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Dependent Coverage Up to Age 26

The Affordable Care Act (ACA) requires group health plans and health insurance issuers offering group or individual coverage that provide dependent coverage to children on their parents' plans must make coverage available until the adult child reaches **age 26**. On May 13, 2010, the Departments of Labor (DOL), Health and Human Services (HHS) and the Treasury (Departments) published interim final regulations on the ACA's young adult coverage requirement.

The ACA's young adult coverage requirement took effect for plan years beginning on or after **Sept. 23, 2010**. However, some plans and issuers extended coverage to adult children before this date. All plans and issuers should now be in compliance with the age 26 dependent coverage requirement.

WHAT DOES THE LAW REQUIRE?

Group health plans and issuers offering group or individual health insurance policies that provide dependent coverage of children must make coverage available for adult children up to age 26, regardless of the child's marital status.

> *Example*: For the plan year beginning Jan. 1, 2012, a group health plan provides health coverage for employees, employees' spouses and employees' children until the child turns 26. On the birthday of an employee's child, July 17, 2012, the child turns 26. The plan must cover the child through July 16, 2012.

Parents can decide whether to add adult children to their plan. The ACA's extension of dependent coverage did not create independent enrollment rights for dependents. In addition, there is no requirement to cover the child of a dependent child (that is, a grandchild) or the spouse of a dependent child.

Restrictions on Definition of "Dependent"

Under the ACA, a plan or issuer may not define "dependent" for purposes of eligibility for dependent coverage other than in terms of the child's **age** and the **relationship** between the child and the participant. For example, a plan or issuer may not deny or restrict coverage for a child who is under age 26 based on any of the following factors:

- Financial dependence on the participant or any other person;
- Residency with the participant or with any other person;
- Student status;
- Marital status;
- Employment status; or
- Eligibility for other coverage.

Although "child" is not specifically defined in the ACA, guidance indicates that it means an individual who is a son, daughter, stepson, stepdaughter or adopted child of the participant. There is some suggestion that a foster child would be included as well, although this is not entirely clear.

Uniformity in Plan Terms

The terms of the plan or health insurance coverage providing dependent coverage of children, including the premiums charged, cannot vary based on age (except for children who are age 26 or older). This means that adult children must be offered all of the benefit packages available to other plan participants and cannot be required to pay more for coverage.

> *Example 1*: A group health plan offers a choice of self-only or family health coverage. Dependent coverage is provided under family health coverage for children of participants who have not reached age 26. The plan imposes an additional premium surcharge for children who are older than age 18. This plan violates the uniformity requirement because the plan varies the terms for dependent coverage of children based on age.
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> *Example 2*: A group health plan offers a choice among the following tiers of health coverage: self-only, self-plus-one, self-plus-two and self-plus-three-or-more. The cost of coverage increases based on the number of covered individuals. The plan provides dependent coverage of children who have not reached age 26. In this example, the plan does not violate the uniformity requirement. Although the cost of coverage increases for tiers with more covered individuals, the increase applies without regard to the age of any child.
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> *Example 3*: A group health plan offers two benefit packages – an HMO option and an indemnity option. Dependent coverage is provided for children of participants who have not reached age 26. The plan limits children who are older than age 18 to the HMO option. This plan violates the uniformity requirement because the plan, by limiting children who are older than age 18 to the HMO option, varies the terms for dependent coverage of children based on age.

WHAT IF STATE LAWS DIFFER FROM FEDERAL LAW?

More than two-thirds of states have passed laws that require insured group health plans to cover dependents after they turn 18 years old, often into their mid to late 20s and in some cases later. For example, in New Jersey, unmarried children can stay on a parent's plan until they are 31 years old. These state mandates will continue to apply to insured health coverage, to the extent they require coverage past age 26.

WHAT ARE THE TAX EFFECTS OF THE EXTENDED DEPENDENT COVERAGE?

Under federal tax law, employers can offer tax-free health coverage to employees' adult children through the end of the year in which the children turn age 26. It does not matter whether the children are tax dependents for federal income tax purposes. All states have passed tax laws conforming to the federal tax law.

Often, adult children that obtain coverage pursuant to state law are not tax dependents for federal income tax purposes. In the event state laws mandate coverage past age 26, federal tax law generally requires employers to impute the fair market value of the dependent coverage as income to employees for tax years after the children turn age 26, unless employees pay for the coverage on an after-tax basis.

RELATIONSHIP WITH THE ACA'S EMPLOYER SHARED RESPONSIBILITY RULES

As noted above, the ACA's young adult coverage mandate does not require plans and issuers to offer dependent coverage at all. Instead, the mandate requires plans and issuers that already provide coverage to dependent children to make that coverage available until the child reaches age 26. Also, the mandate does not specifically define the term "child" for purposes of the requirement.

However, **effective Jan. 1, 2015**, the ACA's employer shared responsibility rules started imposing penalties on large employers (those with 50 or more full-time and full-time equivalent employees) that do not offer coverage to all full-time employees and their dependent children. For purposes of the employer shared responsibility rules, a "dependent" is defined as a biological or adopted son or daughter who is **under 26 years of age**. The employer shared responsibility final regulations clarify that a child is a dependent for purposes of the employer shared responsibility

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penalties **for the entire calendar month in which he or she attains age 26**. However, the final rules **exclude stepchildren and foster children** from the definition of dependent.

As a result, large employers that are subject to the employer shared responsibility rules must offer dependent coverage to children of their full-time employees **through the entire month in which the dependent attains age 26** in order to avoid the shared responsibility penalties. This means that:

- Employers are not subject to penalties under the ACA's adult coverage mandate if they do not offer dependent coverage at all, or terminate dependent coverage on the child's 26th birthday; but
- Large employers that are subject to the ACA's employer shared responsibility rules may be subject to penalties if they do not offer dependent coverage to the children of their full-time employees **through the entire month in which the dependent attains age 26**.

Employers who are subject to both of these ACA mandates should be sure to comply with both requirements.

MORE INFORMATION

Additional information on the ACA's young adult coverage requirement is available on Healthcare.gov. Please contact Kane Mostyn Insurance Agency for more information on the employer shared responsibility rules.

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