

Health Care Reform Update: The Latest Guidance

Questions and Answers on Young Adult Coverage and Small Employer Tax Credit

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Question	Answer
Effective Date of Young Adult Coverage Requirement	
1. If our plan year starts 9/1/2010, is it accurate to say that the age 26 rules would apply starting 9/1/2011?	Correct. The new rules go into effect for plan years beginning on or after September 23, 2010. If your plan year begins on September 1, 2010, then you do not have to extend coverage to young adults until September 1, 2011.
2. What is the definition of "plan year"? For example, plan renews Nov. 1 but deductible runs calendar year. Is the plan year Nov. 1 or Jan. 1?	The Health Care Reform Act's use of the term "plan year" refers to the plan year as defined in your plan document and used for Form 5500 filings. You should look at these documents to determine your plan year.
Eligibility of Young Adults for Coverage in an Employer's Group Health Plan	
3. Could my company decide not to cover any children over 18?	No. Although your company is not required to cover any children at all, if your company decides to cover children, it must cover them until they reach age 26.
4. "For clarification, can we specify that step-children must live with employees to be eligible? Is that defining a child?"	No, you may not require that a step-child live with the employee to be eligible. The only factor that the plan may consider is the relationship between the child and the employee (e.g., child, step-child, adopted child or foster child of the employee). Under the age-26 regulations, an employer's health plan that covers any child, stepchild, adopted child or foster child of an employee must cover that child up to age 26 without imposing other requirements such as residency, student status, marital status or satisfaction of a financial support test One exception is that for plan years beginning before January 1, 2014, grandfathered plans may require an adult child who is eligible for coverage through the adult child's employer to enroll in that employer's coverage.
5. Do the age 26 rules apply only to medical plans? Or do they also apply to dental and vision plans?	The age 26 rules do not apply to stand-alone dental and vision plans, or other types of "excepted benefits" under HIPAA, such as disability insurance, workers compensation insurance and noncoordinated stand-alone coverage for a specific disease or illness. The age 26

		requirement does apply to medical plans, prescription drug plans and health FSAs. It also applies to dental and/or vision plans that are integrated with a medical plan. For example, if an employee who signs up for medical coverage is automatically provided with vision coverage under the same premium, then the adult children covered under the plan must also be eligible for vision coverage until age 26.
6.	Can we require an employee who is less than 26 to be covered under his or her parent's plan and not eligible for our plan until age 26?	Possibly, until January 1, 2014. The age 26 rules deal only with the issue of how young adults are treated as dependents under their parents' coverage. The age 26 regulations do not address coverage for young adults as employees, so an employer continues to have the same flexibility to define which of its employees is eligible to participate in its plans as under current law. However, excluding young adults may cause your health plan and cafeteria plan to fail nondiscrimination requirements. Also, beginning January 1, 2014, the waiting period for new employees to become eligible for health plan coverage may not be more than 90 days.
7.	If an adult child under 26 has a job with benefits and then loses that job but does not elect COBRA through his or her employer, does the parent's employer need to cover that child or does the child lose out because he or she was eligible for insurance but elected not to take it?	If an adult child is eligible to enroll in his/her own employer's health plan, a parent's "grandfathered" health plan is not required to cover the child (until the 2014 plan year). Neither the Health Care Reform Act nor the age 26 regulations provides that eligibility for COBRA is treated differently than eligibility for coverage as an active employee. Therefore, it appears that the parent's plan does not have to cover an adult child who declines COBRA in this situation. Additional guidance on this would be welcome.
8.	Where can we get a list of the states with different laws regarding coverage for older children?	The National Conference of State Legislatures has posted a table of the various state laws that require coverage for adult children. The table is available at http://www.ncsl.org/default.aspx?tabid=14497 .
Premiums for Young Adult Dependent Coverage		
9.	My company's health plan has a Young Adult Rider for which the employee pays extra to extend coverage to children over age 18. Will the extra charge still be permitted?	No. Health plans will no longer be permitted to vary premiums for dependent children based on their age (up to age 26). The premium amount to cover the child must be the same whether the child is 2 or 26.
10.	Can you have coverage	Yes, you may charge an additional premium amount for each

	Emp., Emp.+1, Emp.+2, Emp.+3, etc. so each child is counted?	individual covered by your plan but you may not charge a higher premium amount for adult children (up to age 26) than for younger children.
Special Enrollment Period for Young Adults		
11.	If our plan year begins October 1, 2010 will we need to have a 30-day special enrollment period before October 1, 2010?	No, but you must begin the open enrollment period by October 1, 2010 and coverage must start by October 1, 2010. For plan years beginning on or after September 23, 2010, plans must offer adult children who are not covered under the plan a one-time 30-day special enrollment period. The special enrollment period must begin no later than the first day of the plan year and, if coverage is elected after the start of the plan year, the coverage must be retroactive to the beginning of the plan year. The plan, however, could hold the special enrollment period earlier. Thus, if your plan year begins October 1, you could for example hold the special enrollment period from September 1 through September 30 with coverage beginning on October 1, 2010, or you could hold the special enrollment period from October 1 through October 30, with coverage retroactive to October 1.
12.	May the special enrollment period coincide with annual enrollment for the employees?	Yes, you can run the special enrollment period for young adults so that it coincides with your open enrollment period, and we expect that many employers will do this. Keep in mind, however, that the special enrollment period must run at least 30 days, which may be longer than your open enrollment period would normally run. You don't necessarily need to extend the length of your open enrollment period, but you must give young adults at least 30 days to sign up for coverage.
13.	So if our plan year begins on Sept. 1 and our open enrollment occurs each December, does the date of coverage for young adult children have to be retroactive to Sept. 1st or can it start Jan. 1?	Because coverage for young adults is not required until plan years beginning on or after September 23, 2010, coverage for young adults under your plan would not have to begin until September 1, 2011, though you could start coverage sooner. If your plan has an open enrollment in December of 2010 and runs the special enrollment period concurrently with the open enrollment period, coverage for young adult children could begin on January 1, 2011. Alternatively, the plan could wait to hold its special enrollment period until September 1, 2011, as long as coverage for these young adults begins by September 1, 2011.
14.	How much do we have to do to FIND whether an employee has an eligible adult child?	As part of the special enrollment process, young adult children must be given notice of their special enrollment rights. Your company is not required to go to any extraordinary lengths to locate these young adults. Rather, you are only required to provide notice to your employees. You can rely upon your employees to inform their young adult children of their new rights and to enroll them in your plan.

15.	Should we simply send a notice to all employees, whether or not we know they have kids, telling them that if they DO have adult children under 26, they can enroll into the plan?	Yes, we recommend that you send the special enrollment notice to all employees who are eligible to participate in your health plan.
16.	Will the IRS be providing employers with sample notices to issue to children under age 26?	The Department of Labor has made available sample language that employers may use for providing notice of the new age 26 requirements at http://www.dol.gov/ebsa/dependentsmodelnotice.doc . You will need to fill in certain information specific to your plan and possibly modify the language, depending on whether you are running the special 30-day open enrollment period on or before the start of the new plan year.
Coordination of Benefits for Young Adults		
17.	How is it decided which parent is primary to cover the dependent child? Would we still use the birthday rule?	If an adult child is eligible for coverage under the plans of the employers of both parents, neither plan may exclude the child based on the child being eligible to enroll in the other parent's plan. Therefore, an adult child may end up covered as a dependent under both parents' plans. The Health Care Reform Act, however, does not impose any new rules for deciding which parent's plan would be primary. This will continue to be decided based on the coordination of benefits provisions in the parents' plans.
Application of Pre-existing Condition Clauses to Young Adults		
18.	Are children ages 19-26 covered for pre-existing conditions or is that new rule only for children under age 19?	Until 2014, pre-existing condition clauses may still apply to adult children aged 19-26. Under health care reform, pre-existing condition exclusions are being phased out. For plan years beginning on and after September 23, 2010, pre-existing condition clauses may no longer apply to children under age 19. Beginning in 2014, pre-existing condition clauses may no longer apply to anyone.
Grandfathering of Health Plans		
19.	How do we know if we have a Grandfathered Plan?	If your plan was in effect before March 23, 2010, you may have a grandfathered plan. On June 14, 2010, the IRS issued guidance explaining the types of changes that could cause your plan to lose its status as a grandfathered plan. This guidance was broader than most expected and provided that the changes that could in some cases cause a plan to lose its grandfathered status include changes to: an insurance issuer, benefits provided under the plan, premiums, deductibles and copays. We will be offering a webinar in mid-July that

		discusses the rules for grandfathered plans in more detail.
Small Employer Tax Credit		
20.	Does the small-employer tax credit apply to plans under a common ownership?	Probably not. An employer within a group of companies under common ownership must count all employees within that group of companies to determine whether the employer is eligible for the small-employer tax credit. Unless this group of companies has an aggregate total of less than 25 employees, the employer will not qualify for the credit.