

MAY 2011 DID YOU *KNOW*?:

Extension of Coverage for Children Up To Age 26

Q2.1: Are group health plans required to cover children up to the age of 26?

A2.1: Employer-sponsored plans are not required to cover dependents under the Act. However, if a plan does cover dependents, it will be required to cover children up to the age of 26.

Q2. 2: When does this the new requirement to extend coverage for adult children up to age 26 become effective?

A2.2: For plans subject to the Act (i.e., group health plans for active employees, not retiree-only plans), the extension of coverage is effective as of the first day of the first plan year following September 23, 2010 (i.e., January 1, 2011 for calendar year plans).

Q2.3: Do these requirements apply to dental and vision plans as well?

A2.3: No, but only if the dental and vision plans qualify as "HIPAA-excepted benefits". Generally speaking, stand-alone dental and vision plans qualify as HIPAA-excepted benefits and therefore the extended age dependent law will not apply to them. Consult with ERISA counsel to determine whether your dental or vision plan is a HIPAA-excepted benefit plan.

Q2.4: Are children under age 26 eligible if they are married?

A2.4: Yes. However, under the Act the plan is not required to offer coverage to a dependent child's child or the dependent child's spouse. (Note: Some state laws applicable to fully insured plans may

require coverage of a child's child. Consult with ERISA counsel.)

Q2.5: Is a plan required to offer coverage to adult children up to age 26 who are eligible for other employer-sponsored coverage?

A2.5: From January 1, 2011 through December 31, 2013, grandfathered group health plans may exclude adult dependent children who are eligible for other employer-sponsored coverage. After January 1, 2014, grandfathered plans must offer coverage to all adult dependent children up to age 26 regardless of whether they are eligible for other health coverage (employer-sponsored or otherwise). Note that "employer sponsored health plan" coverage does not include student coverage from a college or university, individual policy, alumni association or similar source. However, it arguably applies to a child's spouse's employer's group health plan.

Q2.6: May a group health plan continue to impose a "full-time student" status requirement for eligibility or a "majority of support" rule?

A2.6: No, for adult children under age 26. All of the old rules about student status and support from the parents and similar rules are no longer applicable and may not be imposed.

Q2.7: Will income need to be imputed to employees for the value of their adult dependent children coverage up to the age of 26?

A2.7: No. The Act has amended the Internal Revenue Code to provide that

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coverage provided to adult children through the calendar year in which they turn age 26 is not includible in income and employees may pay for their share of the cost on a pre-tax basis. This provision of the Act is effective as of March 30, 2010.

Q2.8: Can employers adopt the dependent age 26 rule prior to the effective date applicable to their plan?

A2.8: Yes, but employers sponsoring fully insured plans should consult with their broker or carrier to determine whether the carrier will permit this. Certain national carriers have announced that they are adopting this provision early. Self-insured plans should consult with their stop-loss or risk carrier, if they use one, before implementing this change.

Q2.9: May employers charge more for adult dependent children coverage?

A2.9: This is currently unclear. The Act does not include a specific prohibition with respect to an extra premium. Until further guidance is provided, however, Proskauer has been advising its clients to avoid implementing a flat charge (e.g., \$100 per month per employee covering adult children dependents) that is not actuarially sound. Plan sponsors considering charging an extra amount for children up to the age of 26 should consult ERISA counsel.

Q2.10: Does the plan sponsor have an obligation to re-admit children who are on COBRA but under the age of 26?

A2.10: The Act does not specifically include this requirement, but we believe the likely answer is "Yes". It is likely that either the Internal Revenue Service ("IRS") or Department of Labor ("DOL") will issue guidance and notices regarding this re-enrollment right.

Q2.11: How long does coverage continue for adult dependent children?

A2.11: Under the Act, coverage continues until date of the child's 26th birthday. (Some insurers and plan sponsors may opt to simplify administration by continuing coverage until either the end of the month in which the child turns 26 or even until the end of the year in which the child turns 26. Fully-insured group health plans are also subject to state insurance law mandates regarding dependent coverage. We believe that children must be provided with the better of the two laws. For instance, under New Jersey State law, fully-insured plans must cover dependents up to age 30 (or until the child turns 31 if he is actively on coverage when he attains age 30), so in New Jersey fully insured plans would continue to observe this rule. Remember that income must be imputed to the employee for the value of the adult dependent coverage starting in the first year in which he or she turns 27.

Q2.12: When adult coverage ends at age 26, is that a COBRA qualifying event?

A2.12: Yes, we believe that the loss of dependent status under the terms of the plan is a COBRA qualifying event and these adult children would be eligible for up to another 36 months of continuation coverage.

Q2.13: Is the availability of coverage for a child who is not yet 26 considered to be a "change of status" that would permit an employee to increase his or her deduction for premium through a flexible benefit or 125 plan?

A2.13: Yes, the IRS has released guidance (Notice 2010-38) which clarifies that new eligibility because of the dependent age change to the law is a

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“change of status” for 125 plan purposes. In general, flexible benefit plans must be amended first before any change can take effect. However, in its guidance, the IRS will permit plan sponsors to implement this change operationally prior to an amendment as long as the plan is amended prior to December 31, 2010. Remember that this is a change of status for the deferral only; this is not a change of status for purposes of increasing or

decreasing the amount contributed to a health care reimbursement account.



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