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Regulations Clarify Adult Child Health Care Coverage Mandate

The Patient Protection and Affordable Care Act, which was signed into law on March 23, 2010 and amended on March 30, 2010 by the Health Care and Education Reconciliation Act of 2010 (collectively the "Act"), significantly extended the period of time that children may remain covered under their parents' health care plans. The Act requires health plans and issuers that offer coverage to children on their parents' plan to make the coverage available until the adult child reaches the age of 26. Such coverage is available regardless of the child's dependent status for tax purposes. The legislation left unanswered questions regarding this extended coverage.

Many of these questions have been answered by the regulations issued by the Departments of Health and Human Services, Labor, and Treasury, implementing the Act by expanding dependent coverage for adult children up to age 26. Below are some of the key issues that have been clarified by the regulations:

- Regarding the age when coverage of adult children could be eliminated, the regulations provide that plans and issuers that offer dependent coverage must offer coverage to enrollees' adult children until age 26, even if the young adult no longer lives with his or her parents, is not a dependent on a parent's tax return, or is no longer a student. The new policy applies to both unmarried and married children, although their spouses and children do not qualify for the extended coverage. This portion of the regulations complements guidance issued by the Treasury Department on April 27, 2010, on the tax benefits provided for such coverage through the Act. The prior guidance that was issued provided that the value of any employer-provided health coverage for an employee's child is excluded from the employee's income through the end of the taxable year in which the child turns 26. For example: If a child attains age 26 on May 1, 2011, the last day that the plan is required to cover the child is April 30, 2011. However, an employee in a plan that covers the child through the end of 2011 will not have to include the value of the coverage in the parent's gross income for that year.
- There are also questions pertaining to coverage of adult children who have other coverage available to them. The regulations clarify that grandfathered group health plans (those in place as of March 23, 2010) do not have to provide dependent coverage until 2014 if the adult child is eligible for employer-based coverage in addition to coverage through the parent.

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- One of the most frequently asked questions concerns how much employers can charge these older children for coverage and whether they can charge more for the newly eligible older children. The regulations provide that a child must be offered all of the benefit packages available to “similarly situated individuals” who did not lose coverage because of cessation of dependent status. In addition, the child cannot be required to pay more for coverage than those similarly situated individuals. For example: A plan may not impose an additional premium or surcharge based on age, but will be considered to be in compliance if the cost of an option (such as employee only, employee plus one, employee plus two, etc.) increases without regard to age. The new policy only applies to health insurance plans that offer dependent coverage. There is no requirement for plans that do not offer dependent coverage to do so.
- The Secretary called on leading insurance companies to begin covering young adults voluntarily before the implementation date required by the Affordable Care Act (which is plan or policy years beginning on or after September 23rd). Early implementation would eliminate gaps in coverage for new college graduates and other young adults and allow insurance companies to avoid the administrative costs of disenrolling and re-enrolling them between May 2010 and September 23, 2010.
- Many employers have questions regarding the enrollment rights of the newly eligible children. The regulations provide that plans and issuers must give children who qualify a special enrollment opportunity that continues for at least 30 days regardless of whether the plan or coverage offers an open enrollment period. This enrollment opportunity and a written notice must be provided not later than the first day of the first plan or policy year beginning on or after September 23, 2010. In addition, there were questions regarding eligible children who were receiving COBRA benefits. The regulations clarified that if an eligible child is receiving healthcare benefits under COBRA, the child must be given an opportunity to enroll as a dependent of an active employee, and the child will be eligible for COBRA coverage again upon attaining age 26.

Plan sponsors must act quickly to be prepared for these changes and to implement changes to plan documents, summaries and enrollment materials for upcoming open enrollment.

If you have any questions about the extension of dependent coverage, please contact Dana Thrasher (205-226-5464), Bob Ellerbrock (205-226-5462), Jay Turner (205-226-5468), or Dave Pearson (813-222-1367).

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