

Patient Protection and Affordable Care Act Extension of Dependent Coverage to Age 26

The Patient Protection and Affordable Care Act (PPACA), signed into law on March 23, 2010, and the Health Care and Education Reconciliation Act (HCERA), signed into law on March 30, 2010 contains a provision requiring health plans and health insurance issuers that currently provide dependent coverage to children to extend this coverage for young adults up to age 26. This coverage extension applies to both grandfathered plans (those in existence as of March 23, 2010) and non-grandfathered plans and is effective the first plan year beginning after September 23, 2010 (January 1, 2011 for calendar year plans). Along with the requirement to extend this coverage, reform legislation (HCERA) also stipulated that its value would be excluded from the employee's gross income for federal tax purposes through the end of the calendar year in which the child turns 26. This favorable tax treatment is effective March 30, 2010.

The Departments of Treasury, Labor, and Health and Human Services published interim final rules implementing this provision's requirements on May 13, 2010 in the *Federal Register*. Public comments are being accepted until August 11, 2010.

<http://www.dol.gov/ebsa/pdf/dependentcoverage.pdf>

In April, the Internal Revenue Service (IRS) released Notice 2010-38, which provides guidance regarding the tax treatment of health care benefits provided with respect to children under 27.

<http://www.irs.gov/pub/irs-drop/n-10-38.pdf>

Key Provisions

- All plans and insurance issuers providing dependent coverage now must extend the coverage to children up to age 26. There is an exception for grandfathered plans allowing exclusion until January 2014 for adult children up to age 26 who are eligible to enroll in other employer-sponsored health plan coverage. (If the child can enroll in either parent's employer sponsored insurance, neither plan may exclude the child from coverage based on the fact that the child has coverage from the other parent.) Plan changes made to comply with this new requirement - including early compliance - will not cause a plan to lose its grandfathered status.
- The only allowable eligibility restrictions are the relationship between the plan participant and the child and the age of the child. Eligibility may not be restricted based on factors such as: student status, marital status, financial dependency, or residency.
- Coverage for the child of a child receiving dependent coverage (e.g. grandchild) or the spouse of an eligible child is not required.

- Plans cannot vary the terms or benefits of the plan/health insurance coverage based on the age of the child (except for those 26 or older). Additional premium surcharges may not be added solely for this group of dependents. A plan can charge costs for additional dependents, but the age of the dependent child may not be considered. These adult children must be offered the same benefit coverage options as all other dependents.
- Plans must provide adult children a 30-day enrollment opportunity. Written notice of this enrollment opportunity must be provided and the 30-day enrollment window must be open no later than the first day of the plan year beginning on or after September 23, 2010. This special enrollment applies to adult children:
 - Whose coverage already ended (e.g. due to age limit or graduation from college)
 - Who were denied coverage (e.g. over age limits when participant became eligible for coverage), and
 - Who become eligible for coverage for the plan year beginning after September 23, 2010.

Many states have their own laws (with varying eligibility restrictions) requiring plans/insurers to provide or offer coverage to older children. Both sets of laws (state and federal) should be considered when determining if the plan is in compliance.

For further information, contact Steven Kreisberg or Mary Meeker in AFSCME's Department of Research and Collective Bargaining Services.

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