to such family member's coverage, provide that benefits applicable to children of the certificateholder or subscriber also apply to an adopted child or a foster child of the certificateholder or subscriber placed in compliance with chapter 63, from the moment of placement in the residence of the certificateholder or subscriber. Except in the case of a foster child, the policy may not exclude coverage for any preexisting condition of the child. In the case of a newborn child, coverage begins at the moment of birth if a written agreement to adopt such child has been entered into by the certificateholder or subscriber prior to the birth of the child, whether or not the agreement is enforceable. This section does not require coverage for an adopted child who is not ultimately placed in the residence of the certificateholder or subscriber in compliance with chapter 63.

(2) A policy or contract may require the insured to notify the insurer of the birth or placement of an adopted child within a specified time period of not less than 30 days after the birth or placement in the residence of a child adopted by the insured. If timely notice is given, the insurer may not charge an additional premium for coverage of the child for the duration of the notice period. If timely notice is not given, the insurer may charge an additional premium from the date of birth or placement. If notice is given within 60 days of the birth or placement of the child, the insurer may not deny coverage for the child due to the failure of the insured to timely notify the insurer of the birth or placement of the child.

(3) If the policy does not require the insured to notify the insurer of the birth or placement of an adopted child within a specified time period, the insurer may not deny coverage for such child or retroactively charge the insured an additional premium for such child. However, the insurer may prospectively charge the insured an additional premium for the child if the insurer provides at least 45 days' notice of the additional premium required.

(4) In order to increase access to postnatal, infant, and pediatric health care for all children placed in court-ordered custody, including foster children, all group, blanket, and franchise health insurance policies that provide coverage for a family member of the certificateholder or subscriber shall, as to such family member's coverage, provide that benefits applicable for children shall be payable with respect to a foster child or other child in court-ordered temporary or other custody of the certificateholder or subscriber.

History.--ss. 4, 5, ch. 85-189; s. 2, ch. 88-269; s. 2, ch. 91-185; ss. 134, 149, ch. 92-33; s. 6, ch. 92-278; s. 114, ch. 92-318; s. 10, ch. 98-159.