



Health Care Reform News

Health Care Reform — New interim final rules on coverage for dependents to age 26

May 21, 2010 — On May 10, 2010, The Departments of Health and Human Services (HHS), Labor, and Treasury released interim final rules concerning coverage for dependents to age 26. This article will provide information about these rules and steps you'll need to take regarding your plan's compliance.

The Patient Protection and Affordable Care Act (PPACA) and the Health Care and Education Reconciliation Act (HCERA) require that group and individual health coverage plans — both insured and self-insured — that provide dependent coverage extend that coverage to “adult children” to age 26.

WHEN DO THESE RULES APPLY?

Health plans must cover adult children to age 26 beginning with the first plan year that starts on or after September 23, 2010. For many plans, the rules apply as of January 1, 2011. A “special rule” applies to grandfathered plans. (See below.)

DEFINING DEPENDENTS FOR ELIGIBILITY

The health plan may define dependents only in terms of the relationship between the adult child and the employee or plan participant. The child's status as a dependent is irrelevant. The child is eligible for coverage under the parent's plan until age 26 *regardless* of whether he or she lives with the plan participant, depends on the participant financially, is a student, is employed, is married, or is eligible for other health coverage.

The rules do not mandate that plans provide dependent child coverage. They apply only if a health plan already offers dependent child coverage.

The rules do not require that health plans extend this coverage to **grandchildren**.

Temporary exception for grandfathered plans — Grandfathered plans may exclude adult children under age 26 if they are eligible to enroll in an employer-sponsored group health plan other than the parent's. However, this exception is only temporary; it lasts until the first plan year that starts on or after January 1, 2014.

A grandfathered group health plan is a plan in which an individual was enrolled on March 23, 2010. A grandfathered plan can be a single employer plan, a multi-employer plan, or a multiple employer plan; it can also be insured or self-insured. Until further guidance is issued, it is unclear what plan amendments might jeopardize a plan's grandfathered status.

OTHER ELIGIBILITY CONSIDERATIONS

Benefit packages. Plans cannot limit adult children to certain benefit packages.

Furthermore, the plan must give the eligible adult child the opportunity to enroll in any benefit package option for which he or she is eligible, thereby giving the parent the opportunity to switch benefit packages.

COBRA. If an adult child under age 26 is covered under COBRA, the health plan must give him or her the opportunity to enroll as a dependent of an active employee.

Coverage effective date. Coverage must take effect no later than the first day of the first plan or policy year.

Eligible under both parents' plans. If an adult child is eligible under both parents' plans, neither plan may exclude the child because he or she is eligible under the other parent's plan.

Never enrolled. If an adult child under age 26 never enrolled because he or she was too old to enroll as a dependent, the health plan must give him or her the opportunity to enroll.

Parent not enrolled. If a parent is eligible but has not enrolled in the plan and an adult child is eligible under the new rules, the health plan must give both the child and the parent the opportunity to enroll.

Rates. Rates may not vary based on age for children under age 26. Health plans and insurers may charge based on tiers of coverage. For example, single plus one, family, etc.

SPECIAL OPEN ENROLLMENT PERIOD AND REQUIRED NOTICE

Health plans must provide an open enrollment period for eligible dependents. It must:

- last at least 30 days;
- start no later than the first day of the first plan year that begins on or after September 23, 2010; and
- include a written notice.

Written notice

The health plan must provide a written notice to eligible dependents no later than the first day of the first plan year that begins on or after September 23, 2010. The notice must state that adult children under age 26 whose coverage ended, or who were denied coverage, or who were not eligible for coverage have the right to extend coverage.

You can send the notice to the employee or plan participant. You may include the notice with other enrollment material as long as the statement is prominent.

NO EFFECT ON GRANDFATHERED PLANS

Changes that a health plan makes to comply with the dependent coverage requirements will not affect the plan's grandfathered status. Future regulations and forthcoming rules will make it clear that this change and other changes required by law will not affect a health plan's grandfathered status.

TAX TREATMENT

HCERA made a change to the Internal Revenue Code, which took effect on March 23, 2010. Employer-paid coverage for an adult child is tax-free for any tax year that ends before the year in which the child turns 27. The IRS's [Notice 2010-38](#) discusses the tax treatment of the adult child coverage extension.

FOR MORE INFORMATION

You can find more information about the interim final rules regarding coverage for dependents to age 26 online:

- [Interim Final Rules for Group Health Plans and Health Insurance Issuers Relating to Dependent Coverage of Children to Age 26 under the Patient Protection and Affordable Care Act](#)
- [Federal Register](#)
- [U.S. Department of Health and Human Services Fact Sheet on Young Adult Coverage](#)
- [IRS Notice 2010-38 on the tax treatment of the adult child coverage extension](#)
- [White House Fact Sheet on Young Adult Coverage](#)
- [White House Q & A on Young Adult Coverage](#)

This communication is not intended to provide either legal or tax advice. Please consult with your legal counsel or professional advisors to determine the effects of the statutes and regulations regarding health care reform on you and your plan members.