



# How States Are Making Sure Coverage Is Available to Children

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**T**he Affordable Care Act requires health insurers to accept children regardless of their pre-existing conditions in all group plans and in newly-sold individual health plans. This means that a child cannot be denied health insurance based on their health status. Further, the child’s insurer cannot refuse to pay for treatment just because a condition pre-existed the date that the child enrolled in the plan. However, in a number of states, insurers have said they will not sell “child-only” policies (policies that cover just the child and not other family members) under these new rules. They have said that they are concerned about the financial risks involved, and that families may wait until a child is sick to purchase coverage. HHS’s guidance explains that insurers and states can guard against these risks in several ways, but must accept children with pre-existing conditions when they are accepting other children. Although the market for child-only policies is relatively small, these policies offer important protection to children who cannot be covered by their parent’s job-based plans. A number of states are therefore taking action to keep child-only plans in their markets.

## HHS Guidance

HHS’s October 13 letter to NAIC and Questions and Answers fact sheet explain that insurers already have many tools available to them to minimize the financial risks of selling coverage to children with pre-existing conditions. For example, if it is permitted under state law, they can establish limited “open enrollment” periods when they will sell child-only policies to all children. (However, they cannot discriminate by selling to all children during open enrollment periods and then only to healthy children during the rest of the year.) If permitted under state law, they can also continue to price premiums based on health status, charging higher rates to unhealthy children, until 2014. HHS cited Maryland as an example of a state that had reached an agreement with two major carriers (Kaiser Permanente and Blue Cross) that they will sell child-only policies if Maryland establishes two uniform 30-day open enrollment periods per year. HHS also notes that the Children’s Health Insurance Program (CHIP) may also be a vehicle for insuring children.



Find links to these resources on page 7.

- HHS letter to NAIC
- HHS Questions and Answers fact sheet

## When do children need child-only policies?

Families may need to buy a separate policy for their child when the parent's job-based plan does not offer dependent coverage or when the parents cannot afford to buy coverage for the entire family but want their children to be covered. In some instances, a child may live away from a parent—for example, when there has been a divorce, separation, or family crisis – and the child needs coverage in a different geographical area. In addition, a court may order a non-custodial parent to buy a policy for a child.

## What have states done?

Below are examples of states that have taken action to ensure that coverage is available for children through the use of open enrollment periods. Some key variables to consider if your state is taking this approach include the following:

- **Will the state require all health insurers that sell to individuals and families in the state to also offer child-only policies as a condition of licensure, or will the state make an arrangement with some insurers?**

Some states, including California and Washington, have issued requirements for all licensed individual insurers, while others, such as Colorado, have negotiated rules under which a few major insurers agreed to stay in the child-only market if the state established a limited open enrollment period. You will have to determine which way is the most practical for your state. Requiring all insurers to sell child-only policies will probably require legislation. However, the insurance commissioner may be able to negotiate an agreement for an open enrollment period that brings a few major insurers into the child-only market using his or her rulemaking authority. Yet another way of assuring the availability of children's coverage is to allow higher-income children to buy into the state's CHIP program. A number of states have CHIP buy-in programs that predate passage of the Affordable Care Act.

- **What will be the timing and length of open enrollment periods?**

Your state may want to establish an open enrollment period right now so that people hearing about their new rights to enroll children with pre-existing conditions can immediately take advantage of them. For 2011 and the following years, think about when states can best get out the word that plans are open for enrollment, and how to minimize the time that an uninsured consumer will have to wait for an enrollment opportunity. In the examples below, several states are establishing two 30-day enrollment periods that are six months apart, while others have established longer enrollment periods that only occur annually.

- **In what special circumstances should children qualify to enroll outside of the open enrollment period?**

Health plans are familiar with “special enrollment opportunities” that now allow people in job-based plans to enroll outside of open enrollment periods, and states have included similar exceptions in their rules for children’s enrollment: children should be able to enroll promptly in an individual policy following the loss of their parent’s job-based dependent coverage or employer contribution to that coverage; following birth or adoption; following death, divorce, or separation of a parent; following the loss of public coverage; and when they move out of the service area of their previous plan. A few states (including Colorado) are also beginning to note that children may need a special enrollment period pursuant to a court order – for example, if the court orders a noncustodial parent to pay for coverage. Oregon also allows children who have exceeded a lifetime limit on another policy to enroll outside of the open enrollment period.

- **Can insurers elect to continue selling policies outside of the open enrollment period?**

In some states, the open enrollment period is the only time that insurers can sell child-only policies, unless the child had one of the special circumstances described above. In other states, insurers must sell during the open enrollment period, but can sell at other times if they wish to do so. While advocates may want the longest possible period of time for the sale of child-only policies, some insurers may insist on limited and uniform open enrollment periods as their condition for re-entering the market.

- **How much can insurers vary premium prices based on a child’s health status?**

States are likely to use their existing laws about premium variation, but you should be aware that this will also make a difference in states’ negotiations with insurers. In states where sick children are charged much higher premiums than healthy children, insurers face little financial risk by taking kids with pre-existing conditions. However, policies may not be affordable for them. You will want to do what you can to constrain prices while still gaining agreements that make sure insurers will sell to children.

## State Examples

**Washington** issued an emergency rule requiring all insurers that sell individual insurance in the state to provide child-only policies during specified open enrollment periods and at other times during the year when a child experiences certain qualifying events. However, insurers are permitted to sell child-only policies at additional times as long as they do not inquire about the child's health status.



Find links to these resources on page 7.

- Washington's emergency rule
- Washington's cease-and-desist order

Under laws in Washington that existed before the Affordable Care Act was passed, insurers cannot charge more based on health status. Before the Affordable Care Act, insurers in Washington all used a uniform health questionnaire to determine if someone was eligible for individual insurance. If so, the person or family was charged standard premium rates. If not, the person or family was denied coverage and sent to the state's high-risk pool where premiums were 1.25 to 2 times standard rates. As a result of the Affordable Care Act, children cannot be denied coverage so they are no longer screened through the questionnaire. As of last week, at least one Washington insurer continued to refuse to sell to children, and Washington issued a cease-and-desist order to require it to do so. (The insurer complied.)

The state describes open enrollment on its website as follows:



Find link to this website on page 7.

*"As of Sept. 23, 2010, all health plans can no longer deny children (under age 19) coverage because of a pre-existing condition. They must take all children who apply. However, the plans are allowed to create a special enrollment period. This is new in the individual market.*

*"If you want to add your child or children to your individual health plan, buy a family plan that includes children, or buy a child-only policy, you must do so between Nov. 1-Dec. 15 of each year. Exceptions include the birth or adoption of a child or if a child or their parent:*

- *is no longer eligible for a state program.*
- *loses coverage due to a divorce.*
- *loses employer-sponsored coverage.*
- *moves, and their plan is not available where they live."*

**California** enacted legislation, AB 2244, requiring an initial open enrollment period beginning January 1, 2011. All carriers offering individual insurance in the state must sell to children during that period. Thereafter, they must offer an open enrollment period during the child's birth month. However, California does allow insurers to charge higher

rates based on health status. During open enrollment, a child with a health condition may be charged twice the premiums of a healthy child. At other times of the year, prices can vary more. Further, children who were not insured during the past 90 days may face a premium surcharge of 20 percent.



Find link to this resource on page 7.

- California legislation, AB 2244

Sections 1399.825 and 10950 of the new law provide the following:

- Insurers must offer a 60-day open enrollment period beginning January 1, 2011. Subsequently, they must offer open enrollment during a child's birth month.
- Kids can enroll outside of that time as "late enrollees" in certain circumstances (loss of job-based dependent coverage or loss of the employer contribution to job-based coverage; death, separation, or divorce of parent; loss of public coverage; adoption; change in state of residency; or court order).
- Rates can vary up to twice the standard price during open enrollment until 2014 due to underwriting, and more at other times. (Rates must be actuarially sound.) In addition, children who enroll during the open enrollment period and who did not have continuous coverage during the past 90 days can be subject to a 20 percent surcharge. This provides an incentive to maintain coverage
- Individual health plan contracts must include the following notice until 2014: "Please consider your options carefully before failing to maintain or renew coverage for a child for whom you are responsible. If you attempt to obtain new individual coverage for that child, the premium for the same coverage may be higher than the premium you pay now."
- All carriers who sell individual insurance policies must sell child-only policies; if they do not, they are banned from offering individual coverage in the state for five years.

**Colorado** passed an emergency rule establishing a uniform open enrollment period. Carriers are not required to offer child-only policies. However, all carriers who do so will use open enrollment periods when they accept all children (September 23 through October 31 of this year and 30-day periods in January and July thereafter). Outside of these periods, they can only accept kids who had a qualifying event. In addition to the events listed by other states (birth, adoption, marriage, divorce, separation, and loss of job-based coverage), Colorado includes a valid court order mandating coverage and a catch-all: loss of other existing coverage for reasons other than fraud, misrepresentation, or failure to pay premiums. Carriers must continually publicize on their website when the next open enrollment period will be. As of October 6, two carriers had agreed to come back into the market under those conditions, and Colorado was working to get others.



Find links to these resources on page 7.

- Colorado's emergency rule
- Colorado's efforts to get carriers

**Oregon** adopted a new emergency rule on September 23, 2010. If a plan sells family or child-only policies, it must allow enrollment of dependents during the following set open enrollment periods: November 1, 2010 through December 31, 2010, the month of February, and the month of August each year, beginning in 2011. (The periods may change slightly when permanent rules are promulgated.)



Find link to this resource on page 7.

- Oregon's new rule

Insurers must also accept children under age 19 at other times of year who meet certain qualifications, including birth or adoption and when they lose coverage due to separation, divorce, death, or cessation of dependent status. People who have exceeded a lifetime limit in an existing policy may also enroll. For some of these events, people must apply and submit documentation within 60 days.

Insurers can reject applicants who would otherwise qualify if the applicant had chosen to terminate coverage or failed to pay premiums within the 12 months prior to the application.

## Children's Health Insurance Program (CHIP) Buy-In

A number of states allow higher income children to buy into the children's health insurance program, another way of making children's insurance available. (This approach probably requires state legislation.) States that have or are developing CHIP buy-in programs include Connecticut, Delaware, Florida, Illinois, Maine, North Carolina, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Tennessee, Washington, and Wisconsin. See the resources on page 7 for more about buy-ins.



Find links to these resources on page 7.

- Info on states that have recently passed legislation
- Resources on state buy-in programs
- Snapshot of state buy-in programs

### Let us know what your state is doing!

Families USA would love to hear what your state does to ensure the availability of children's coverage. Please keep us in the loop if you have a rule or law that you like!

## Links to Resources

### HHS's October letter to NAIC

<http://www.hhs.gov/news/press/2010pres/10/20101013a.html>

### HHS's Questions and Answers fact sheet

<http://www.hhs.gov/ociio/regulations/children19/factsheet.html>

### Washington's emergency rule

[http://www.insurance.wa.gov/laws\\_regs/documents/2010-14103E.pdf](http://www.insurance.wa.gov/laws_regs/documents/2010-14103E.pdf)

### Washington's open enrollment

<http://www.insurance.wa.gov/consumers/health/IndivHealthPlans.shtml>

### California's legislation, AB 2244

[http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab\\_2201-2250/ab\\_2244\\_bill\\_20100930\\_chaptered.html](http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab_2201-2250/ab_2244_bill_20100930_chaptered.html)

### Colorado's emergency rule

([http://www.dora.state.co.us/insurance/regs/E-11-01\\_final.pdf](http://www.dora.state.co.us/insurance/regs/E-11-01_final.pdf))

### Colorado's carrier efforts

<http://www.dora.state.co.us/insurance/pr/2010MediaReleases/newsReadyAssistChildOnlyPolicies100610.pdf>

### Oregon's new rule

[http://insurance.oregon.gov/rules/attachments/recently%20proposed/id19-2010\\_rule.pdf](http://insurance.oregon.gov/rules/attachments/recently%20proposed/id19-2010_rule.pdf)

## Buy-in Resources

### Blog post, Center for Children and Families, October 2010

<http://theccfblog.org/2010/10/medicaid-and-chip-buy-in-could-help-children-excluded-from-child-only-private-market.html>

### Recent state legislation to create CHIP buy-in programs, Center for Children and Families

<http://ccf.georgetown.edu/index/child-health-coverage>

### State buy-in programs, Urban Institute, November 2008

[http://www.urban.org/UploadedPDF/411795\\_state\\_buyin\\_programs.pdf](http://www.urban.org/UploadedPDF/411795_state_buyin_programs.pdf)

### Program design snapshot, Center for Children and Families, November 2008

<http://ccf.georgetown.edu/index/program-design-snapshot-state-buy-in-programs-for-children>



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