

HEALTH REFORM IMPACT

What you need to know NOW

NEWS FOR THE CLIENTS AND FRIENDS OF BASS, BERRY & SIMS PLC

New Regulations Expand Dependent Coverage to Children Under Age 26

May 17, 2010

Group health plans that offer dependent child coverage must generally make that coverage available to children until age 26, effective January 1, 2011 for calendar year plans. Just-released regulations clarify the scope of coverage that must be offered and the premiums that may be charged for that coverage. The regulations also establish a new special enrollment process for children previously dropped from a plan based on age or who otherwise become eligible for coverage due to the law change. Coupled with other recent IRS guidance,¹ the new regulations will result in greatly expanded coverage of children, all in a tax neutral manner to employees.

Highlights of the new regulations include:

- **Coverage to Age 26.** Plans offering dependent coverage of children must make that coverage available to any child under the age of 26 regardless of the child's student or marital status, financial dependency on the employee, or residency. Eligibility for dependent coverage may only be based on the relationship between the child and the employee. In addition, the terms of the coverage made available may not vary based on age except for children age 26 or older (if coverage is allowed for this group). The regulations do not define the term "child."
- **Pricing.** When determining the premiums to be charged or passed on to employees for coverage under a plan, employers may consider increased costs that might result from the newly expanded coverage requirements. However, the employer must treat all dependents the same regardless of age. This means an employer may not charge higher premiums for dependents over a certain age or limit the availability of benefits based on a dependent's age.
- **New Notice and Enrollment Procedures.** Notice of the new coverage requirements must be provided to employees and their children who have either "aged out" of the plan or gained eligibility for coverage under the plan, generally by January 1, 2011 (for calendar year plans). Dependents then have 30 days to elect plan coverage. Current

¹ Please [click here to view](#) our earlier client alert discussing Notice 2010-38 ("*IRS Issues Guidance Which Permits Group Health Plans to Eliminate Potential Coverage Gap for Adult Children*").

COBRA enrollees who will not reach age 26 by January 1, 2011 must also be offered the opportunity to enroll on a non-COBRA basis (as the dependent of their employed parent) and, if they do so, will be eligible for COBRA again upon experiencing a subsequent qualifying event (e.g., reaching age 26 or any later age-out provided by a plan).

Most employers will want to provide the notice before January 1, 2011, since a dependent child's election of coverage within the 30-day window must be effective as of January 1, 2011 (for calendar year plans). For this reason (i.e., to avoid the need for possible retroactive coverage), the regulations allow the notice to be included with open enrollment materials for the 2011 plan year. Notice delivered to the employee is deemed delivered to the child.

- **Grandfathered Plans.** Group health plans that were in existence on March 23, 2010 ("grandfathered plans") are generally exempt from the requirement to offer dependent coverage to a child under 26 if the child is eligible for group coverage through his (or his spouse's) employer. The exemption does not apply if the only employer coverage available to the child (besides the grandfathered plan) is that of his other parent's employer. At the present time, there is little guidance on how employers may verify whether a child is eligible for coverage through his employer, but reasonable procedures such as certification by the child or the child's parent during open enrollment should be considered. The limited exemption for grandfathered plans expires in 2013.
- **Implementation.** The regulations will cause plan design changes much greater than anticipated by the original health reform legislation since they apply not only to dependents who have already lost coverage on account of age, but also to dependents who were never offered coverage for this reason (for example, a child who was over the plan's limiting age when the parent commenced participation). Further, the elimination of the ability to condition dependent coverage on such factors as student status, marital status, residency or financial dependency will require most plans to be amended even in grandfathered plan situations. While it is surprising that the regulations fail to include a definition of the term "child," employers should exercise caution if they attempt to define that term in a narrow manner.

Employers are being encouraged by the government to implement the new dependent coverage requirement prior to 2011, and many insurance carriers have already announced plans for early implementation. However, employers with self-insured plans should consider the increase in benefit and administration costs when weighing the advantages of early implementation, and should also consult with their stop-loss carrier prior to making a final decision. Early implementation could also require a mid-year open enrollment opportunity for newly eligible children who are not currently covered under the plan.

If you have questions regarding the information in this alert, or with respect to other provisions of the health reform legislation as it relates to your employee benefits plans, please contact any of the attorneys in our Employee Benefits Practice Group listed below.

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