

Health Care Reform: Summary of Key Changes in Coverage for Adult Children

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Q: How does the Affordable Care Act help young adults?

The health reform laws (i.e., the Patient Protection and Affordable Care Act of 2010 and Health Care and Education Reconciliation Act of 2010, referred to together below as the "Affordable Care Act") require plans and issuers that offer dependent coverage to make the coverage available until the adult child reaches the age of 26. However, plans and issuers that do not offer dependent coverage are not subject to this rule.

Q: When does this requirement become effective?

In general, this requirement is effective for plan years beginning on or after September 23, 2010. This means that for calendar year plans, the dependent coverage requirement becomes effective January 1, 2011.

Q: Which adult children are protected by this new provision?

In short, any child of an eligible employee who has not attained age 26 must be eligible to participate.

Final regulations clarify that group health plans may not define dependent child for purposes of eligibility other than in terms of the relationship between the child and the participant. Other factors that were previously used to exclude dependent children are no longer permitted, such as financial dependency on the participant, residency with the participant, full-time student status, employment, or eligibility for other coverage.

Q: Do the new rules even apply to married children?

Yes. Marital status is not a permissible factor to be used by a plan in determining the eligibility of a dependent child. However, a plan is not required to cover the spouse of an eligible child, or the child of a child receiving dependent child coverage.

Q: How is this coverage treated for tax purposes? Will employers have to amend their cafeteria plans?

The Internal Revenue Service has released guidance concerning how employers can deal with Affordable Care Act changes affecting coverage of adult children. This guidance is contained in [Notice 2010-38](#). In general, under the Notice, an adult child includes a son, daughter, stepchild, adopted child or eligible foster child under the age of 27 in the relevant taxable year. The child need not be a dependent for tax purposes.

Exclusions from Income Provided. The Notice confirms that the IRS will administer these new favorable tax provisions, effective March 30, 2010, so that both (i) employer-provided reimbursements for adult children under an employer medical care plan for adult children are excluded from the parent-employee's income under Section 105(b) of the Internal Revenue Code and (ii) the value of the coverage for that adult child will be excluded from gross income under Section 106 of the Internal Revenue Code. In addition, the Notice confirms that these benefits are not considered wages for FICA

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and FUTA purposes.

Cafeteria Plan Elections. The Notice includes a special rule that employers may permit employees to make pre-tax salary reduction contributions immediately for accident or health benefits for an adult child under a cafeteria plan, even if the plan has not yet been amended to cover such individuals. *However, if elections to enroll dependents under this new provision were permitted during 2010, the plan amendment must be made by December 31, 2010, and be effective retroactively to the first day when employees were permitted to make contributions (but not before March 30, 2010).*

Q: Do employers have to confirm the age of dependents?

No. IRS [Notice 2010-38](#) states that employers may rely on the employee's representation as to a child's date of birth.

Q: Does it matter if the plan is "grandfathered"?

Under the Affordable Care Act, plans that are considered "grandfathered" do not have to comply with certain reforms that are part of the new law. However, the requirement to make available dependent coverage for children who have not attained age 26 *generally applies to all group health plans whether or not the plan qualifies as a grandfathered health plan.*

However, for plan years beginning before January 1, 2014, a grandfathered group health plan may exclude an adult child who has not attained age 26 from coverage *only* if the child is eligible to enroll in an employer-sponsored health plan, other than a group health plan of a parent. In the case of an adult child who is eligible for coverage under the plans of the employers of both parents, *neither plan* may exclude the adult child from coverage based on the fact that the adult child is eligible to enroll in the plan of the other parent's employer.

Q: When the dependent coverage provision becomes applicable to an employer's plan, what happens to dependents who have not reached age 26 but either (i) are currently covered under an employer's plan through COBRA, (ii) lost coverage because they graduated from college, or (iii) did not enroll because they were not eligible under the terms of the plan due to age?

There is a transition period during which these dependents must be permitted to enroll under rules similar to those for special enrollment under HIPAA. When the dependent coverage provisions become applicable, a plan can no longer exclude coverage for the child prior to age 26, regardless of whether or when that child was enrolled in the plan.

Opportunity to Enroll and Notice Requirement. Regulations require plans to give such a child an opportunity to enroll that must continue for at least 30 days (including written notice of the opportunity to enroll), regardless of whether the plan offers an open enrollment period and regardless of when any open enrollment period might otherwise occur. This enrollment opportunity (including the written notice) must be provided not later than the first day of the first plan year beginning on or after September 23, 2010. *Thus, for calendar year plans, this notice must be provided not later than January 1, 2011.*

Model Notice Language. The U.S. Department of Labor posted [model notice language](#) that can be used to inform dependents of this special enrollment right:

Individuals whose coverage ended, or who were denied coverage (or were not eligible for coverage), because the availability of dependent coverage of children ended before attainment of age 26 are eligible to enroll in [insert name of group health plan or health insurance coverage]. Individuals may request enrollment for such children for 30 days from the date of notice. Enrollment will be effective retroactively to [insert date that is the first day of the first plan year beginning on or after September 23, 2010]. For more information contact the [insert plan administrator or issuer] at [insert contact information].

The notice described above may be provided to an employee on behalf of the employee's child, and it

may be included with other enrollment materials that a plan distributes to employees, provided the statement is prominent. If the notice is provided to an employee whose child is entitled to an enrollment opportunity, the obligation to provide the notice with respect to that child is satisfied for both the plan and the issuer. So, if the insurance carrier for an employer's plan provides the notice, the employer's obligation is satisfied.

When must coverage begin under the special enrollment provision? If the child is enrolled, coverage must begin not later than the first day of the first plan year beginning on or after September 23, 2010, *even if the request for enrollment is made after the first day of the plan year*. In subsequent years, dependent coverage may be elected for an eligible child in connection with normal enrollment opportunities under the plan.

The regulations provide the following examples concerning this special enrollment right:

- If a child qualifies for the enrollment opportunity described above and the parent is not enrolled but is otherwise eligible for enrollment, the plan must provide an opportunity to enroll the parent, in addition to the child.
- If a plan has more than one benefit package option and a child qualifies for the enrollment opportunity described above, the plan must provide the parent enrolled in one benefit package option an opportunity to enroll the child in any benefit package option for which the child is otherwise eligible (thus allowing the parent to switch benefit package options).
- A child who qualifies for the enrollment opportunity described above and who is covered under a COBRA continuation provision must be given the opportunity to enroll as a dependent of an active employee. In this situation, if the child loses eligibility for coverage due to a qualifying event (including aging out of coverage at age 26), the child has another opportunity to elect COBRA continuation coverage. (If the qualifying event is aging out, the COBRA continuation coverage could last 36 months from the loss of eligibility that relates to turning age 26.)
- In the case of a child who never enrolled because the child was too old under the terms of the plan, but has not yet turned 26, the plan must provide an opportunity to enroll the child even though the child was not previously covered under the plan. If the parent is no longer eligible for coverage under the plan (for example, if the parent has ceased employment with the employer) as of the first date on which the enrollment opportunity would be required to be given, the plan would not be required to enroll the child.

Q: What about state law?

Some states, such as New York and New Jersey, have additional requirements for coverage of dependent children. These requirements apply only to fully insured plans issued in the applicable state, but not to self-funded plans.

For example, in New York, a new provision of the Insurance Code, sometimes referred to as the "Age 29" law, extends the availability of health insurance coverage to young adults through the age of 29. More information about that law can be found [here](#). In New Jersey, a similar provision referred to as the "Dependent Under 31 law" or the "DU31 election," permits young adults to continue coverage or become covered under a parent's group health plan as an over-age dependent until the young adult's 31st birthday. More information about that law can be found [here](#).

Of course, if you have any questions about these requirements, or to learn about how they apply to your plan, or how the state requirements interact with the requirements under the Affordable Care Act, contact a member of our [Employee Benefits Practice Group](#), or the Jackson Lewis attorney with whom you regularly work.

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