

## HEALTH INSURANCE FOR ADOPTED CHILDREN

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

### 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 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.”*

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.”

# Adoption Advocate

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.<sup>1</sup> 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.<sup>2</sup>

If your insurance company denies your child coverage, Deborah Ghose, offers the following advice via the Web site [www.adopting.org](http://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."

<sup>1</sup> Bunce, V.C. & Wieske, J.P. (2009). *Health insurance mandates in the states 2009*. Alexandria, VA: Council for Affordable Health Insurance. Retrieved September 24, 2009 from [http://www.cahi.org/cahi\\_contents/resources/pdf/HealthInsuranceMandates2009.pdf](http://www.cahi.org/cahi_contents/resources/pdf/HealthInsuranceMandates2009.pdf)

<sup>2</sup> U.S. Department of Labor, Employee Benefits Security Administration. (2004). *Protections for newborns, adopted children, new parents*. Washington, DC: Author. Retrieved September 23, 2009 <http://www.dol.gov/ebsa/publications/newborns.html>



---

# Adoption Advocate

---

## 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.delawareinsurance.gov/>

### District of Columbia

District of Columbia Department of  
Insurance, Securities and Banking  
<http://disr.dc.gov/disr/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  
<http://www.doi.idaho.gov/default.aspx>

### 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>



---

# Adoption Advocate

---

**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](http://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/>

**Nevada**

Nevada Division of Insurance  
<http://doi.state.nv.us/>

**New Hampshire**

New Hampshire Insurance Department  
<http://www.nh.gov/insurance/>

**New Jersey**

New Jersey Department of Banking & Insurance  
<http://www.state.nj.us/dobi/index.html>

**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/>



---

# Adoption Advocate

---

## **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](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](http://oci.wi.gov/oci_home.htm)

## **Wyoming**

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

*Mark T. McDermott, J.D., is a Washington, DC attorney. He is a past president of the American Academy of Adoption Attorneys and currently serves as the Academy's Legislative Chairman. He is also an adoptive parent.*

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](http://www.adoptivefamilies.com).

