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## Agencies Issue Guidance on Extension of Children's Health Coverage to Age 26

*The Departments of Treasury, Labor and Health and Human Services have jointly issued interim final regulations that provide guidance on implementing the extension of adult children's health coverage to age 26. Consistent with the goal of expanding the availability of health coverage, the regulations impose significant restrictions on how a plan may define an eligible dependent and how it may charge for coverage. They also provide transition rules for the first plan year to which the requirements apply.*

### Background

One aspect of the health care reform law that has been in the spotlight from the date of its enactment is the requirement that group health plans and health insurers that cover dependent children continue to make dependent health coverage available until a child turns age 26. This mandate is effective for plan years beginning on or after September 23, 2010 (i.e., January 1, 2011 for calendar year plans). The new law also provides that health coverage will not be taxable to employees through the end of the year in which the child reaches age 26. (See our May 4, 2010 [For Your Information](#).)

Grandfathered health plans (group health plans or health insurance coverage in existence on March 23, 2010) are not required to extend coverage to adult children under age 26 who are eligible for other employer-sponsored health coverage. This limited exception expires in 2014.

**BUCK COMMENT.** *The new mandate only applies to group health plans that provide dependent coverage – it does not require a plan to provide dependent coverage.*

The mandate applies to health insurance coverage in both the group and individual market and to group health plans both in the private and public sectors. Plans that provide HIPAA-exceptions benefits, such as limited scope dental and vision benefits that an employee may elect separately with payment of an additional premium, are not subject to the mandate.

The [interim final regulations](#) clarify how the dependent eligibility extension must be implemented. Although the regulations also apply to health insurance issuers, we focus here on group health plans.

## The Interim Final Regulations

### Restrictions on Plan Definition of Dependent

The definition of eligible dependent found in most group health plans typically includes conditions related to support, residence, marital status or full-time student status that a child must satisfy in order to be eligible for coverage. The interim final regulations dramatically restrict the conditions regarding eligibility that can be imposed on children under age 26. Under the new rules, a group health plan that provides coverage for children can only specify the required familial relationship that a child under age 26 must have with the employee to be eligible for coverage (e.g., whether eligible children will be limited to the employee's children or whether the employee's stepchildren, foster children and grandchildren will also be eligible). If the child has that relationship to the employee, the plan must cover the child. A plan will no longer be able to require a child under age 26 to be unmarried, receive more than one-half of his or her support from, or reside with, an employee, or be a full-time student. It also cannot exclude children under age 26 who are employed full-time. Eligibility for other health coverage can be taken into account only if the plan is a grandfathered health plan and the coverage qualifies as other employer-sponsored coverage as described below.

The regulations also state that a group health plan will not have to extend coverage to an employee's grandchildren or to the spouse of the employee's child.

**BUCK COMMENT.** *The preamble to the regulations makes clear that these requirements apply to all children under age 26, not just children age 19 and older who were not eligible for coverage because they were not full-time students. Thus, a plan cannot require that a child (or even a stepchild if the plan covers stepchildren) under age 19 reside with the employee or be dependent on the employee for financial support.*

**Other Employer-Sponsored Health Coverage.** As noted above, grandfathered health plans are not required to extend coverage to children under age 26 who are eligible for other employer-sponsored health coverage. The regulations clarify that this exception does not allow a plan to deny enrollment based on any group health plan coverage available through a parent's employer.

**BUCK COMMENT.** *The regulations do not specifically limit the exception for "other employer-sponsored health coverage" to coverage that the child has as an employee. Thus, it appears that a plan could also deny enrollment if a child has coverage available through his or her spouse's employer.*

### No Variation in Terms and Conditions of Coverage

The interim final regulations prohibit group health plans from varying the terms or conditions of coverage based on the age of a child, except for children age 26 or older. Although a group health plan can continue to have different tiers of coverage, such as employee-only, employee-plus-one, etc. and charge different rates based on

the number of individuals covered, it cannot impose an additional premium surcharge (such as charging the COBRA rate) for children who have attained a certain age (e.g., charging more for children who are older than age 18). Similarly, a plan that offers more than one benefit option cannot restrict children to a specific option based on their attainment of a specified age that is below age 26.

**BUCK COMMENT.** *Many states have enacted requirements for expanded child coverage, some to age 30. These state laws are not preempted, so insured group health plans will need to provide the better of state or federal mandated coverage. For example, insured plans that currently charge the full cost of coverage or require enrollment in a separate policy for children under age 26 will need to change these requirements. Similarly, insured plans will still need to comply with any state requirements that extend beyond age 26.*

## Transition Rules for Enrolling Newly Eligible Children

The interim final regulations include transition rules for enrolling children under age 26 whose coverage under the plan previously ended, or who were not eligible for coverage because they were over the plan's limiting age at the time the employee enrolled. These rules apply to enrollment for the first plan year to which the extension applies (January 1, 2011 for calendar year plans). In subsequent years, coverage may be elected for an eligible child under the plan's normal enrollment opportunities.

**New Enrollment Opportunity And Notice Requirement.** The interim final regulations require a group health plan to provide children who will become eligible for coverage as a result of the mandated extension of child coverage with an enrollment period of at least 30 days. In addition, the plan must provide written notice to children whose coverage ended, or who were not eligible for coverage before they turned age 26, that they are now eligible to enroll. This notice may be provided to an employee on behalf of the employee's child and may be included with other enrollment materials that a plan distributes to employees, as long as the statement is prominent.

The opportunity to enroll and the written notice must be provided no later than the first day of the first plan year to which the dependent extension mandate applies.

**Plans With Open Enrollment Periods.** The regulations provide that plans can use existing annual open enrollment periods to satisfy the enrollment opportunity requirement.

**BUCK COMMENT.** *Because annual open enrollment periods are typically shorter than 30 days, their use for enrolling newly eligible dependents could be problematic. Consideration will need to be given to starting annual enrollment earlier than in the past, or to providing a longer enrollment period, at least for newly eligible adult children, to ensure that an enrollment period of at least 30 days is provided.*

**Plans That Do Not Have Open Enrollment Periods.** Plans providing dependent coverage that do not have annual enrollment periods (e.g., plans that only permit the addition of dependents qualifying for special enrollment

rights) will also have to allow the enrollment of children who are now eligible because of the mandated extension of dependent coverage. As discussed above, the child must be provided with an enrollment period of at least 30 days. This enrollment period must be provided beginning not later than the first day of the first plan year beginning on or after September 23, 2010. Regardless of when enrollment occurs, coverage must begin no later than the first day of the plan year, even if the request for enrollment is made after that date.

**Status As Special Enrollee.** The regulations state that any child enrolled in group health plan coverage under this new enrollment opportunity must be treated as a HIPAA special enrollee. This means that the child must be offered all of the benefit options available to similarly situated dependents who did not lose coverage by reason of loss of dependent status and that the child cannot be required to pay more for coverage than those individuals.

The interim final regulations contain several examples that illustrate the application of the transition rules.

- If a child qualifies for an enrollment opportunity and the parent is not enrolled in the plan but is otherwise eligible to enroll, the plan must provide an opportunity to enroll both the parent and the child.
- If a plan has more than one benefit option, the parent must be permitted to enroll the child in any benefit option for which the child is otherwise eligible (thus allowing the parent to switch benefit options).
- A child who currently has COBRA coverage under a plan must be given the opportunity to enroll as a child of an active employee (i.e., other than as a COBRA qualified beneficiary). If the child subsequently loses eligibility for coverage due to a qualifying event (including aging out of coverage at age 26), the child must be given another opportunity to elect COBRA coverage and would be entitled to up to 18 or 36 months of COBRA coverage based on the nature of the qualifying event.
- A child who was too old to enroll at the time of the parent's initial enrollment, but has not yet turned 26, must be provided an opportunity to enroll. However, the plan would not be required to enroll the child if the parent is no longer eligible for coverage (e.g., if the parent has ceased employment with the plan sponsor) as of the first date on which the enrollment opportunity would have to be given.

**BUCK COMMENT.** *Although not discussed in the example, it appears that an employee who elected COBRA coverage after termination of employment would have to be permitted to add a child under age 26 as a dependent.*

**Plans That Offer Continued Coverage Of Adult Children Before Required To Do So By Law.** According to the preamble to the regulations, group health plans that continued the coverage of children under age 26 before they were required by law to do so do not have to provide the enrollment opportunity and notice with respect to children who did not lose coverage. Thus, employees whose children are already enrolled would not have to be permitted to change benefit options, etc.

## Conclusion

The interim final regulations clearly change the rules regarding eligibility for dependent coverage. Plan sponsors should review their current eligibility requirements and determine whether they want to narrow the scope of familial relationships that qualify for dependent coverage and whether they want to reduce their subsidies of dependent coverage or change their plan's tier structure. In addition, plan sponsors should consider what impact the new enrollment opportunity will have on their annual enrollment for the 2011 plan year.

Buck's consultants would be pleased to discuss these issues with you.

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*This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.*