

## Employee Benefits & Executive Compensation Client Service Group

To: Our Clients and Friends

May 11, 2010

### Agencies Issue Interim Rules on Dependent Health Care Coverage of Children to Age 26

On May 10, 2010, the Internal Revenue Service, the Department of Labor and the Department of Health and Human Services jointly issued interim final regulations addressing the provision of dependent coverage of children to age 26 under the Patient Protection and Affordable Care Act, as amended ("PPACA").

Effective for plan years beginning on or after September 23, 2010 ("Effective Date"), PPACA requires group health plans that make available dependent coverage of children to make such coverage available for children to attainment of age 26. This extension of coverage to age 26 applies whether or not the child was previously enrolled in the group health plan. The new regulations clarify many questions relating to implementation of the expanded dependent child coverage.

- **Defining Dependent Eligibility.** Dependent eligibility can be defined only in terms of the relationship between the child and the participant. Accordingly, a group health plan can no longer base eligibility for coverage on a child's financial dependency, residency, student, employment and/or marital status. Also, a plan cannot restrict coverage based on the child's eligibility for other coverage (subject to the special exception for grandfathered plans discussed below).
- **Premium Surcharges.** The terms of the plan (including cost and benefits) for dependent coverage cannot vary based on the age of the child, except for children age 26 or older. Therefore, surcharges for coverage of children under age 26 are prohibited, unless the surcharges apply regardless of the age of the child.
- **Children and Spouses of Dependent Child.** A group health plan is not required to extend coverage to any child or spouse of a covered dependent child.
- **Grandfathered Plans.** A group health plan that qualifies as a grandfathered plan is subject to the same requirements relating to extension of dependent health care coverage; however, for plan years beginning before January 1, 2014, a grandfathered plan may exclude an adult child who has not attained age 26 if the child is eligible to enroll in an eligible employer-sponsored health plan other than a parent's group health plan.

The regulations also provide the following transition rules regarding children who previously lost coverage or were not eligible for coverage under the terms of a group health plan due to age prior to the Effective Date.

- **Enrollment Opportunity.** Such children must be provided with an opportunity to enroll that continues for at least 30 days (including written notice of the opportunity to enroll), regardless of whether the plan offers an open enrollment period or when any open enrollment period might otherwise occur. This enrollment opportunity (including the written notice) must be provided no later than the Effective Date and coverage must begin no later than the Effective Date, even if the request for enrollment is made after the Effective Date. The regulations expressly permit plans to use their existing annual enrollment periods to satisfy the enrollment opportunity requirement and the required notice may be included with other enrollment materials the plan distributes to employees, provided the statement regarding this enrollment opportunity is prominent.
- **Special Enrollee Status.** A group health plan must treat any child enrolling for coverage pursuant to the required enrollment opportunity as a special enrollee in accordance with the portability provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Accordingly, the child must be offered all the same benefit packages and cannot be required to pay more for such coverage than similarly situated individuals who did not lose coverage by reason of cessation of dependent status. Furthermore, if a child qualifies for the enrollment opportunity and the parent is eligible but not enrolled, the plan must provide both the parent and the child with an opportunity to enroll.

In light of the regulations, sponsors of group health plan, including grandfathered plans, will need to amend their plan documents, summary plan descriptions and enrollment materials to comply with these requirements.

Please feel free to contact any member of the Bryan Cave LLP Employee Benefits and Executive Compensation Group listed below if you require assistance or have any questions regarding the information contained in this Bulletin.

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