American Benefits Council
Initial Agency Guidance on PPACA

New Interim Final Regulations Regarding Adult Child Coverage
May 13, 2010

Seth Perretta
Adult Child Extended Coverage

- Act requires a plan to provide adult child coverage if it provides for any dependent coverage of children
  - Two important pieces of guidance
    - IRS Notice 2010-38 (issued 4/27/10) – Governs taxation of coverage
    - Interim Final Regulations (“IFR”) (issued 5/9/10) – Governs coverage extension

- Effective for plan years beginning on or after September 23, 2010 (i.e., 2011 for calendar year plans) REGARDLESS OF PLAN’S GRANDFATHERED STATUS
  - For plan years beginning prior to 2014, a “grandfathered” group health plan must only provide adult child coverage to qualifying individuals who are not eligible for other qualifying employer-sponsored coverage
    - IFR clarifies that such plan may exclude an adult child from coverage if such adult child is eligible for coverage under an employer-sponsored health plan “other than a group health plan of a parent”
    - Coordination of benefit issues
**Adult Child Extended Coverage**

- **IFR** — Requires all group health plans and issuers that provide dependent coverage of children to “make such coverage available for children until attainment of 26 years of age”

**Q:** What types of coverage are subject to the coverage extension?

**A:** Generally all group health plan coverage, unless HIPAA-excepted

<table>
<thead>
<tr>
<th>IN</th>
<th>OUT</th>
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<tbody>
<tr>
<td>✓ Major Medical</td>
<td>✓ HIPAA-Excepted</td>
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<tr>
<td>✓ HRA</td>
<td>✓ Health FSA</td>
</tr>
<tr>
<td>✓ Mini-Medical</td>
<td>✓ HSA</td>
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<td>✓</td>
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<td>✓ LTC</td>
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<td>✓ Specified Disease</td>
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<td>✓</td>
<td>✓ Fixed/Hospital Indem</td>
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<td>✓</td>
<td>✓ Med Supplemental</td>
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<tr>
<td>✓</td>
<td>✓ Disability</td>
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<tr>
<td>✓</td>
<td>✓ On-Site Medical</td>
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**Does your plan currently provide dependent coverage?**

- **NO**
  - **OUT**
    - **HIPAA-Excepted**
      - **Health FSA**
      - **HSA**
      - **Dental**
      - **Vision**
      - **LTC**
      - **Specified Disease**
      - **Fixed/Hospital Indem**
      - **Med Supplemental**
      - **Disability**
      - **On-Site Medical**

  - ****Sponsor’s Choice** **
    - May offer adult child coverage at plan sponsor’s election

- **YES**
  - **IN**
  - Must provide adult child coverage generally beginning for plan years after 9/22/10 (i.e., 2011 for calendar year plans)
Adult Child Extended Coverage

- **IFR**
  - Essentially requires plans that make available “dependent coverage of children” to make available the coverage to all “children” under the age of 26
  - *Appears can only limit eligibility based on relationship*
    - For example, could provide coverage only to children of employees
  - **CANNOT place restrictions on eligibility based on a child’s age**
    - For children through age 25; restrictions on children 26 and over permitted
  - **CANNOT make available coverage with different “terms” based on a child’s age**
    - “Term” not defined in the IFR, but likely should be read broadly based on examples to include benefits, coverage levels, and pricing
  - **CANNOT charge more for coverage based on child’s age**
    - Clearly applies to any premium surcharge
    - Silent on issue of copayments and deductibles, but presumably included
Adult Child Extended Coverage

- Who is covered by the extension?
  - NOTE: IRS Notice 2010-38, which pertains to the corresponding tax “fix” for adult child coverage, defines “child” by reference to IRC 152(f)(1) (which defines child as legal child, foster child or step-child of the employee)
    - Clear Dependency Tests do not apply

Employee’s legal child (including through adoption) OR step-child OR foster child

Does NOT turn 27 during the calendar year

Qualifying Adult Child

Approved
Adult Child Extended Coverage

- Who qualifies?
  - IFR does **NOT** include an express definition of “child”
    - Lack of agency agreement
    - Concerns regarding allowing plans/issuers to use dependency tests to exclude non-familial minor age children and grandchildren
Implications for employers regarding grandchild and other coverage:
- Coverage decisions needed
- State taxation issues are likely to arise

<table>
<thead>
<tr>
<th>Option</th>
<th>Description</th>
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<tbody>
<tr>
<td>Option #1</td>
<td>Preserve Dependency Tests&lt;br&gt;• Some potential risk here&lt;br&gt;• Leg history and Notice 2010-38 helpful</td>
</tr>
<tr>
<td>Option #2</td>
<td>Eliminate Dependency Tests&lt;br&gt;• Clearly compliant with IFR&lt;br&gt;• Potential adverse selection&lt;br&gt;• Likely increased negative claims experience</td>
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<tr>
<td>Option #3</td>
<td>Eliminate Coverage&lt;br&gt;• Clearly compliant&lt;br&gt;• Potential employee relations “hit”</td>
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</table>
Adult Child Extended Coverage

- **IFR**
  - Also mandates *special enrollment opportunity* for certain adult children
    - Applies to plan years beginning on or after September 23, 2010 (i.e., for the 2011 plan year for calendar year plans)
  - **Requirements** for compliant special enrollment
    - At least 30-day open enrollment opportunity
    - To children who are not yet age 26 and who either (i) were dis-enrolled from the plan by reason of “aging out,” or (ii) were ineligible or otherwise denied for coverage because they were too old
    - Provided “not later than the first day of the first plan year beginning on or after September 23, 2010,” (i.e., January 1, 2011 for calendar year plans)
      - Plans may use existing open enrollment period (so long as made at least 30 days)
      - With retroactive coverage?
Adult Child Extended Coverage

- **IFR**
  - Requirements for compliant special enrollment (cont’d)
    - Must provide *written* notice to eligible adult children
      - May be provided to parent employee on behalf of employee
      - May be included as part of regular enrollment materials BUT must be “prominent”
        » “Prominent” is NOT defined. Presumably should use same-size font and consider offsetting or highlighting
    - Employer considerations
      - Can employer accurately identify all individuals who should be noticed?
      - If not, probably best to include notice as part of open enrollment materials generally
Adult Child Extended Coverage

2010 Transition Year Issue

** IFR makes clear extending coverage does NOT jeopardize grandfathered plan status **

<table>
<thead>
<tr>
<th>OPTION 1 – Status Quo</th>
<th>OPTION 2 – Status Quo</th>
<th>OPTION 3 – Extend Coverage to Adult Children Who Would Otherwise Lose Coverage</th>
<th>OPTION 4 – Extend Coverage to All Qualifying Adult Children Regardless of Whether Enrolled Now</th>
</tr>
</thead>
<tbody>
<tr>
<td>PRO: Easy to administer</td>
<td>PRO/CON: Same as Option 1 except that employee’s premium cost for adult child COBRA coverage is reduced to extent of marginal tax rate; also some marginal employee relations “bump”</td>
<td>PRO: Good for employee relations</td>
<td>PRO: Good for employee relations (arguably even better than Option 3)</td>
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<tr>
<td>PRO: To extent self-insured, increased premiums for plan sponsor</td>
<td>PRO/CON: Reduces disruption in coverage</td>
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<tr>
<td>CON: Increased employee premium cost in form of COBRA premiums for adult child</td>
<td>CON: Likely need to amend health plan and cafeteria plan documents</td>
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<td>CON: No employee relations “bump”</td>
<td></td>
<td>CON: For employer, increases cost because they lose COBRA premiums, unless increase premium cost for adult child coverage during transition period</td>
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<td>CON: Possible adverse selection</td>
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Davis & Harman LLP
Wrap-Up

- Questions?

- Contact Information

  Seth Perretta  
  Partner, Davis & Harman LLP  
  (202) 347-2230  
  www.davis-harman.com