

REFORM TOPIC SUMMARY: *Dependent to Age 26*

May 14, 2010

The following is more detailed guidance (not necessarily “high level” but certainly “elevated”) on the age 26 dependent issue. Routine disclaimers should apply here, i.e. this is our current interpretation, get legal advice, etc.

As it relates to early adoption, my advice would be as follows:

It’s good social policy, but recognize that in many cases this will likely increase plan costs (the 1-1.5% is an average and will be apportioned differently due to actual experience and carrier underwriting). While adopting the provision early doesn’t appear to affect a plan’s grandfathered status, early adoption will likely exclude plans from recapturing the limited restrictions on enrollment afforded grandfathered plans, which could extend to 2014.

Health Coverage for Children to Age 26: **General clarification...**

- There is no requirement for a group health plan to provide coverage for dependent children.
- If coverage for dependent children is offered, it must be made available to those who have not attained the age of 26 for plan years beginning on or after September 23, 2010.
- There can be limited delay of this provision for grandfathered plans (plans in existence on March 23, 2010) which allow you to exclude enrollment in the group if the child is eligible to enroll in an employer sponsored group plan (other than the health plan of either parent).
- Note that the definition of a grandfathered plan is still unclear and separate guidance on this is expected.
- Early adoption of this provision is allowed for issuers and plans (some carriers may not allow an option) and it appears that early adoption would not affect the grandfathered status of other items for the purposes of the grandfather provision.
- A dependent is defined for this purpose solely by the relationship between the participant and the child so there are no definitional refinements such as residency, employment, etc. that could be used to circumvent this provision.
- Employers should review the terms of their plan and SPDs to amend for this provision when implemented.
 - amend definitions/ provisions that reference only IRS codes for dependent children
 - plan terms clearly distinguish between dependent children who have not reached 26 and other non-code dependents who are eligible such as domestic partner etc.
 - remove references to Michelle’s law to the extent it no longer applies

- Allows tax deductibility of premium until the end of the taxable year the child turns age 26. (Further clarification is needed for situations where the plans definitions of dependent are broader than the codes i.e. the mandate may still apply even if not tax free).
- No premium differential is allowed that would discriminate on the age of the dependent.
- The dependent can be married but it does not require you extend coverage to the dependent's dependents.
- Transitional rules require that you allow those already aged off to re-enroll beginning on the first day (notice is required of this opportunity at least 30 days prior and lasts for 30 days) beginning on or after the first plan year beginning Sept. 23, 2010. Coverage must also begin on that first day, which may create some Cobra refund issues.
- Notice of the enrollment right can be made to an employee on behalf of the employee's child (can be made with other open enrollment materials as long as PROMINENT).
- These same notices and enrollment opportunities must be afforded Cobra participants.
- Child must be offered all benefit packages available and the parents will also have the ability to enroll in the child's plan (not clear if this requires a split option).

Outstanding issues:

- It is not clear if a Cobra participant under a grandfathered plan must be given the same enrollment opportunity, i.e. to add a dependent up to 26 pre-2014.
- Will a broader plan definition of child require the mandate for those more broadly defined children and receive the same tax treatment?
- Not sure if open enrollment periods specifically for this purpose will require FSA or other plan changes to be made, as well.

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