

## IRS/DOL/HHS Issue Joint Health Care Reform Regulations Mandating Coverage for Adult Children Under Age 26

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"), 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 those children 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).

The IRS has recently published guidance for the tax free treatment of health care benefits and coverage for adult children under this mandate. You can read our summary of this guidance by clicking on the following link: <http://www.postschell.com/docs/publications/507.pdf>. Now the IRS, DOL and HHS have jointly published interim final regulations outlining the coverage requirements themselves. Here are some of the highlights.

- Group health plans are not permitted to deny coverage or otherwise make distinctions in the coverage available to children of employees based on any age under 26, tax dependent status, financial dependency, residency, student status, employment, marital status, eligibility for other coverage (except that a plan in existence on March 23, 2010 need not offer coverage to an adult child who is eligible for coverage provided by an employer other than the employer of the child's parent), or any combination of these. In short, a group health plan or health insurance issuer may not define dependent status for purposes of eligibility for dependent coverage of children other than in terms of the relationship between the child and the participant.
- The benefits, benefits package options, cost of coverage, or other terms of the plan or policy for dependent coverage cannot vary based on the age of the child, except for children 26 or older. A surcharge for coverage of adult children, for example, is not permitted if the surcharge does not apply to coverage of minor children.
- Coverage need not be provided for spouses or children of adult children.
- The federal agencies anticipate that regulations relating to grandfathered plans (i.e., those in existence on March 23, 2010) will provide that changes to a plan or policy to provide coverage for adult children will not cause the plan or policy to lose grandfathered status.
- Any adult child who has not reached age 26 but who was previously denied coverage, or whose coverage terminated because the child ceased to be a dependent under the plan, must be given written notice and at least thirty (30) days during which to enroll in the health care plan before the first day of the first plan year beginning on or after September 23, 2010, regardless of when any open enrollment period might otherwise occur. Coverage must begin not later than the first day of that first plan year, even if the enrollment application is made after that date. The written notice may be provided to an employee on behalf of the employee's adult child, and may be included with other enrollment materials, so long as the notice is prominent.
- Any child enrolling in this newly available coverage must be treated as a special enrollee under the HIPAA portability regulations. This means that the child must be offered all benefit options available to similarly situated individuals who did not lose coverage due to cessation of dependent status, and cannot be required to pay more for coverage than such similarly situated individuals. In addition, if the child's parent is not enrolled in the health care plan but is otherwise eligible for enrollment, the parent, as well as the child, must be permitted to enroll. Similarly, if the parent is enrolled in a particular benefit package option, the parent must be permitted to switch benefit package options, in order to allow the child to choose among any benefit package options for

which he or she is otherwise eligible.

- An adult child receiving COBRA continuation coverage, e.g., because of cessation of dependent status, must be permitted to enroll as a dependent of an active employee, other than as a COBRA qualified beneficiary.

If you have questions or would like additional information about required health care coverage for adult children, please feel free to contact Brian Dougherty at (215) 587-5919 or [bdougherty@postschell.com](mailto:bdougherty@postschell.com).

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