

**Health Care Reform
Coverage Eligibility – Dependents to Age 26**

April 2010

Health Care Reform has mandated that group health plans offer coverage to dependent children until they attain age 26. This *Briefing* responds to frequently asked questions on the topic of children who qualify as dependents but the Department of Health & Human Services (HHS) has advised that regulations that further define who is a dependent will be issued.

Dependent Coverage Rule:

Q1: What is the new rule regarding dependent coverage of children?

A1: A group health plan that offers dependent coverage for children shall continue to make such coverage available for eligible dependent children until the age of 26 (“Adult Children”).

Q2. When this rule becomes effective, may a group health plan continue its existing dependent coverage for full-time students as was the case for full-time students younger than age 24 but just extend the coverage for full-time students to age 26?

A2: Unlikely. Unless new regulations state otherwise, we believe that plans should anticipate coverage for all Adult Children dependents regardless of their student status. One of the purposes of Health Care Reform is to expand access. Individuals between the ages of 19 and 26 have the highest uninsured rate of any age group in the nation.

Q3: Just to clarify, what are the current Federal child dependent rules?

A3: The Internal Revenue Code (§ 105(b)) provides for favorable tax treatment for health coverage of “dependents” who are “qualifying children” (§ 152). The rules are quite complex but generally refer to children who are either (i) younger than age 19 or (ii) full-time students younger than age 24. In addition, the child must live with the parent for more than half the year, not rely on themselves for more than half of their own support and not file a joint tax return with a spouse for anything other than a tax refund.

Q4: How does Health Care Reform change the definition of child dependent?

A4: We believe that the requirement for full-time student status for dependent children between the ages of 19 and 24 is eliminated. Going forward, it appears that any child dependent younger than age 26, regardless of student status, must be offered coverage under a plan subject to the rules regarding eligibility under another employer’s plan.

Q5: Will plans be permitted to exclude Adult Children who are married?

- A5:** No. Under the new rules coverage must be offered to Adult Children whether or not married, provided the Adult Child satisfies the other elements of being a child dependent.
- Q6: Must a plan cover children of Adult Children?**
- A6:** No. Children of Adult Children are expressly excluded from coverage.
- Q7: Are plans required to cover the spouses of Adult Children?**
- A7:** Unless new regulations provide otherwise, there is no obligation to cover spouses of Adult Children.
- Q8: Are there any exceptions to the new rules?**
- A8:** Yes. A group health plan in existence on March 23, 2010 (a “grandfathered” plan) does not have to provide coverage to Adult Children who are eligible for coverage under another employer’s plan. New regulations are anticipated to define when a plan ceases to be “grandfathered.”
- Q9: Does the exclusion of Adult Children who are eligible under another employer’s plan refer to another parent’s plan or a plan of an employer of the Adult Child?**
- A9:** As the new law is written, a “grandfathered” plan may exclude from coverage an Adult Child who is eligible for coverage under another employer’s plan. This could mean that a plan is not required to cover an Adult Child who is eligible for coverage under either (i) another parent’s plan or (ii) their own employer’s plan. For example, an Adult Child who works as a part-time employee may be eligible for coverage under his employer’s plan whether or not he participates in the plan. Although coverage as a part-time employee may be more expensive than adding the child to a parent’s plan, as the law is written, it appears that this Adult Child may be excluded from coverage as being eligible under another employer’s plan.
- Q10: If an Adult Child is eligible for coverage under the plans of both parents, which plan may exclude the child from coverage?**
- A10:** This issue is not addressed in the statute. However, we anticipate that there will be a recommended ordering rule under the coordination of benefits rules.
- Q11: Does Health Care Reform impact the benefits offered to children of domestic partners?**
- A11:** Because Federal Law does not recognize domestic partnerships, it is unlikely that children of domestic partners will satisfy the rules for being a “qualifying child” dependent for Federal income tax purposes. However, because California law recognizes domestic partnerships, children of domestic partners may have state tax favorable health coverage under California’s Revenue & Taxation Code.

Effective Dates:

Q12: When must plans comply with the new dependent coverage rules?

A12: The rules are effective for plan years beginning on or after September 23, 2010. The immediate impact will be on plans whose plan year begins on October 1, 2010.

Q13: Is there a Special Enrollment Right under HIPAA?

A13: Not at this time, but HHS has indicated that it is exploring whether to permit a special enrollment for Adult Children who have been dropped from coverage under a plan because of exceeding the age limits.

Transition Issues:

Q14: Is there anything that needs to be done now to address the issue of Adult Children who have been dropped from coverage or does this wait until the next open enrollment?

A14: At this time, plans are not required to re-enroll Adult Children who have already been dropped from coverage. However, this is an excellent time to begin good communications to employees about the status of the law, eligibility, enrollment and exclusions if eligible for coverage with another employer.

Q15: Must plans still require certification of full-time student status?

A15: Until the new dependent rules become effective for a plan, it should continue its requirements for certification of full-time student status. Once the new coverage rules are effective, certification of full-time student status appears unnecessary. However, we recommend that, upon enrollment for the new plan year, employees should be required to certify that their Adult Children are dependents and that they are not eligible for coverage under another employer's plan subject to the coordination of benefits issues mentioned above.

Q16: How should a plan address child dependents who are currently covered under the plan but who will be dropped from coverage over the next few months – knowing that they will be re-enrolled for the next plan year?

A16: Unless HHS issues a transition rule, Adult Children who lose eligibility for coverage because they no longer satisfy the rules of the plan may not continue in the plan as eligible dependent children. It is a fiduciary responsibility to follow the terms and conditions of a plan as described in the plan document. However, if the plan provides, they may retain eligibility in a different dependent status or COBRA continuation coverage would be available to bridge the gap until they re-enroll for the next plan year.

Q17: Will an Adult Child who has been dropped from coverage be subject to the preexisting condition rules when re-enrolling in a plan under these new rules?

A17: Adult Children re-enrolling in a plan would be subject to the plan's preexisting condition rules. Under Health Care Reform, preexisting conditions are prohibited for children (i.e. under age 19) effective for plan years beginning on or after September 23, 2010 but not for adults. Preexisting condition exclusions will be prohibited for adults beginning in 2014.

Q18: Must dependent status be verified?

A18: While not a requirement by law, verification of dependent status is a good fiduciary practice aimed at preserving plan assets and costs. Many employers engage independent companies to conduct

dependent audits because verification of dependent status may be administratively burdensome or lax.

Other Issues:

Q19: Will it be necessary to amend the plan?

A19: Yes. Plans must describe their eligibility requirements. In addition, amendments must be adopted prior to the beginning of the plan year. Enrollment materials, summaries, etc. will need to be updated as well.

Q20: Are there any other new requirements of Health Care Reform that would impact plans regarding Adult Children?

A20: Health Care Reform has a new rule regarding notice to employees. The rule requires 60 days advance notice about material changes to health plans. Although effective for plan years beginning on or after September 23, 2010, we recommend that this notice rule be adopted as a best practice now. Plan sponsors may wish to take the 60-day notice period into account when scheduling open enrollment.

Q21: May plans increase the amount of employee contributions for families with Adult Children?

A21: At this time the true cost impact of Health Care Reform on plans is unknown, but it's possible that the new dependent coverage rules would add cost. As a general rule, employee contributions may be increased each plan year subject to the terms of the plan or other agreements that may impact costs.

These FAQs are believed to be accurate as of the date of this *Briefing*. However, as Health Care Reform is digested and dissected, or as regulations and clarifications are issued, the responses in this *Briefing* may change.

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