



SITZMANN ■ MORRIS ■ LAVIS

**TO: Clients of Sitzmann Morris & Lavis Inc.**

**RE: Interim Final Rules Issued for Dependent Coverage to Age 26 Provision**

Background: As reported in our Health Care Reform Updates a provision was included in the health care reform law that mandates coverage of dependents up to age 26. Soon after we reported in the SML Update – Dependent Coverage to Age 26, most carriers have decided to provide early implementation of this provision.

On May 10, 2010, the IRS, Department of Labor (DOL) and Department of Health and Human Services (HHS) issued their Interim Final Rules for Group Health Plans and Health Insurance Issuers Relating to Dependent Coverage of Children to Age 26 under the Patient Protection and Affordable Care Act (PPACA). These regulations answer some very important questions.

Dependent Defined:

Dependent can only be defined by a plan or issuer in terms of the relationship between the child and the participant.

Factors that *cannot* be used to define a dependent include:

- Financial dependency
- Residency with the participant
- Student status
- Employment
- Eligibility for other coverage. (A grandfathered plan may exclude an adult child if the child is eligible to enroll in an employer-sponsored health plan other than the plan of a parent.)
- Marital status. (A plan or issuer is not required to cover the spouse of an eligible child.)

There is nothing to require a plan or issuer to make coverage available for a child of a child receiving dependent coverage.

When Does Coverage End?

The rules have clarified when coverage ends for the dependent. The last day the plan must cover the child is the day before their 26<sup>th</sup> birthday. For example, a child turns 26 on July 17, 2011. The last day the plan must cover the child is July 16, 2011. If your policy terminates coverage on the last day of the month then July 31, 2011 is last day your plan will cover the child.

Notice requirement:

A written notice of the dependent's opportunity to enroll must be provided not later than the first day of the first plan year beginning on or after September 23, 2010. The notice must include a statement that children whose coverage ended, or who were denied coverage, because the availability of dependent coverage of children ended before attainment of 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. The notice may be included with other enrollment materials provided the statement is prominent. We expect a model notice to be provided by the DOL.

Enrollment requirement:

The child must be given 30 days to enroll. Many plans can use their existing annual enrollment periods (which commonly begin and end before the start of the plan year) to satisfy the enrollment opportunity requirement. Coverage must begin not later than the first day of the first plan year beginning on or after September 23, 2010, even if the request for enrollment is made after the first day of the plan year.

For plans that don't have an open enrollment at renewal be advised that any child enrolling in group health plan coverage pursuant to this enrollment right must be treated as a special enrollee, as provided under the HIPAA regulations. Accordingly, the child must be offered all the benefit packages.

The regulations provide the following examples of how to apply this:

- if a child qualifies for an enrollment opportunity and the parent is not enrolled but is otherwise eligible for enrollment, the plan must provide an opportunity to enroll the parent, in addition to the child.
- if a plan has more than one benefit package option, a child qualifies for enrollment, and the parent is enrolled in one benefit package option, the plan must provide an opportunity to enroll the child in any benefit package option for which the child is otherwise eligible (thus allowing the parent to switch benefit package options).
- a child who qualifies for an enrollment opportunity under this section and who is covered under a COBRA continuation provision must be given the opportunity to enroll as a dependent of an active employee (i.e., other than as a COBRA-qualified beneficiary).

The child also cannot be required to pay more for coverage than similarly situated individuals who did not lose coverage by reason of cessation of dependent status.

Additional Resources:

The DOL has published a fact sheet available at <http://www.dol.gov/ebsa/newsroom/fsdependentcoverage.html> as well as FAQs, available at <http://www.dol.gov/ebsa/faqs/faq-dependentcoverage.html>

Effective date:

The provision is still effective for plan years beginning on or after September 23, 2010.

## **Tax Treatment of Employer Provided Health Coverage**

A separate provision of the health care reform law amended the tax code to extend tax excludable health reimbursements and coverage to children of employees who have not attained age 27 by the end of the calendar year. The IRS has released [Notice 2010-38](#) providing guidance on this provision. Nontaxable treatment is available even if the child is not the employee's tax dependent under IRC Section 152. The Notice further clarifies that both health coverage under an employer plan and amounts paid or reimbursed under such a plan are excluded from the employee's income. This includes reimbursements under a Sec. 125 health flexible spending arrangement (FSA) and a health reimbursement arrangement (HRA). This is not a surprise and fits with our earlier communications on this topic.

Cafeteria plans may need to be amended to include employees' children who have not attained age 27 as of the end of the taxable year. The transition rule will allow employers to amend their plans retroactively for this provision only. The amendment must be made no later than December 31, 2010, and must be effective retroactively to the first date in 2010 when employees are permitted to make a pre-tax salary reduction to cover children under 27. This cannot be before the provision's effective date of March 30, 2010.

### What's Next:

We will provide you with more detail as it becomes available. As always, contact your SML Account team if you have any questions.