

May 11, 2010

Who's Your Daddy? Agencies Release Interim Rules on Dependent Health Care Coverage of Children

On May 10, 2010, three federal agencies (the Internal Revenue Service, the Department of Health and Human Services and the Employee Benefits Security Administration, Department of Labor), released interim final rules for group health plans and insurance issuers relating to coverage of children to age 26 as "dependents" under the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act (together, the "Act").

The Act requires plans and issuers that offer dependent coverage to make the coverage available until a child reaches the age of 26. The Act and recent IRS guidance also changed the definition of "dependent" for purposes of tax-free health coverage to include a child who reaches age 26 during the plan year. Both provisions apply regardless of whether the child otherwise qualifies as a dependent under the tax code.

As expected, the interim rules provide that a plan or issuer may not deny or restrict coverage for any child who has not attained age 26 based on the presence or absence of the child's financial dependency (upon the participant or any other person), residency with the participant or with any other person, student status, employment, or any combination of those factors. In other words, the interim rules provide that a plan or issuer may not define "dependent" for purposes of eligibility *other than in terms of the familial relationship between the child and the covered participant*. For these purposes, a child is a biological child, an adopted child or a child placed for adoption, a step-child or a foster child placed by a court or agency.

The interim final regulations also provide that neither the terms of the plan or policy for dependent coverage nor the cost for such coverage may vary based on the age of a child. Thus, no surcharges or reductions in benefits for student children or children above a specified age or in a specified category are permitted. Neither the Act nor the interim rules require a health plan or health insurer to provide coverage to a covered child's spouse or a covered child's own child.

The rules contain a broad transitional rule requiring a plan or issuer to give a special 30 day enrollment period to any child whose coverage ended or who was denied coverage on account of the child's age, not later than the first day of the first plan year following September 23, 2010 (January 1, 2011 for most plans). The coverage is retroactive to the first day of the plan year, even if the enrollment occurs after the first day of the plan year. Fortunately, the timing of this notice period permits coordination of this requirement with a calendar year plan's open enrollment period.

These rules apply to plans for plan years beginning on and after September 23, 2010 (January 1, 2011 for most plans). The rules apply to all plans, even those in existence on March 23, 2010 (so-called "grandfathered" plans under the Act). However, until January 1, 2014, grandfathered plans can exclude a child under age 26 if that child is eligible to enroll in another employer-sponsored health plan in a capacity other than a dependent child.

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Jane Francis
jfrancis@hollandhart.com
(303) 295-8599
Denver



Rebecca Hudson
rhudson@hollandhart.com
(303) 295-8005
Denver



Elizabeth Nedrow
enedrow@hollandhart.com
(406) 252-2166
Billings



Leslie Thomson
lthomson@hollandhart.com
(406) 252-2166
Billings



Brenda Berg
brberg@hollandhart.com
(303) 295-8029
Denver



Michelle Sullivan
mmsullivan@hollandhart.com
(406) 252-2166
Billings

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