

May 17, 2010

## **DOL RELEASES INTERIM FINAL REGULATIONS ON DEPENDENTS HEALTH COVERAGE UNDER THE AFFORDABLE CARE ACT**

**T**he Affordable Care Act (the Act) requires plans and issuers that offer health coverage to children on their parents' plan to make the coverage available until the adult child reaches the age of 26. The Departments of Health and Human Services, Labor, and Treasury have issued regulations implementing the Affordable Care Act by expanding dependent coverage for adult children up to age 26. Key elements include:

- **Coverage Extended.** 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. There is a transition for certain existing group plans that generally do not have to provide dependent coverage until 2014 if the adult child has another offer of employer-based coverage aside from coverage through the parent. The new policy providing access for young adults applies to both married and unmarried children, although their own spouses and children do not qualify.
- **Special Enrollment Opportunity.** For plan years beginning on or after September 23, 2010, plans must give children who qualify an opportunity to enroll 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. The new policy does not otherwise change the enrollment period or start of the plan or policy year.
- **Same Benefits/Same Price.** Any qualified young adult must be offered all of the benefit packages available to similarly situated individuals who did not lose coverage because of cessation of dependent status. The qualified individual cannot be required to pay more for coverage than those similarly situated individuals. The new policy applies only to health insurance plans that offer dependent coverage in the first place; while most insurers and employer-sponsored plans offer dependent coverage, there is no requirement to do so.
- **New Tax Benefits for Adult Child Coverage.** Under a new tax provision in the Act and Treasury guidance, 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. This tax benefit applies regardless of whether the plan is required by law to extend health care coverage to the adult child or the plan voluntarily extends the coverage.

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- **Tax Benefit Continues Beyond Extended Coverage Requirement.** While the Act requires health care plans to cover enrollees' children up to age 26, some employers may decide to continue coverage beyond the child's 26th birthday. In such a case, the Act provides that the value of the employer-provided health coverage is excluded from the employee's income for the entire taxable year in which the child turns 26.
- **Both Employer and Employee Shares of Health Premium Are Excluded from Income.** In addition to the exclusion from income of any employer contribution towards qualifying adult child coverage, employees can receive the same tax benefit if they contribute toward the cost of coverage through a "cafeteria plan." This benefit is available immediately, even if the cafeteria plan document has not yet been amended to reflect the change. To reduce the burden on employers, they have until the end of 2010 to amend their cafeteria plan documents to incorporate this change.

**Employer Actions**

- **Consider extending coverage to adult children up to age 26 immediately.** This will avoid disenrolling certain dependents now and reenrolling them at the beginning of the next plan year. If an employer wishes to pursue this option, the insurance company for the plan should be consulted to determine if it will permit such a change and if any documents need to be amended.
- **Prepare to amend cafeteria plan documents.** Cafeteria plans and pretax premium plans must be amended by December 31, 2010 to permit premium payments on behalf of adult children and not just tax dependents, as provided in most documents. In addition, the plan should provide for the special enrollment rights provided above.
- **Prepare to notify affected adult children.** Employers should review their COBRA rolls and health insurance applications to determine if there are adult children who have been disenrolled from the plan and will be entitled to the special enrollment right indicated above. This will be necessary to provide the required notices of the special enrollment rights and may be required by insurers as a part of the renewal or contract bidding process.

Please contact a McMahon Berger attorney with questions about these or any other issues.

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