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Legislative Update

The following information, provided by Ceridian Health Care Compass, is being sent as a courtesy to keep you informed on the status of the Health Care initiatives taking place in our government.

NEW REGULATIONS ON GROUP HEALTH PLAN COVERAGE OF ADULT CHILDREN

The new health care reform law requires group health plans that provide dependent coverage for children to continue to make such coverage available for an adult child until the child turns 26 years of age.

The rules generally take effect for plan years that begin on or after September 23 of this year.

Key issues addressed in the recent regulations are summarized below:

- The regulations restate the general rule that group health plans or health insurers that offer dependent coverage must make such coverage available to adult children until such children attain age 26.
- A group health plan or insurer may base eligibility for adult child coverage only in terms of the relationship between a child and participant, and may not deny or restrict coverage based on factors such as: financial dependency, residency, student status, employment, eligibility for other coverage (except under the pre-2014 grandfather rule described below), or marital status. Unlike the tax exclusion guidance in the IRS' Notice 2010-38, which generally defines a "child" as a son, daughter, stepchild, adopted child, or foster child, the regulations do not provide a definition of "child" for these purposes.
- Plans and insurers are not required to cover grandchildren — a child of an adult child receiving coverage — or the spouse of an adult child. **[Note: The State of Florida has a mandate in place whereby grandchildren up to the age of 18 months may be covered under an employee's benefits if the parent of the child is covered as a dependent as well.]**
- The terms of the plan or coverage providing adult children coverage cannot vary based on the age of the child, except with respect to children who are age 26 and over.
- A plan may not charge an "additional premium surcharge" based on a child's age or limit available benefit options available to children based on age. A plan providing dependent child coverage until age 26 may, however, charge more for each individual added (for example, under tiers of coverage such as self-only, self-plus-one, self-plus-two, etc.), as long as the additional charge is uniform and does not vary based on the child's age.
- The regulations confirm that the coverage requirement applies to children whose eligibility for coverage previously ended, or who were denied coverage or were not eligible for coverage because of age. Moreover, the plan or insurer is required to provide such children who become



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eligible for coverage as a result of the new coverage requirement with a special 30-day enrollment period.

- The plan or insurer must provide written notice of the opportunity to enroll, and the enrollment period must begin by the first day of the first plan year for which the requirement is effective (January 1, 2011, for calendar year plans). The notice must affirmatively state such adult children are now eligible to enroll in the plan or coverage. It may be provided to the employee on behalf of the child and may be included with other enrollment materials, as long as it is prominently displayed.
- Coverage for individuals enrolling under the special enrollment rules must take effect no later than the first day of the first plan year for which the requirement is effective (January 1, 2011, for calendar year plans). A child who enrolls is treated as a HIPAA special enrollee, which means the child (and the participant through whom the child is eligible for coverage) must be offered all of the benefit packages with the same benefits, cost-sharing requirements and premiums available to similarly situated individuals who did not lose coverage because of the loss of dependent status.
- Grandfather Rule: For plan years beginning before 2014, a grandfathered group health plan (generally, a plan that is in existence on March 23, 2010) may exclude an adult child if the adult child is eligible to enroll in an employer-sponsored health plan other than a group health plan of a parent.

Note: The preamble to the regulation states that regulations on the grandfather rule are expected to be issued in the "very near future" and the regulations will clarify that compliance with the adult child coverage requirements, including voluntary compliance before the requirements are effective, will not jeopardize the plan's grandfather status.

Dependent Coverage to Age 26 Guidance A Focus on Coverage, Enrollment and Written Notification

The following examples illustrate the government's recent guidance concerning coverage, enrollment and notification requirements for the Dependent Coverage to Age 26 provision:

- An employee whose 23-year-old child aged out and terminated coverage under an employer's calendar-year plan must be provided notice by January 1, 2011, with at least a 30-day opportunity to enroll the child retroactively to January 1, 2011.
- An employee who switched to a lower-cost benefit option when the employee's child aged out must be provided notice and at least a 30-day opportunity to enroll themselves and their adult child in any coverage option available to similarly situated individuals who enrolled when first eligible.
- In the case where an employee's child had received COBRA continuation coverage upon aging out, the employee must be provided notice and the employee and child must be given at least a 30-day opportunity to enroll in a coverage option other than COBRA.



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- In the case of a child who had already aged out of coverage at the time the employee parent joined the plan, the plan must provide the employee notice and at least a 30-day opportunity to enroll the child.

FAQs

The new health care reform law requires employee benefit plans and issuers that offer dependent coverage to children to make the coverage available until the adult child reaches the age of 26. In the questions and answers below, we take a closer look at this provision through the recent guidance provided by the U.S. Department of Labor, Employee Benefits Security Administration.

Are employers required to immediately enroll eligible adult children in their parents' plan?

No. The law states that the extension of dependent coverage for children is effective for plan years beginning on or after six months after the enactment of the law — which means plan years beginning on or after September 23, 2010. However, the Administration has urged insurance companies and employers to prevent a gap in coverage for young adults aging off of their parents' policy prior to this effective date. Many insurers have volunteered to do so. We urge you to check with your insurance company or employer to see if they are offering this coverage option earlier than the legal deadline.

Will adult children be given a special chance to enroll after September 23, 2010?

Yes. For plan or policy years beginning on or after September 23, 2010, plans and issuers must give children who qualify an opportunity to enroll that continues for at least 30 days, regardless of whether the plan or coverage offers an open enrollment period. This enrollment opportunity and a written notice must be provided not later than the first day of the first plan or policy year beginning on or after September 23, 2010.

Can plans or issuers who offer dependent coverage continue to impose limits on who qualifies based upon financial dependency, marital status, enrollment in school, residency or other factors?

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Plans and issuers that offer dependent coverage may base eligibility for dependent coverage only in terms of the relationship between a child and the participant, not on any other factor.

It seems as if plans and insurers can terminate dependent coverage after a child turns 26, but employers are allowed to exclude from the employee's income the value of any employer-provided health coverage through the end of the calendar year in which the child turns age 26. Please explain.

Under the law, the requirement to make dependent coverage available applies only up to the date that the child turns 26. However, the value of the coverage can continue to be excluded from the employee's income for the full tax year (generally the calendar year) in which the child had turned 26 – but only if the "child" is the son, daughter, stepchild, adopted child or foster child of the participant.



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For example, if a participant's son turns 26 in March but is covered under the employer plan of his parent through December 31 (the end of most people's taxable year), the value of the health care coverage through December 31 is excluded from the employee's income for tax purposes. If the child stops coverage before December 31, then the premiums paid by the employee up to the time the coverage was stopped will be excluded from the employee's income. The employee would be taxed, however, for a domestic partner's child's coverage regardless of the child's age.

For more information about implementation of PPACA, please visit the Department of Labor website at www.dol.gov/ebsa/healthreform.

As always, we'll keep you posted of significant developments as they occur.

If you have any questions, please contact your HARDEN Employee Benefits Account Manager.