



# Health Care Reform Management Alert Series

Issue 3

## New Interim Rules Issued for Adult Dependent Coverage

This supplements Issue 1 of our Health Care Reform Management Alert Series, in which we addressed health care coverage for adult children under the Patient Protection and Affordable Care Act (PPACA), as modified by the Health Care and Education Reconciliation Act of 2010 (HCERA) (collectively the “Act”).

As we stated in Issue 1, (Issue 1 can be accessed by clicking [here](#)) the Act requires group health plans and health insurance issuers that provide dependent health coverage to continue such coverage for adult children until they attain age 26. In response to the mandate in the Act to issue regulations defining the dependents to whom the coverage shall be made available, the Departments of Health and Human Services, Labor and the Treasury have jointly issued interim final rules (the “Rules”) relating to dependent coverage.

### Definition of Dependent

The Rules provide some guidance on how a group health plan or health insurance issuer may define “dependent” for purposes of eligibility for dependent coverage. With respect to children who have NOT attained age 26, a plan or issuer may define dependent based on the child’s *relationship* with the participant, but may not define dependent in a manner that would deny or restrict health coverage for a child based on the child’s:

- financial dependency upon the participant or another person;
- residency with the participant or another person; or
- student or employment status.

Although for plan years beginning before January 1, 2014, grandfathered plans may deny coverage to an adult child who is eligible to enroll in another employer-sponsored health plan (other than a parent’s plan), thereafter the Rules provide that a plan or issuer will not be permitted to deny or restrict coverage based on eligibility for other coverage. In fact, if a child’s parents have coverage under separate employer-sponsored plans, and the adult child is eligible for coverage under both plans, neither plan may deny the child coverage.

## Uniform Cost and Coverage

Under the Rules, plans and issuers may not vary dependent coverage based on age, except for children who have attained age 26. For example, a plan or issuer may not impose a premium surcharge (i.e. charge more) for older children or offer only limited benefit options to older children.

Thus, although plans are not required to cover grandchildren, children of domestic partners and/or children over which a participant has legal guardianship, if they do so, they may not terminate coverage or vary the terms of coverage based on the age of a child who has not attained age 26. Note that a plan or issuer may offer different levels of coverage where the cost increases based on the number of dependents, regardless of their age. For example, plans may want to look at adding coverage tiers covering an employee plus a specified number of dependents (such as employee plus three, employee plus four or more) in addition to or in lieu of family-level coverage. Beware that such a change could affect the availability of grandfathering treatment.

## Special Enrollment Right

The Rules contain a one-time special enrollment right for adult children who become eligible for coverage under the Act. An adult child who was denied health coverage or lost coverage due to the attainment of a certain age (and is still under age 26) will have the right to enroll or re-enroll in the plan, regardless of whether he or she has continued coverage under COBRA. A plan or issuer must give such a child an opportunity to enroll that continues *for at least 30 days* (including written notice of such opportunity). The enrollment opportunity and notice must be provided no later than January 1, 2011, for calendar year plans (i.e. the first day of the first plan year beginning on or after September 23, 2010). The special enrollment period must last at least 30 days even if your open enrollment period is typically less than 30 days.

The Rules state that any child who enrolls during this special enrollment period must be offered all the benefit packages available to similarly situated individuals (i.e. those who did not lose coverage nor were denied coverage because of age). If the employee is not a participant in the plan, the employee and the adult child must both be offered the opportunity to enroll in any benefit option available.

## Required Notice and Effective Date of Coverage

A written notice must be given to all adult children with this special enrollment right explaining the availability of dependent coverage to a child whose coverage ended, or who was denied coverage, before attainment of age 26. It is sufficient to provide the notice to an employee on behalf of the employee's child, and the notice may be included with other enrollment materials provided the notice is prominent.

If a child enrolls within the 30-day special enrollment period, coverage must begin no later than the first day of the first plan year beginning on or after September 23, 2010 (for calendar year plans, January 1, 2011), even if the request for enrollment is

made after the first day of the plan year (enrollment will be retroactively effective). This means that coverage may be effective retroactively in some instances, provided that enrollment occurs during the 30-day enrollment window. For example, if notice is provided on December 20, 2010, an adult child who enrolls in the plan on or before January 19, 2011, will have coverage retroactive to January 1, 2011.

## Employer Action Plan

- Determine when your plan will begin offering coverage to adult children (for calendar year plans, no later than January 1, 2011). If your plan is grandfathered, choosing to voluntarily extend adult child coverage for the remainder of 2010 will not cause the plan to lose grandfathered status.
- Examine your coverage levels and associated premium rates.
- Amend your cafeteria and health plans to remove impermissible eligibility factors for dependents and to provide for continued coverage for adult children until age 26.
- Identify all adult children who lost or were denied coverage because dependent coverage availability ended before attainment of age 26.
- Prepare written notice to such individuals, notifying them of their one-time opportunity to enroll in the plan until they attain age 26.
- Contact your vendors and stop loss carrier (if any) to coordinate plan changes.

*For further details, or if you have any questions regarding health care coverage for adult children, contact your Seyfarth Shaw LLP attorney or any Employee Benefit attorney listed on the website at [www.seyfarth.com/employeebenefits](http://www.seyfarth.com/employeebenefits).*



Breadth. Depth. **Results.**

[www.seyfarth.com](http://www.seyfarth.com)