

New Rules for Group Health Plans Providing Coverage to Children Under Age 26

The Internal Revenue Service, the Department of Labor, and the Department of Health & Human Services each published Interim Final Rules on May 10 concerning the obligation of all group health plans under the Patient Protection and the Affordable Care Act (“PPACA” or “Affordable Care Act”) to provide dependent coverage for children who have not yet attained age 26. Under these new rules, a group health plan may not define the term “dependent child” other than in terms of the relationship between the child and the participant. Factors that cannot be used to define “dependent child” include financial dependence on the participant, residency with the participant, student status, employment, eligibility for other coverage, or any combination of these. The interim final rules also clarify that a dependent’s marital status is irrelevant for determining whether or not he or she is eligible to be a “dependent child” under his or her parent’s group health plan coverage. Nothing in the interim final regulations requires a group health plan to make coverage available for a participant’s grandchildren (e.g., the child of a child receiving dependent coverage).

Exception for “Grandfathered” Group Health Plans

A “grandfathered” group health plan is a group health plan that was in existence on March 23, 2010, when President Obama signed the PPACA into law. Collectively bargained group health plans in effect on March 23, 2010 are not subject to the Affordable Care Act until the date on which the last of the collective bargaining agreements relating to coverage terminates. The Affordable Care Act generally allows a grandfathered plan to avoid the application of many of the Affordable Care Act’s requirements. One of those exceptions is for dependent children under the age of 26. The interim final rules provide that a grandfathered group health plan that makes available dependent coverage may exclude an adult child who has not yet reached age 26 from coverage if the child is eligible to enroll in an employer-sponsored health plan, other than the group health plan of a parent. This means that a grandfathered plan participant’s child who has a job that offers group health plan benefits is ineligible to be claimed as a dependent under his or her parents’ group health plan.

The Rules For Non-Grandfathered Plans

The new law requires group health plans that offer dependent coverage for children to make that coverage available for children until they reach 26 years of age. Nothing in the Affordable Care Act requires a group health plan to offer coverage for dependent children. If dependent coverage is offered to children, then these interim final rules point out that the costs and the benefit features for all children under the age of 26 must be uniform.

New Enrollment Opportunity For Older Children

The new rules for dependent children go into effect for the first plan year beginning on or after Sept. 23, 2010. Group health plans that use a calendar year for the plan year must comply on or before Jan. 1, 2011. To comply, a group health plan must send a notice to each employee who is a parent, which includes a statement that children whose coverage ended, or who were denied coverage because the availability of dependent coverage for the child ended before the age of 26, that informs them that they are now eligible to enroll in the plan. The notice concerning the new definition of “dependent” may be included with other enrollment materials that a plan distributes to employees, provided the

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statement is prominent. Again, children who elect to receive coverage under this enrollment offer must be provided with all of the benefit packages available to similarly situated individuals (other dependent children) who did not lose coverage by reason of cessation of dependent status.

Income Tax Treatment

The interim final rules indicate that an employer may exclude from the employee's income the value of any employer-provided group health plan coverage for an employee's child for the entire tax year when the child turns 26, even if the coverage continues until the end of that taxable year. This means that if a child turns 26 in March but stays on the plan until Dec. 31 (the end of most people's taxable year), the health benefits through Dec. 31 can be excluded from the income of both the employee and the child for tax purposes.

The IRS issued Notice 2010-38 on April 27, stating that group health plan participants with children who have not yet reached the age 27 by the end of 2010 will qualify for this favorable income tax treatment beginning on March 30, 2010. This favorable income tax treatment will apply to children who are already

covered under an employer's group health plan or are added to the group health plan at any time during a calendar year. The IRS also ruled that employers with cafeteria plans can immediately allow employees to begin making pre-tax contributions to pay for any required premium co-payments for dependent children. A number of large insurers, such as Blue Cross-Blue Shield and United Healthcare; have decided to voluntarily cover a child beginning immediately, according to the Secretary of Health and Human Services.

The Department of Health & Human Services has released estimates of the costs and benefits of increasing the age of child dependents to 26. It estimates that the new benefit will cost \$3,380 for each additional dependent, raising premiums by 0.7 percent in 2011 for employer-sponsored group health plans. Some 1.2 million young adults are expected to enroll by the end of 2011.

If you have questions about this briefing please contact Jim Baker, Linda Hoseman, Marla Letellier, or one of the attorneys in Winston & Strawn's Health Care Task Force listed below.

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