



EMPLOYEE BENEFITS CLIENT ALERT

June 25, 2010

Health Care Reform Extends Dependent Coverage to Age 26

Under the Patient Protection and Affordable Care Act of 2010 and the Health Care and Education Reconciliation Act of 2010 (collectively, "PPACA"), a group health plan that provides coverage to any participant's child must provide coverage to all participants' children until the children attain age 26. This new requirement takes effect for plan years beginning on or after September 23, 2010 (i.e., January 1, 2011 for calendar year plans). The federal government recently published two forms of guidance concerning this new requirement. In April, the Department of Treasury issued guidance relating to the tax treatment of adult children under age 27. In May, the Departments of Treasury, Health and Human Services and Labor issued interim final regulations relating to the extension of coverage for dependents until age 26. This Client Alert discusses both sets of guidance.

Mandated Coverage

As noted above, group health plans covering any children must extend the same coverage to all children until age 26. Group health plans are not allowed to impose other eligibility requirements, such as requiring that a child be unmarried, a full-time student, or a tax dependent. However, group health plans are not required to cover the children's spouses or the children's children.

The new guidance contains additional uniformity rules. First, group health plans must not vary coverage provided children on the basis of a child's age. Second, group health plans must not vary the premium for a child on the basis of the child's age. (The practice of having different cost levels—employee only, employee-plus-one, family, and so forth—based on the number of individuals enrolled under an employer's plan is permissible). Third, group health plans must not vary the benefit options available to children on the basis of age.

Group health plans subject to COBRA will need to extend coverage to a child who loses coverage as a result of turning age 26.

Transition Rules

The new requirements will result in a number of children becoming newly eligible for coverage. The interim final regulations contain transition rules designed to give these newly eligible children the opportunity to enroll in coverage. Under the new guidance, group health plans must provide each newly eligible child with a special enrollment opportunity of at least 30 days. The enrollment opportunity must begin no later than the first day of the first plan year beginning on or after September 23, 2010 (January 1, 2011 for calendar year plans). Any coverage elected during the special enrollment opportunity must be effective on the first day of the plan year. This special enrollment opportunity is similar to HIPAA's special enrollment rights, which means that parents not previously enrolled in the plan may also enroll. If a parent was previously enrolled, the parent must be allowed to change benefit package options.

Plan sponsors must provide prior written notice of this special enrollment opportunity. Notice to the participant on behalf of the child satisfies this requirement. Plan sponsors may wish to provide this notice with their annual open enrollment material. The information must be displayed in a prominent manner and provide at least a 30-day special enrollment period regardless of the length of the open enrollment period.

Grandfathered Plans

PPACA contains a special provision for grandfathered plans. A grandfathered plan is not required to cover children who are eligible for coverage under another employer-sponsored plan (other than the parent's employer-sponsored plan) until the first plan year beginning on or after January 1, 2014.

Tax Treatment

Before PPACA, the Internal Revenue Code provided that employer-paid health care premiums and benefits from employee group health plans generally were excluded from an employee's taxable income. This exclusion only applied to premiums and benefits for the employee and the employee's tax dependents. Under PPACA the exclusion also applies to premiums and benefits for the employee's children until they turn 27, regardless of whether the children are the employee's tax dependents. In Notice 2010-38, the Department of the Treasury clarified that the exclusion applies to benefits received from health flexible spending accounts, health reimbursement arrangements, voluntary employees' beneficiary associations, and Code Section 401(h) accounts. However, the exclusion does not apply to benefits received from a Health Savings Account ("HSAs"). This means that while a nondependent child may be covered under a high-deductible health plan, expenses incurred by the nondependent child are not "eligible medical expenses" for the employee's HSA.

Next Steps

- Establish the 30-day transitional enrollment period.
- Prepare and distribute the transitional enrollment notice prior to the first day of the first plan year beginning on or after September 23, 2010 (i.e., January 1, 2011 for calendar year plans).
- Timely amend group health plan documents to extend coverage to children effective the first day of the first plan year beginning on or after September 23, 2010. Generally, group health plans must be amended by the last day of the plan year.
- Consider communicating to participants with high-deductible health plans that out-of-pocket expenses incurred by a child are not eligible HSA expenses.

Additional Information

If you wish to visit with us about the latest health care reforms, please contact your Kutak Rock LLP attorney or a member of our Employee Benefits Practice Group listed below. For more information on our Employee Benefits practice and for recent Employee Benefits news and alerts, please visit us at www.kutakrock.com.

John E. Schembari

john.schembari@kutakrock.com

Peter C. Langdon

peter.langdon@kutakrock.com

Juliana Reno

juliana.reno@kutakrock.com

Michelle M. Ueding

michelle.ueding@kutakrock.com

Kathryn M. Magli

kathryn.magli@kutakrock.com

William C. McCartney

william.mccartney@kutakrock.com

Margaret A. Olsen

margaret.olsen@kutakrock.com

Autumn G. Long

autumn.long@kutakrock.com

Kutak Rock LLP | The Omaha Building | 1650 Farnam Street | Omaha, NE 68102-2186 | (402) 346-6000

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