

Extension of Coverage until Age 26 under Federal Health Reform

Client Bulletin provided by Hub International



Under federal health reform, an employee's child can remain enrolled as a dependent until he or she reaches age 26. The new rule contains a number of sub-rules and nuances, as explained below. Federal tax changes allow tax-favored treatment of coverage costs until the child reaches age 27 (rather than age 26). New interim final regulations published May 10, 2010 require a 30-day election period following a special notice requirement. Practical implications and actions steps provided below will guide a group health plan sponsor's reaction to this change in the law.

The new rule only applies to a plan otherwise offering dependent child coverage. A plan that only provides employee-only, or employee and spouse only, coverage will not need to comply with the new rule.

Effective Date

The change is effective for a plan as of its first plan year on or after October 1, 2010. The effective date will correspond to a new plan year, which is also the date employees generally are allowed to re-enroll. (See below for the practical effect on the enrollment process just prior to the plan's effective date.) The change for a plan with an October, November, or December plan year will be effective as of the first day of that month in 2010. Plans with plan years starting with January through September must comply with this change effective as of the first day of that month in 2011.

Many employees already are asking if they can enroll their children, in the spring and summer of 2010. These children may have lost coverage in the past for various reasons, or perhaps were never enrolled, and are under age 26. The response to a request to enroll these children now is generally going to be, "No." As discussed below, a 30-day open enrollment period just prior to the plan's effective date generally will be the time frame during which an employee will re-enroll or enroll a child. The law does not require a group health plan to add these children to the plan before that date. A group health plan can, and should, require a completed election form to add an adult child to the plan or to allow an adult child to rejoin the plan.

If a plan is grandfathered (discussed in a separate Hub International Health Care Reform Briefing), the plan may impose a special rule to the effect that the child is only eligible for coverage if the child is *not* eligible for coverage through his or her own employer. The plan is only allowed to impose that no-employer-coverage rule until the first plan year on or after January 1, 2014.

Insurance Carrier Reactions

As of April 2010, some insurance carriers and third party administrators are announcing they will allow children to remain on group health plans past the usual limiting age up to age 26 (even if the child is not in school and even if the child gets married), provided the children are enrolled in the plan as of June 1, 2010. (June 1 is the most common date insurance carriers have selected.) An insurance carrier's goal in doing so is to lessen administrative efforts while preventing a gap for children who are graduating this spring, so the change is known as a "stop-gap" measure. Otherwise, these children would lose coverage between either the date of graduation, the date of loss of coverage due to reaching the limiting age, or the date of another loss of coverage event, and the date the law takes effect.

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Employers should realize early implementation in this manner results in implementation being done in a piecemeal fashion. Some children -- those who already lost coverage prior to the date the carrier has selected -- usually will *not* benefit from the carrier or TPA implementing the law early. Until the actual effective date, an employee whose son or daughter reached the limiting age or lost coverage for a related reason prior to June 1 generally will not be able to enroll that child in the health plan.

An employer typically will have a choice about making this plan change early. Just because an insurance carrier or administrator states it is willing to disregard a child's loss of coverage after June 1, 2010, the employer as plan sponsor is not required by federal law to do so, and may choose not to do so, especially in the self-funded plan context. While some plan sponsors will not mind complying with the new plan rule earlier than required by law, many plan sponsors prefer to delay compliance due to cost concerns and due to the need to revise plan materials and notify participants. Early compliance also will not eliminate the need to provide the new notice and 30-day election period, discussed below.

Please note some carriers implementing the law early may not allow smaller, fully-insured employers -- usually those under 50 or under 100 employees -- to decide whether or not to come into compliance early. The carrier may simply impose a blanket requirement for all groups of this size, to apply the stop-gap measure.

Adult Children Eligible for Coverage

A group health plan must change its previously-held concepts of covered dependent children. Any child can remain covered until age 26, even if the child is living away from home or is married, even if the child is not a student, and even if the child is working.

For example, after the law becomes effective, an employee may have a child who permanently drops out of school at age 17, moves into an apartment alone, gets married at age 20, and has a child at age 23. During this entire timeframe, and up to the date s/he reaches age 26, the plan must continue to provide him or her with coverage as it would any other dependent child.

Issues for a Young Family: The law does not require coverage of the spouse (or of any child) of such an adult child.

However, if the adult child is female and is covered under the plan at the time of a pregnancy and delivery, the expenses for the mother for maternity care and childbirth would be covered. The new baby (the employee's grandchild) would not be eligible for coverage under the group health plan. (A plan sponsor could be more generous than required by law and provide such coverage. Most plan sponsors have indicated they do not intend to provide coverage to spouses or children of adult children covered by the plan.)

Changes to IRS Tax Rules

Group Health Plans: Plan sponsors have been confused by changes to the taxation of health plan coverage for adult children. Federal taxation rules have been revised as of March 30, 2010, to allow pre-tax treatment of employee and employer premiums and coverage for adult children, presumably to correspond to the requirement for plans to offer coverage until age 26. The tax rule is somewhat different, however, and is a source for confusion.

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The tax law changes allow an employee to provide pre-tax coverage for an adult child until that child reaches age 27 (not until age 26, as the adult child eligibility rule provides). These ages simply do not match in the new law provisions. The rules are easier to understand if one considers their impact:

- The change in the health care law will **require** group health plans to cover children under the plan until the child turns age 26, if the plan offers dependent coverage.
- The new tax law would **allow** parents to cover their children on a pre-tax basis up to age 27, **if** their employer's group health plan **allows** for children to be covered until that age. The plan is **not required** to do so.

Flex Plans: The change to the tax rule will affect plan sponsors who offer health flexible spending accounts (Health FSAs). Under the new tax rules, a Health FSA may reimburse claims for a dependent child until that child reaches age 27. A plan may, but is not required to, allow its Health FSA to do so; the plan could be drafted to only reimburse claims up to the date the child turns age 26, for example.

Special Notice and Election Period

Regulations require each plan sponsor to notify all eligible employees of their right to enroll any children up to age 26 in group health plan coverage, even if the employee is not currently enrolled, and even if the child was not previously enrolled in the plan. The notice is due no later than the first day of the first plan year on or after October 1, 2010. As discussed below, due to annual enrollment periods and a 30-day election period following the notice, most plan sponsors will provide the notice prior to that date.

The notice can be provided in a number of ways: by electronic disclosure if the plan satisfies DOL requirements under ERISA for this method, by including the information in enrollment materials, or by mailing the notice to each employee's last known address by U.S. postal service first class mail. If the notice is included with enrollment materials, the notice must be "prominent," which likely means it should be a separate written notice with a statement of why it is important. The federal agencies may provide a sample model notice for this purpose, but have not promised to do so. In addition to other information, the notice must state as follows: Children whose coverage ended, or who were denied coverage (or who were not eligible for coverage), because the availability of dependent coverage ended before attainment of age 26 are eligible to enroll in the plan or coverage.

The plan sponsor must allow a 30-day enrollment period following the distribution of the notice during which time the employee may choose to enroll the child as well as himself if not currently enrolled in the plan. If the notice is provided just over 30 days prior to the effective date of the new rule, the election would have to be made just prior to the effective date of the new rule, which in turn will generally correspond to a new plan year. However, if the notice is provided, for example, just two weeks before the effective date of this rule, the employee could elect coverage during a 30-day period which would end after the start of the new plan year and after the effective date of the rule. In that situation, coverage elected for the child (and employee) must be made effective retroactively as of the start of that plan year.

Benefit Options Made Available: The child (and the employee through whom the child enrolls) must be offered all the benefit packages available to similarly situated individuals who did not lose coverage by reason of cessation of dependent status.

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No Premium Surcharges or Other Different Terms: The plan providing dependent coverage cannot vary its terms (including cost and available benefits) based on age (except for children who are age 26 or older). The child simply cannot be required to pay more for coverage than any other child of any age, regardless of any prior loss of coverage. Wording in the health reform law itself suggested an employer might charge a higher premium for children over a certain age; the new regulations strictly forbid such a surcharge.

Rights of COBRA Qualified Beneficiaries

Children who are covered by COBRA will have the right to enroll in the plan with the employee, provided the child has not yet reached age 26. As a result, some children will switch from COBRA status back to coverage through an active employee.

The law does not address children of persons covered by COBRA, such as children of a former employee on COBRA. Such a former employee should have the same rights as a similarly situated active employee to add children up to age 26. It is suggested that the notice and 30-day election period explained above be provided to persons on COBRA, in addition to active employees eligible for coverage under the plan.

Plan Changes Required When Effective

Group health plan sponsors will need to take the following steps when the law takes effect:

- Amend plan documents to allow coverage of adult children until the date the child turns age 26 and to remove conflicting provisions (such as rules on student and marital status).
- Revise plan summaries (if separate from plan documents) in a similar manner.
- Revise cafeteria plan provisions to allow pre-tax premium payment until coverage ends when the child reaches age 26.
- Consider Health FSA plan changes to allow pre-tax reimbursement of adult children medical expenses up to age 27 if the plan allows for coverage beyond age 26.
- Revise election forms, enrollment guides, and other annual or new hire election materials.
- Provide a 30-day election period following a special notice on this issue, to be provided to all eligible employees before the first day of the first plan year on or after October 1, 2010.
- Enroll a child (and the employee enrolling with the child) who elects coverage pursuant to the new law on the effective date of the rule, allowing them to select any benefit option available to similarly situated persons, and at the same premium cost applicable to other dependents.
- Confirm the insurance carrier or TPA has changed its systems to address the new triggering age.
- Confirm COBRA administration will correspond to legal and plan changes.

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Plan Sponsor Planning Opportunities

Opportunities to reduce costs in the face of this plan change are few, but are worth considering:

- A group health plan could be re-written to eliminate coverage for children of an employee. (Plan sponsors are not likely to make such changes.)
 - After the employer mandate is effective in 2014, dependent coverage apparently must be offered for spouses and dependents of all full-time employees, so this change is not “sustainable.”
- Determine whether the plan will be considered “grandfathered.”
 - If so, impose a condition that the child can only enroll if not eligible for group health plan coverage through his own employer.
 - This provision can only be grandfathered until the first plan year on or after January 1, 2014. After that date, an adult child’s eligibility for benefits through his own work cannot be considered.
- Determine if the insurance carrier or TPA offers early implementation and decide whether to use a stop gap measure to prevent a loss of coverage prior to effective date of the age 26 rule