

Health Care Reform— Dependent Children Up to Age 26



PROVISIONS

2.1 WHEN

Coverage to dependents up to the age of 26 must be offered the first of the plan year on or after September 23, 2010.

2.2 LEGAL BASIS

Clarification and definition have been provided by IRS Notice 2010-38 (tax treatment) and Interim Final Regulations.

2.3 DEFINITION

Plans are prohibited from defining dependents more narrowly than the relationship between a child and participant. Therefore, requirements for residency, financial dependence, student status and employment are not to be considered.

A “dependent” may even be married (though the plan is not required to extend coverage to the spouse or any children of the dependent child). Dependents include son, daughter, stepson, stepdaughter, lawful foster child or a child legally adopted by or placed for adoption with the employee.

New rules for medical plans

Dependent Children Up to Age 26

Among the first regulations included in the Health Care Reform Act is the requirement that the dependents up to age 26 be allowed for inclusion in an employee’s medical plan. Carrier definitions typically allowed dependent children to be covered to age 19 and then to age 23 (some were 24 and 25) if they were a full time student maintaining 12 credits per semester. The new rules do not only extend the age, but expand the definition.

Tax

Employer provided coverage of adult children is nontaxable until the end of the year they turn 26, even though the children are not “dependents” as defined under the Tax Code. Tax exemption also applies to distributions from HSA, HRA, VEBA and retiree health accounts.

The rule of tax exemption was in place March 30, 2010, even though carriers or plans may not have yet extended coverage to dependents (therefore, expenses are exempt through a Flexible Spending Account, whose enrollment is independent of a health plan).

Enrollment Notice

Employers must give written notice of eligibility no later than the first day of the first plan year following September 23, 2010—then they are given 30 days to enroll the newly eligible dependent regardless of any plan open enrollment period. The enrollment applies both to those who have aged out and those not previously enrolled or eligible due to their age or status (e.g., dependent turned

19 and was not a full time student, which makes them ineligible under the carrier’s previous plan definition, may now enroll.)

Special Enrollment

If a parent must be enrolled for the child to enroll, then the un-enrolled parent must be allowed to enroll, and the enrolled parent may also change their plan.

Cost

Children cannot be charged more for that coverage than is charged with respect to other children who have not aged out.

Grandfathered Plan Exception

Group plans do not need to offer coverage to an adult child under the age of 26 when they are eligible for another employer provided group plan (at this stage, all plans should be considered “grandfathered” until they make a benefit change). This exception ends in the 2014 plan year.

Flex Plans

Plan language will have to be modified to allow the extension of tax free coverage to dependent children to up to the end of the plan year in which they attain age 26. This new provision also allows a special enrollment by current enrollees due to the expanded family coverage - again, plans have to be modified to allow employees to take advantage of this change. These changes may be allowed prior to the formal amendment.