

Employer Health Plans May Immediately Cover Adult Children

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Spring marks the beginning of graduation season for high schools and colleges. For many, graduation also signals the end of coverage under a parent's employer-provided health plan, as eligibility rules are often written so that coverage ends once the child is over age 18 and no longer a student.

The health care reform act changes this for plan years beginning on or after September 23, 2010 -- but new guidance from the IRS gives employers the ability to begin *immediately* covering adult children up to age 26, including those graduating from college this spring. Moreover, this can be done even if plans have not yet been amended. Amendments must be made by the end of 2010.

The Age 26 Coverage Requirement

The health care reform act requires employer-sponsored health plans that provide dependent coverage to cover an employee's adult child up to age 26. The new law does not mandate dependent coverage, but if the plan provides dependent coverage, it must also cover the employee's adult child.

This requirement goes into effect for plan years beginning on or after September 23, 2010. There is a limited exception for plans that were already in existence on March 23, 2010, the date health care reform was signed into law. Until 2014, those plans do not have to cover an adult child who is eligible for coverage under another employer's health plan.

Adjustments to the Tax Code

Under the Tax Code, employers have been able to provide tax-free coverage for dependent children of their employees. Both the premiums paid to cover the child and the benefits paid out for medical expenses are tax-free. The Code, however, included restrictions on who could qualify for these tax-free benefits. Children over 18 had to be students who still lived with their parents, were still dependent on their parents for a majority of their support, and were under age 24.

The health care reform act revised the Code to permit tax-free coverage for a child until the end of the year in which the child turns age 26. However, there were questions about how this new law would interact with other provisions in the Tax Code.

IRS Guidance

The new guidance explains how the IRS plans to implement this new law. Significantly, it explains that:

- A "child" is a son, daughter, stepson or stepdaughter of the employee, including a legally adopted child and a child lawfully placed with the employee for legal adoption. The definition also includes a foster child—that is, a child who is placed with the employee by an authorized placement agency or by judgment, decree or other court order.
- The child does not have to qualify as the employee's tax dependent to be eligible for tax-free coverage. Thus, it no longer matters whether the child is a student, where the child lives, or whether the child is dependent on the parents for support. It also does not matter whether the child is eligible for coverage under another employer's health plan (although plans in existence on March 23, 2010 may keep this requirement until 2014). The child can even be married — though the child's spouse would not be eligible for tax-free coverage.
- The cafeteria plan rules will be retroactively revised to include a new change of status event that will allow employees to add coverage mid-year for children who become eligible because of this new law. Thus, your plan can immediately allow children who had previously aged out of coverage back into the plan if they are still under age 26, provided the plan is amended by the end of 2010.
- The new rules also allow Flexible Spending Accounts and Health Reimbursement Arrangements to pay expenses for children through the end of the calendar year in which they turn age 26.

The White House has released a list of insurance providers that have already begun to offer this coverage. The list can be found [here](#).

If you have questions about this new guidance or how the health care reform legislation applies to employer-sponsored group health plans, please contact Norbert F. Kugele, Sue O. Conway, or any other member of Warner's Employee Benefits Group.