

IRS Issues Initial Health Care Reform Guidance Addressing Coverage For Children Under Age 27

In the first regulatory guidance issued under the Patient Protection and Affordable Care Act (PPACA) and the Health Care and Education Reconciliation Act of 2010 (HCERA) (together, the "Health Care Reform Law"), the IRS has filled in some of the details for tax free health care coverage for adult children under age 27. Under the Health Care Reform Law, group health plans and health insurance carriers that provide dependent coverage for children will be required to make that coverage available to adult children under age 26, whether or not they would otherwise be treated as dependents under the plan, beginning the first plan year after September 23, 2010. For calendar year plans, this requirement will be effective January 1, 2011. (For plans in existence on March 23, 2010, this coverage need not be offered prior to 2014 for adult children who are eligible to enroll in another employer sponsored plan.) But the related tax law provisions of the Health Care Reform Law are effective immediately, i.e., March 30, 2010, and apply to any adult child who will not have reached age 27 by the end of the calendar year, whether or not the child is otherwise treated as a dependent for tax purposes.

Although coverage for adult children is not required for most health care plans until 2011, a number of large insurance carriers have announced that they would make this coverage available sooner, in order to avoid breaks in coverage for 2010 college graduates. Several large employers have also indicated that they will consider offering this coverage in 2010. The IRS has responded to these initiatives by providing clarifying guidance to facilitate early implementation. Notice 2010-38 includes the following points of interest to employers sponsoring health care plans.

- The IRS confirms that adult children under age 27 need not qualify as dependents for tax purposes in order to receive tax free health care benefits. So the age limit, residency, support and other criteria for tax dependent status do not apply.
- The Health Care Reform Law amended section 105(b) of the Internal Revenue Code to provide tax free health care benefits (i.e., payments for health care services) for children under age 27. It did not amend section 106 of the Code, however, which provides for tax free health care coverage (e.g., premiums paid for health care insurance). The regulations under section 106 currently limit tax free health care coverage to individuals who are dependents of a covered employee for tax purposes. The IRS has said that it will amend those regulations, retroactive to March 30, 2010, to extend tax free health care coverage to children under age 27, regardless of tax dependent status.
- The IRS will amend the regulations for cafeteria plans, including flexible spending accounts, retroactive to March 30, 2010, to include as a change in status event the eligibility of non-dependent children under age 27 for tax free health care coverage. Thus, employees may make mid-year changes to their cafeteria plan elections during 2010, to pay for health care benefits on a pre-tax basis for their children under age 27.
- Generally, amendments to cafeteria plans may only be effective prospectively. The IRS will amend the cafeteria plan regulations to permit retroactive amendments to cafeteria plans to cover children under age 27, so long as the amendments are adopted no later than December 31, 2010.
- The IRS has clarified that health care coverage and benefits for children under age 27 are not wages for employment taxes purposes, regardless of the children's dependent status for other tax purposes.

If you have questions or would like additional information about the new rules under the Health Care Reform Law for health care coverage for adult children, please feel free to contact Brian Dougherty at (215) 587-5919 or bdougherty@postschell.com.

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