

## CLIENT BULLETIN

### ***Regulations Issued Relating to Dependent Coverage of Children to Age 26 Under the Patient Protection and Affordable Care Act***

The Departments of Treasury, Labor and Health and Human Services jointly posted pre-publication versions of *Interim Final Rules* ("regulations") for group health plans and health insurance issuers relating to dependent coverage of children to age 26 under the *Patient Protection and Affordable Care Act (PPACA)*. Section 2714 of the *PPACA* requires group health plans (insured or self-insured, including collectively bargained plans) to cover participants' dependents through age 26. The regulation is effective 60 days after publication. For more information on the *PPACA* see [Client Bulletins 2010-26](#), [2010-28](#), [2010-30](#) and [Benefit News Briefs 2010-32](#).

The regulation and *Preamble* can be accessed at: <http://www.dol.gov/ebsa/pdf/dependentcoverage.pdf> or by "[clicking here](#)." A specially prepared version of just the regulations with a Table of Contents added is available by "[clicking here](#)." The DOL posted some *Frequently Asked Questions (FAQs)* that are available at: <http://www.dol.gov/ebsa/pdf/faq-dependentcoverage.pdf> or by "[clicking here](#)" and a Fact Sheet that is available at: <http://www.dol.gov/ebsa/pdf/fsdependentcoverage.pdf> or by "[clicking here](#)." A specially prepared copy of the FAQs with a Table of Contents added and the FAQs numbered is available by "[clicking here](#)."

On a related note, recently issued *IRS Notice 2010-38* allows plans to cover dependents who have not turned 27 through the end of the taxable year the dependent turns age 26. This allows plans to provide coverage through the end of the plan year the dependent turns age 26 instead of cutting off coverage during the plan year on the date the dependent turned age 26. Plans are not required to continue coverage past the dependent's 26<sup>th</sup> birthday, but now have that option of doing so without any adverse tax effects for the participant. See [Benefit News Briefs 2010-32](#).

#### **Application to Grandfathered Plans**

This age 26 dependant coverage extension applies to grandfathered and non-grandfathered plans by the first day of the first plan year beginning on or after September 23, 2010, or January 1, 2011 for calendar year plans. However, for plan years beginning prior to January 1, 2014, the regulations provide that a

**“grandfathered” health plan** that has dependent coverage only has to provide extended coverage to age 26 if the child is not eligible to enroll in an employer-sponsored health plan other than a group health plan of a parent. A “grandfathered” plan is one that was in existence on or before March 23, 2010.

HOWEVER, the regulation **does not** discuss the “delayed” effective date for collectively bargained plans. The *Preamble* indicates that regulations on “grandfathered” plans will be coming soon. No doubt, this “delayed” collective bargaining agreement (CBA) effective date issue will be clarified soon, hopefully in the expected “grandfathered” plan regulations. Until then, CBA-based plans, including multiemployer CBA plans may wish to plan for an effective date the first day of the first plan year beginning on or after September 23, 2010.

Ordinarily, where the law contains a delayed effective date for collectively bargained plans, such plans are given until the first day of the first plan year beginning on or after the date of the expiration of the CBA. However, due to peculiarities in the language used in the section of the *PPACA* dealing with this “delayed” effective date, there is a split of opinion as to whether the delay applies to certain *PPACA* reforms, including the age 26 dependent extension of coverage.

Some multiemployer self-insured plans are implementing age 26 coverage on the earlier date regardless of when the CBA expires. With over 65 insurers, including most Blues insured plans, CIGNA, Humana, AETNA and United HealthCare, offering age 26 coverage NOW, before the required compliance date, there may some “political”/“political correctness” pressure on CBA plans (or what the media often calls “union” plans) to extend coverage by at least the first day of the first plan year beginning on or after September 23, 2010, or January 1, 2011 for calendar year plans.

### **Dependent Eligibility Factors No Longer Allowed**

The regulations clarify that the with the expansion of dependent coverage required by the *PPACA* to children until age 26, conditioning coverage on whether a child is a tax dependent or a student, or resides with or receives financial support from the parent, is no longer appropriate in light of the correlation between age and these factors.

Thus, the regulations clarify that, with respect to children who have not attained age 26, a plan or issuer **may not define dependent** for purposes of eligibility for dependent coverage of children **other than in terms of the relationship between the dependent and the participant.** The *PPACA* changed the applicable definition of a child to *“an individual who is the son, daughter, stepson, or stepdaughter of the employee, and a child includes both a legally adopted individual of the employee and an individual who is lawfully placed with the employee for legal adoption by the employee.”*

Examples of previously allowable eligibility restrictions on dependent coverage that now cannot be used for defining dependent eligibility (or continued eligibility) include:

- financial dependency on the participant (or any other person),
- residency with the participant (or any other person),
- student status,
- employment,
- eligibility for other coverage,
- marital status, or
- any combination of these.

Plans may NOT charge an additional premium or fee for dependents based on age. Thus, in a multiemployer plan, if dependents are normally covered without any additional fee, plans cannot charge under age 26 dependents who are now eligible for coverage a fee for that coverage. See examples at subsection (e) of the regulation.

### **What About Dependents Under 26 Who Have Aged Out Of Coverage?**

The regulations provide transitional relief for a dependent whose coverage ended, or who was not eligible for coverage under a plan (insured or self-insured) because the plan ended dependent coverage before age 26.

#### ***Required Notice to Affected Dependents***

Under the regulations, all group health plans and health insurance issuers ***must provide notice of a 30-day right to enrollment to dependents under age 26 not later than the first plan year beginning on or after September 23, 2010.*** The notice can be provided to the employee or with enrollment materials, if prominently displayed.

The *Preamble* notes that many health insurance issuers have announced that they will allow continued coverage of adult children before such coverage is required by the *PPACA*. Accordingly, the *Preamble* continues, a plan that allows continued coverage of older dependents before being required to do so by the *PPACA* is not required to provide the enrollment opportunity with respect to children who do not lose coverage.

#### ***If Elected, When Does the Dependent Coverage Begin?***

If the under age 26 dependent 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.

### **Examples**

The regulations contain examples to illustrate these transitional rules.

One example illustrates that, if an under age 26 dependent qualifies for an enrollment opportunity 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.

Similarly, another example illustrates that, if a plan offers more than one benefit package option, and the under age 26 dependent qualifies for enrollment due to this change in the law, and the parent is enrolled in one benefit package option, the plan must provide an opportunity to enroll the dependent in any benefit package option for which the dependent is otherwise eligible (thus allowing the parent to switch benefit package options).

Another example illustrates that an under age 26 dependent who qualifies for an extended enrollment opportunity and who is covered under a COBRA continuation provision must be given the opportunity to enroll as a dependent of an active employee (i.e., other than as a COBRA-qualified beneficiary). In this situation, if the dependent loses eligibility for coverage due to a qualifying event (including aging out of coverage at age 26), the dependent 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).

The final example illustrates that an employee who joined a plan prior to the applicability date of the regulation, and has a child who never enrolled because the child was too old under the terms of the plan but has not yet turned 26, must be provided an opportunity to enroll the child under this section even though the child was not previously covered under the plan. However, if the parent is no longer eligible for coverage under the plan (for example, if the parent has ceased employment with the plan sponsor) 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.

### **Action Items**

Trustees should determine the expiration date of the last CBA covering the plan that was in effect on March 23, 2010 and adopt a timeline for implementation of these changes. Plan Documents will need to be revised, Summaries of Material Modifications (SMM) issued and enrollment information and forms will need to be updated. Plan professionals will need to provide projections of anticipated additional costs for financial planning purposes as in multimeployer group health plans, there is generally no "single" vs "family" coverage as the plan usually covers the entire family for the flat contribution rate.

\* \* \*

**Technical Note:** With the elimination of "dependency" tests, the only real test is whether the person formerly called a "dependent" is a "child" of the participant. The term dependent has been around for a long time. While it may be more accurate to call such an under age 26 person a "child" or "adult child", we have stayed with the term dependent, using it as short-hand for such individuals.

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