

The Specifics on What Employers Should Know About Covering Young Adults Under Their Health Plans

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One of the changes required by Healthcare Reform calls for health plans that cover children to extend their coverage to adult children until they reach age 26. This change will apply to employer-sponsored group health plans with new plan years beginning on or after September 23, 2010. If your plan is on a calendar year, you will have to provide this coverage beginning January 1, 2011 — though you may start providing coverage earlier.

Here are some answers to questions you may have as you prepare to adopt this new requirement:

Who do I need to cover?

ERISA has always given the employer broad discretion to decide who it will cover under its health plan, and these rules still respect that choice. You do not have to cover any dependents at all, but if you decide to cover children, they must be eligible to participate until they reach age 26 (though you can permit them to participate on a tax free basis until the end of the year in which they turn 26).

Under the tax law, a "child" is defined as the employee's son, daughter, stepson, stepdaughter, a child legally adopted or placed for adoption with the employee, or a foster child placed with the employee. You may cover all of these children under your plan, but you are not required to do so. For example, you might decide not to cover foster children. If you do cover any of these groups of children, you must cover them until they reach age 26.

If the adult child is married, you still have to cover the child — but you do not have to cover the adult child's spouse or the adult child's children.

Can I still require the child to be a student or to live with the employee?

Under prior law, to qualify for tax-free coverage, the child had to meet certain age, residency and dependency requirements and, if over 18, had to be a student. These rules no longer apply. Moreover, you may no longer use these kinds of rules in defining which children are eligible (at least until the child turns age 26, at which point you can add additional requirements if you decide to continue to allow them to participate).

Under the new law, you may only define a child with respect to the child's relationship with the employee (e.g. son, daughter, stepson, stepdaughter, etc.). The only age requirement can be whether the child is age 26 or older (though you can cover children older than age 26 on a taxable basis). You may no longer

require the child to be a student, to depend on the employee for support, or even to live with the employee.

Are there any exceptions to who has to be covered as an adult child?

The new law provides a limited exception until 2014 for grandfathered plans (those plans that were in existence on March 23, 2010, when the law was enacted). Until 2014, a grandfathered plan does not have to cover an adult child of a participating employee if that child is eligible for coverage under another employer's group health plan — other than a plan sponsored by the employer of one of the child's parents. (Thus, coverage available through a group health plan covering the child's mother will not disqualify the child from coverage under the group health plan covering the child's father, and vice versa). Beginning in 2014, this exception disappears.

Because this exception only applies to grandfathered plans, non-grandfathered plans must cover the adult child regardless of whether the child has coverage available through another employer.

What about children who aged out of coverage or have not been eligible until now?

Under the new law, employers who cover children under their plans must provide a 30-day special enrollment period for children who were previously ineligible to participate. Thus, any child who lost eligibility or who had been denied coverage (or maybe didn't even apply for coverage) because of age must be given an opportunity to enroll in the health plan.

The 30-day special enrollment period must begin no later than the first day of the plan year. The child must receive written notice about the special enrollment period, and an employer can satisfy this requirement by providing written notice to the employee, even as part of an open enrollment packet (provided that the notice is prominent).

Coverage for the adult child must begin by the first day of the new plan year — so if your special enrollment period doesn't start until the beginning of the plan year, elections must be retroactive to the start of the plan year. This special enrollment period is treated the same as a HIPAA special enrollment period. Thus, if the employee currently does not have coverage, the employee must be allowed to enroll in order to cover the child and must be permitted to change coverage options.

Can I charge a higher premium for adult children?

The new law does not allow employers to charge a higher premium or to vary the terms of coverage based on age (except age 26 or older). Thus, the premium and the benefits for an adult child must be the same as the premiums and benefits for a young child. Also, the adult child must be eligible for the same coverage options as a young child.

You can, however, change the amount that you charge to cover children, as long as the higher charge applies uniformly. Thus, you could have a set charge for each child covered, or you can have coverage tiers such as employee only, employee + 1, employee + 2 and employee + 3 or more.

Do I have to make any changes to plan documents?

Your health plan document and your cafeteria plan document will need to be amended. You will also need to amend your summary plan description and perhaps enrollment materials and other documents related to your plan.

If you want to start covering adult children right away, you do not need to wait until you have amended your plan documents. You can implement the changes now (assuming that your insurer or stop-loss carrier agrees) and then make retroactive amendments to your plan documents — as long as these amendments are made by December 31, 2010.

If you have questions about covering adult children or any other requirements under healthcare reform, please contact a member of Warner Norcross & Judd's Employee Benefits Group.