

Health Care Reform: Adult Child Coverage Mandate

In March, President Obama signed the Patient Protection and Affordable Care Act (PPACA) and the Health Care and Education Reconciliation Act of 2010 (HCERA), enacting comprehensive health care reform. This client alert is another in a series related to the legislation and addresses PPACA's requirement that group health plans and insurance issues provide dependent coverage to a participant's adult children until age 26. On May 13, 2010, the Internal Revenue Service (IRS), the Department of Labor (DOL) and the Department of Health and Human Services (HHS) jointly issued regulations implementing the requirement that group health plans provide dependent coverage to participants' children up to age 26.

Effective Date

This coverage mandate takes effect as of the first plan year beginning on or after September 23, 2010.

Reinhart Comment: HHS has worked diligently to obtain the agreement of leading health insurance carriers to comply in advance of the required date. The Fact Sheet and the Frequently Asked Questions documents that appear on the DOL Web site encourage individuals to ask their employers if they will also comply early, so employers can expect inquiries regarding the effective date.

Definition of Dependent

- A group health plan that makes dependent coverage available to children must make the coverage available to a participant's child up to the child's 26th birthday. (NOTE: For purposes of this mandate, a "group health plan" does not include "excepted benefits" as defined by HIPAA. Therefore, non-integral dental and vision plans, and other excepted benefit coverages such as most Health FSAs, do not have to comply with this rule.)
- The child can only be defined in terms of the relationship between the participant and the child. This means that the plan cannot impose additional requirements for eligibility such as financial dependence on the participant, residency with the participant or student status.
- Eligible children may be married or unmarried. However, the plan need not make coverage available to the child's spouse or the child's child (i.e., the participant's grandchild).
- For plan years beginning before January 1, 2014, grandfathered plans may

POSTED:

May 25, 2010

RELATED PRACTICES:

[Employee Benefits](#)

<https://www.reinhartlaw.com/practices/employee-benefits>

RELATED PEOPLE:

[Gregory A. Storm](#)

<https://www.reinhartlaw.com/people/gregory-storm>



require that the child not be eligible for group health coverage other than group health coverage provided through a parent.

Reinhart Comment: This means that a child eligible for coverage through the child's own employment need not be given access to coverage offered by employers of the child's parents. It may also mean that if the child is married and eligible for coverage through the child's spouse, then the child need not be given access to coverage offered by employers of the child's parents.

Uniformity of Coverage

The terms of the plan offering dependent coverage to children cannot vary based on age (except for children age 26 or older). This means, for example, that the plan cannot charge a premium differential based on the child's age.

Example: A group health plan offers a choice of single or family coverage. Dependent coverage is made available for children up to age 26. The plan imposes an extra surcharge for children over age 18. Conclusion: This plan is in violation of the regulations.

A plan may increase premiums due to the addition of an adult dependent child if the premium increase is consistent with how the plan otherwise charges premiums and does not relate to the child's age.

Example: A group health plan charges an employee \$100 per month for employee coverage, \$200 per month for "employee plus one dependent" coverage, \$300 per month for "employee plus two dependents" and \$400 per month for "employee plus three or more dependents." If adding an adult child to an employee's coverage moves the employee from "employee plus two dependents" to "employee plus three dependents," the employee's premium may increase accordingly.

Transitional Enrollment Rules

As a group health plan becomes subject to the new mandate, it must provide an enrollment opportunity with respect to children under age 26 who previously were not eligible for coverage, were denied coverage or lost coverage, but who become eligible because of the new mandate. The enrollment window must be at least 30 days (including written notice of the opportunity to enroll) and must begin no later than the first day of the first plan year beginning on or after September 23, 2010. Coverage must be effective as of the first day of the plan



year.

The notice may be provided to a participant on behalf of a participant's child, and may be included with other enrollment materials. If the plan conducts an annual open enrollment in advance of the beginning of the plan year to which the mandate applies, the notice and transitional enrollment period may be conducted as part of the annual open enrollment.

The transitional enrollment must be treated similarly to a HIPAA special enrollment event in at least two respects:

- If the plan does not allow dependents to enroll without the employee, then both the employee and the dependent child must be permitted to enroll
- Both the participant and the dependent child must have an opportunity to select among all of the health care benefit package options available to similarly situated individuals who did not lose coverage by reason of cessation of dependent status

Action Items to Implement the New Mandate, the Plan Sponsor Must:

- Prepare the transitional enrollment notice. **Reinhart Comment:** The regulations appear to require that the notice be provided only to affected individuals. In light of the likely difficulty in identifying affected children, plan sponsors may wish to provide the notice to all participants for administrative simplification purposes.
- Select and make available the 30 day transitional enrollment period
- Amend the plan document and summary plan description

If you have questions or desire assistance regarding implementation of the new mandate, please contact your Reinhart Employee Benefits attorney.

These materials provide general information which does not constitute legal or tax advice and should not be relied upon as such. Particular facts or future developments in the law may affect the topic(s) addressed within these materials. Always consult with a lawyer about your particular circumstances before acting on any information presented in these materials because it may not be applicable to you or your situation. Providing these materials to you does not create an attorney/client relationship. You should not provide confidential information to us until Reinhart agrees to represent you.