



# Legislative Brief

## Health Care Reform: Interim Final Rules on Dependent Coverage of Children Up to Age 26



### EXECUTIVE SUMMARY

The Patient Protection and Affordable Care Act (PPACA), as amended by the Health Care and Education Reconciliation Act (the Reconciliation Act), provides that health plans and issuers that offer dependent coverage to children on their parents' plans must make the coverage available until the adult child reaches the age of 26. The Departments of Health and Human Services (HHS), Labor and Treasury have issued interim final rules relating to this requirement.

- The interim final rules clarify that qualified dependents must be offered the same coverage that is available to similarly situated individuals and cannot be required to pay more. They also provide a special enrollment opportunity for qualified dependents not currently covered.
- Note that the requirement to extend coverage applies only to plans that offer dependent coverage in the first place. Most insurers and employer-sponsored plans offer dependent coverage, but there is no legal requirement to do so.
- The interim final rules complement guidance issued by the Treasury Department on April 27, 2010, on the tax benefits for dependent coverage. Under a new tax provision in the Reconciliation Act, the value of employer-provided health coverage for an employee's child is excluded from income through the end of the taxable year in which the child turns 26, effective March 30, 2010.

This RPG Solutions, Inc. Legislative Brief summarizes key points of the interim final rules. Please read below for further information. We will continue to monitor legislative and regulatory developments related to these rules and health care reform.

### EXPLANATION OF THE INTERIM FINAL RULES

#### General Rule

The interim final rules incorporate PPACA's requirement that health plans and issuers that make available dependent coverage of children, must make the coverage available for children until they reach 26 years of age.

*Example:* For the plan year beginning January 1, 2011, a group health plan provides health coverage for employees, employees' spouses and employees' children until the child turns 26. On the birthday of a child of an employee, July 17, 2011, the child turns 26. The last day the plan covers the child is July 16, 2011. This plan satisfies the requirements of the interim final rules.

#### Restrictions on Plan Definition of Dependent

The interim final rules also address a plan's definition of the term "dependent." They state that a plan or issuer may not define dependent for purposes of eligibility "other than in terms of a relationship between a child and the participant." This means that coverage may not be denied for a child who is under age 26 based on the following factors (or any combination of them):

- 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;

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- Student status;
- Employment; or
- Eligibility for other coverage (unless the plan is a grandfathered plan and the child is eligible for other employer-sponsored coverage before January 1, 2014).

The rules specifically state that plans and issuers are not required to make coverage available for the child of a dependent receiving coverage.

### Uniformity in Plan Terms

PPACA did not specifically address benefit packages or the cost of benefits available to dependents who are eligible for coverage under the new law. However, the interim final rules specifically state that the terms of the coverage cannot vary based on age (except for children who are age 26 or older). This means that qualified dependents must be offered all of the benefit packages available to similarly situated individuals who did not lose coverage because of cessation of dependent status. Also, these dependents cannot be required to pay more for coverage than those similarly situated individuals.

The interim final rules provide examples illustrating the uniformity requirement.

*Example:* A group health plan offers a choice of self-only or family health coverage. Dependent coverage is provided under family health coverage for children of participants who have not reached age 26. The plan imposes an additional premium surcharge for children who are older than age 18. This plan violates the interim final rules because the plan varies the terms for dependent coverage of children based on age.

*Example:* A group health plan offers a choice among the following tiers of health coverage: self-only, self-plus-one, self-plus-two and self-plus-three-or-more. The cost of coverage increases based on the number of covered individuals. The plan provides dependent coverage of children who have not reached age 26. In this example, the plan does not violate the interim final rules. Although the cost of coverage increases for tiers with more covered individuals, the increase applies without regard to the age of any child.

*Example:* A group health plan offers two benefit packages -- an HMO option and an indemnity option. Dependent coverage is provided for children of participants who have not reached age 26. The plan limits children who are older than age 18 to the HMO option. This plan violates the uniformity requirement because the plan, by limiting children who are older than age 18 to the HMO option, varies the terms for dependent coverage of children based on age.

### Special Enrollment Opportunities for Dependents

Before the coverage requirement becomes effective, a child who was covered under a group health plan or health insurance coverage as a dependent may lose or have lost eligibility under the plan due to age prior to age 26. Also, a child may not have been eligible for coverage if his or her parent first became covered under the plan when the child was under age 26 but older than the plan's eligible age.

The interim final rules attempt to remedy this situation by providing all eligible dependents with a special enrollment opportunity. For a child to be eligible for special enrollment, his or her coverage must have ended (or not been offered) before the age of 26 and he or she must be eligible for extended coverage under PPACA.

Plans must provide these dependents with an opportunity to enroll which continues for at least 30 days, along with written notice of the opportunity to enroll. The opportunity (including the written notice) must be provided no later than the first day of the first plan year beginning on or after September 23, 2010. This rule applies regardless of

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whether the plan or coverage offers an open enrollment period and regardless of when any open enrollment period might otherwise occur.

The written notice of the special enrollment opportunity must include a statement that children whose coverage ended, or who were denied coverage (or were not eligible for coverage) because the availability of dependent coverage of children ended before age 26, are eligible to enroll in the plan or coverage. The notice may be provided to an employee on behalf of the employee's child and may be included with other enrollment materials.

The coverage for dependents who enroll through a special enrollment opportunity must take effect no later than the first day of the first plan year beginning on or after September 23, 2010. Also, these dependents must be treated as special enrollees (as under HIPAA).

### Special Enrollment Examples

The interim final rules include a number of examples explaining the special enrollment rights.

*Example:* Employer Y maintains a group health plan with a calendar year plan year. The plan has a single benefit package. For the 2010 plan year, the plan allows children of employees to be covered under the plan until age 19, or until age 23 for children who are full-time students. Individual B, an employee of Y, and Individual C, B's child and a full-time student, were enrolled in Y's group health plan at the beginning of the 2010 plan year. On June 10, 2010, C turns 23 years old and loses dependent coverage under Y's plan. On or before January 1, 2011, Y's group health plan gives B written notice that individuals who lost coverage by reason of ceasing to be a dependent before reaching age 26 are eligible to enroll in the plan, and that individuals may request enrollment for such children through February 14, 2011 with enrollment effective retroactively to January 1, 2011.

In this example, the plan has complied with the special enrollment requirements by providing an enrollment opportunity to C that lasts at least 30 days.

*Example:* Employer Z maintains a group health plan with a plan year beginning October 1 and ending September 30. Prior to October 1, 2010, the group health plan allows children of employees to be covered under the plan until age 22. Individual D, an employee of Z, and Individual E, D's child, are enrolled in family coverage under Z's group health plan for the plan year beginning on October 1, 2008. On May 1, 2009, E turns 22 years old and ceases to be eligible as a dependent under Z's plan and loses coverage. D drops coverage but remains an employee of Z.

In this example, not later than October 1, 2010, the plan must provide D and E an opportunity to enroll (including written notice of an opportunity to enroll) that continues for at least 30 days, with enrollment effective not later than October 1, 2010.

*Example:* Same facts as the preceding example, except that D did not drop coverage. Instead, D switched to a lower-cost benefit package option.

In this example, not later than October 1, 2010, the plan must provide D and E an opportunity to enroll in any benefit package available to similarly situated individuals who enroll when first eligible.

*Example:* Same facts as the preceding examples, except that E elected COBRA continuation coverage.

In this example, not later than October 1, 2010, the plan must provide D and E an opportunity to enroll other than as a COBRA qualified beneficiary (and must provide, by that date, written notice of the opportunity to enroll) that continues for at least 30 days, with enrollment effective not later than October 1, 2010.

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*Example:* Employer X maintains a group health plan with a calendar year plan year. Prior to 2011, the plan allows children of employees to be covered under the plan until the child reaches age 22. During the 2009 plan year, an individual with a 22-year-old child joins the plan; the child is denied coverage because the child is 22.

In this example, notwithstanding that the child was not previously covered under the plan, the plan must provide the child, not later than January 1, 2011, an opportunity to enroll (including written notice to the employee of an opportunity to enroll the child) that continues for at least 30 days, with enrollment effective not later than January 1, 2011.

### Applicability Dates

The interim final rules apply to group health plans and insurance issuers for plan years beginning on or after September 23, 2010. Similarly, they apply to individual health insurance issuers for policy years beginning on or after September 23, 2010.

However, for plan years beginning before January 1, 2014, a group health plan that qualifies as a grandfathered health plan under PPACA, and makes dependent coverage of children available, may exclude an adult child under age 26 from coverage if the adult child is eligible to enroll in an employer-sponsored health plan, other than a group health plan of a parent.

These applicability dates are consistent with the effective dates of PPACA's provisions.

### Early Implementation

Although the law provides for a delayed effective date, many insurance carriers have agreed to implement the coverage requirements early. This will avoid gaps in coverage for new college graduates and other young adults. It will also save administrative costs of dis-enrolling and re-enrolling them.

### More Information

Click [here](#) for a copy of the interim final rules, as published in the Federal Register on May 13, 2010.

See this [HHS page](#) for a list of insurance companies that have agreed to implement the dependent coverage requirement before the September 23, 2010 deadline.

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