

PUBLICATION

Spotlight on Health Care Reform: Age 26 Requirements

Authors: Andrea Bailey Powers

May 17, 2010

The health care reform package enacted earlier this year contains a number of provisions that will require various federal agencies to issue guidance on their implementation over the coming months. The first regulations were recently issued and contain guidance regarding the new provisions covering health plan participants' children.

Under the health care reform package, certain employer-sponsored group health plans must extend their dependent coverage to employees' "children" up to age 26 (the "Age 26 Requirement"). Plan sponsors must implement this change effective no later than the first day of the first plan year which begins on or after September 23, 2010 (January 1, 2011 for calendar year plans). On May 10, 2010, the U.S. Departments of Health & Human Services (HHS), Labor (DOL), and Treasury issued the first interim final regulations on the Age 26 Requirement. Those regulations provide the following guidance:

- Only plans providing dependent coverage of children are required to adopt the Age 26 Requirement. If a plan does not offer dependent coverage the plan need not cover an employee's children. The term "child" will be defined by later guidance.
- Plans can not impose requirements on the child for these purposes, such as being a full-time student or being the employee's tax-dependent. However, until 2014, grandfathered plans (i.e., plans already effective prior to March 23, 2010¹) which are not materially changed, under standards not yet established, may deny coverage to a child who is eligible for coverage under another group health plan (other than a plan of the other parent). Also, a child is not required to be covered unless the employee-parent is covered.
- Plans are not required to cover a child's spouse or child.
- Plan premiums and coverage must be uniform, regardless of age, for all children not yet 26.
- A child under age 26 must be given a 30-day opportunity to enroll in the parent's health plan effective as of the effective date of the Age 26 Requirement. A special advance notice of this opportunity must be given prior to the effective date.
- All coverage options must be offered to a child entering the plan. A covered parent must also be offered the opportunity to elect the same coverage at the same time.
- A child will be eligible for COBRA (perhaps for a second time) upon being dropped from the plan at age 26.

Action Steps

- Plan sponsors should consult their plans advisors to have plan documents and summary plan descriptions amended for the Age 26 Requirement.
- In planning an open enrollment period, plan sponsors should include the special enrollment rights for those children under age 26 who have lost eligibility under the plan. If this special enrollment cannot be accommodated during the plan's next open enrollment period, plan sponsors must hold a special enrollment period.
- Because more guidance, including guidance regarding the definition of a grandfathered plan and a child, is due from HHS, DOL, and Treasury over the coming months, plan sponsors should consult

their advisors to determine the appropriate strategy for implementing the health reform package and its regulatory guidance in their group health plans.

- Any change to a plan as it existed on March 23, 2010 may result in a loss of grandfathered status. Accordingly, sponsors should carefully consider any proposed changes to existing plans.

If you have any questions concerning this Age 26 Requirement or any other aspects of the health care reform, please contact any of the attorneys in the Firm's Tax or Health Care Departments.

¹ This is only a general explanation of what constitutes a grandfathered plan. The health care reform package does not clearly define the term "grandfathered." The DOL, Treasury, and HHS (the federal agencies responsible for the regulations) expect to issue regulatory guidance regarding the definition of a grandfathered plan by the end of May.