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HEALTH CARE REFORM CLIENT UPDATE

Coverage for Children Up to Age 26

This Client Update is Part Two in a series of updates written to help employers understand the effects of the Patient Protection and Affordable Care Act.

Shuttleworth & Ingersoll has put together a multispecialty work group of health, tax, benefit and employment lawyers to analyze the effects of the legislation on you as our clients.



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Introduction

The Patient Protection and Affordable Care Act of 2010 and the Health Care and Education Reconciliation Act of 2010 (collectively the “Affordable Care Act”) requires health plans (both individual and group policies) that provide dependent coverage to extend coverage for children until they reach age 26. The Affordable Care Act also allows contributions to an employer-provided plan for a child’s coverage to be tax free until the tax year following the year the child turns 26. To help understand these requirements, various executive agencies issued guidance documents (collectively, the “Regulations”): (1) IRS Notice 2010-38 which provides guidance on the tax treatment of reimbursement, and (2) the Interim Final Regulations Group Health Plans, to be issued jointly by the IRS, DOL, and HHS.

When does this new law go into effect?

Both new and grandfathered plans that offer dependent coverage are required to extend coverage to children until age 26. This requirement goes into effect for plan years starting on or after September 23, 2010 (January 1, 2011 for calendar year plans). The Regulations permit and encourage insurers to implement this extension prior its effective date. In fact, Wellmark Blue Cross and Blue Shield of Iowa and several other prominent health insurance providers indicated its plan to extend the coverage for children up to age 26 before September 23, 2010.

What are the eligibility requirements for children to qualify for extended coverage?

The Regulations clarify a child’s eligibility to join their parents plan cannot depend on any factors except: (1) the child’s relationship with the parent; and (2) whether the child is 26 years old. This means that children of participating parents are eligible for this extended coverage regardless of their “tax dependent,” student, residency, employment, or marital status.

The Affordable Care Act does not require employers to cover eligible adult children of an employee’s domestic partner, but some state laws might require their coverage. If an employer does offer coverage for an adult child of an employee’s domestic partner (either voluntarily or under state law) and the employee is not legally a parent of that child, under federal law, the money used to pay premiums will not be tax-free for the employee.

What do employees need to do for their children who lost coverage due to age, but are now eligible again?

The Regulations provide a special procedure to give an opportunity to re-enroll (or enroll for the first time) to a child whose coverage ended or who was denied coverage because, under the terms of the plan or coverage, the availability of dependent coverage ended before the attainment of age 26.

These special rules, also called transitional rules, require that a qualifying child or a parent must receive written notice about the opportunity to re-enroll or enroll as the case may be. A plan or issuer must also give a child at least 30 days to enroll on their parent's plan. This enrollment period must start no later than the first day of the plan year beginning on or after September 23, 2010 (January 1, 2011 for calendar year plans). Even though a child may enroll after the first day of the plan year (this may happen because an insurer is allowed to wait until the first day of a plan year to start the 30 day enrollment period), the coverage must start by the first day of the plan year beginning on or after September 23, 2010.

Under the transitional rules, children under 26 years old who were on a COBRA plan because their age disqualified them from coverage on their parent's plan can get off their COBRA plan and get back on their parent's plan.

Does the extended coverage for adult children apply for parents who are on COBRA plans?

Yes, the extension of coverage up to age 26 for children of participating parents applies to COBRA coverage. This means, if a parent ended his or her employment and is entitled to COBRA coverage for up to 18 months, to the extent the parent has a child under 26 years old, that child must be eligible for coverage on the COBRA plan for 18 months as well.

How long are employers required to offer coverage to eligible children?

The Regulations make it clear that at a minimum an insurer must give children of insured individuals the option to obtain coverage on their parent's plan up to the child's 26th birthday.

Can employer charge children different premiums based on age?

No, the Regulations clarify that the price of dependent coverage cannot vary by age

(except to the extent a dependent is 26 years old or older). Accordingly, a plan would violate this requirement if it charges a surcharge for children who are older than 18. However, a plan that uses a tiered system, which increases its premiums based on the number of covered individuals would conform with this requirement because the increased cost does not vary based on age.

Do employers have to offer the same benefits to all children?

Yes, an insurer must offer children re-enrolling in a plan the same benefits packages the insurer would offer a similarly situated individual who did not lose coverage because of age.

Are premiums for an employer sponsored health plan tax-free for children up to 26 years old?

Yes, the IRS recently issued Notice 2010-38 explaining that employers may exclude from employee's income the value of any employer-provided health coverage for an employee's child for the entire taxable year the child turns 26 years old if the coverage continues until the end of that taxable year. This means, if a child turns 26 years old in March, but the plan allows the child to stay on the plan until December 31 (the end of most individual's tax year), the health benefits for the 26 year old can be excluded for tax purposes up to December 31.

Are grandfathered plans required to extend coverage for adult children up to age 26?

Yes, all of the above rules generally apply to grandfathered plans. The only exception is when an otherwise eligible child (the child is not yet 26 years old) is eligible to enroll in a different qualifying employer sponsored health benefits. In that case, the grandfathered plan does not have to extend coverage to such children. After January 1 2014, this exception expires and grandfathered plans must extend coverage to all children under 26 years old regardless of whether a child already has employer sponsored health benefits.

Does this new federal law preempt stricter state laws?

No, the Affordable Care Act does not preempt these stricter state law requirements. Therefore, employers offering insured group health plans in states such as New York, New Jersey, and Pennsylvania, which already require dependent coverage to continue beyond age

26, must continue to meet these state law insurance requirements. At this time, Iowa does not have a stricter requirement as it only mandates coverage up to 25 years of age.

What should employers do to comply with the new law?

The following is a non-exhaustive list of things employers should consider doing to assure compliance with the new law in a cost effective manner:

First and most importantly, employers and plan providers should examine their plans to assure the age limit for dependent coverage is at least 26 years old. While examining their plans, employers should also review the specific terms of their group health plans (as well as summary plan descriptions and open enrollment materials) for the following issues and amend them as necessary:

- ✓ Review definitions and other applicable provisions to ensure that they do not reference only “dependent children” as defined under the Internal Revenue Code, but instead reference children with a legal child-parent relationship with the participating parent.
- ✓ Review definitions and other applicable provisions to ensure that, where appropriate, the plan terms clearly distinguish between dependent children who have not attained age 26 and other dependents that plans voluntarily cover or that state law requires plans to cover, such as domestic partners or children of domestic partners.
- ✓ To the extent it no longer applies to a plan at issue (i.e. for college students under 26 years old), remove references to Michelle’s Law, which allows dependent college facing a serious illness to take a leave of absence and still preserve their health coverage.

Second, employers or plan providers must give notices to children under the transitional rules. Consequently, employers or plan providers must examine plan records to identify any children that: (1) are under 26 years old; and (2) are not currently covered under their parent’s plan. Employers or plan providers must send notices to such children or parents explaining that the age limit for dependents on the plan is now 26 years old and that the children are eligible to enroll in their parent’s plan.

Next, with respect to children who are currently enrolled in COBRA coverage and who are under 26 years old, group health plan administrators should note that there is a

possibility that a COBRA premium refund might have to be made. The special enrollment opportunity discussed in the transitional rules above means that these children have the right to be added to the group health plan as of the first day of the relevant plan year (Jan. 1, 2011, for calendar year plans). If the child had paid a full COBRA premium for any period for which the health care reform mandate applies, that excess premium amount will have to be refunded to the qualified beneficiary.

Lastly, the following action items, while not required, may be very cost effective in the long run for employers or plan providers: (1) given the new eligibility requirements, employers should consider auditing current dependents to assure (i) they have a legal child-parent relationship with the working parent and (ii) they are under 26 years old; and (2) in light of the temporary exception for grandfathered plans, employers should consider auditing potential adult children of participating parents to determine whether the adult child is eligible for a different employer-sponsored plan and consequently, is not required to receive an offer for extended coverage from their parent's plan.

These Regulations and requirement will create numerous questions in plan creation/development and practical administration. You should consult your attorney concerning your specific situation before acting on the information provided. If you would like further information or assistance, please contact your attorney at S&I or Chair Diane Kutzko, at 319-365-9461 who will refer you to the attorney with the expertise to respond to your questions. Diane can be reached by email at dhk@shuttleworthlaw.com.

****Note:** This article was prepared by Shuttleworth & Ingersoll's Health Care Reform Workgroup with the assistance of Jonathan Landon, a summer associate.