ACA COMPLIANCE OVERVIEW

Dependent Coverage Up to Age 26

Effective for plan years beginning on or after Sept. 23, 2010, the Affordable Care Act (ACA) requires group health plans and health insurance issuers offering group or individual coverage that provide dependent coverage to children on their parents' plans must make coverage available until the adult child reaches **age 26**.

A transition rule applied for plan years prior to 2015, which allowed grandfathered group health plans to exclude an adult child who had not attained age 26, if the child was eligible to enroll in an employer-sponsored plan other than a parent's group health plan. **However, this transition rule no longer applies. Thus, all plans and issuers should now be in compliance with the age 26 dependent coverage requirement.**

This ACA Overview summarizes the ACA's extension of dependent coverage to age 26.

LINKS AND RESOURCES

- On May 13, 2010, the Departments of Labor (DOL), Health and Human Services (HHS) and the Treasury (Departments) published interim final regulations on the ACA's young adult coverage requirement.
- On Nov. 18, 2015, the Departments published final regulations to finalize provisions in the interim final regulations without substantial change, incorporating clarifications issued by the Departments in frequently asked questions (FAQs) and other subregulatory guidance.

Overview

The ACA's young adult coverage mandate took effect on the first day of the first plan year that began on or after Sept. 23, 2010.

The mandate:

- Applies to both grandfathered and non-grandfathered group health plans; and
- Does not require plans and issuers to offer dependent coverage at all.

Definition of Dependent

- A plan or issuer cannot define "dependent" for purposes of eligibility for coverage other than in terms of the child's age and the relationship between the child and the participant.
- For example, a plan or issuer may not deny or restrict coverage for a child who is under age 26 based on the child's student status, marital status or residency.

What Does the Law Require?

Group health plans and issuers offering group or individual health insurance policies that provide dependent coverage of children must make coverage available for adult children up to age 26, regardless of the child's marital status. For this purpose, "dependent coverage" means coverage of any individual under the terms of a group health plan, or group or individual health insurance coverage, because of the relationship to a participant (in the individual market, primary subscriber).

> *Example*: For the plan year beginning Jan. 1, 2012, a group health plan provides health coverage for employees and their spouses and children, until the child turns 26. On the birthday of an employee's child (July 17, 2012), the child turns 26. The plan must cover the child through July 16, 2012.

Parents can decide whether to add adult children to their plan. The ACA's extension of dependent coverage did not create independent enrollment rights for dependents. In addition, there is no requirement to cover the child of a dependent child (that is, a grandchild) or the spouse of a dependent child.

Restrictions on Definition of "Dependent"

Under the ACA, a plan or issuer may not define "dependent" for purposes of eligibility for dependent coverage other than in terms of the child's **age** and the **relationship** between the child and the participant. For example, a plan or issuer may not deny or restrict coverage for a child who is under age 26 based on any of the following factors:

- Financial dependency on the participant or any other person;
- Residency with the participant or any other person;
- Student status;
- Marital status;
- Employment status; or
- Eligibility for other coverage.

Because the ACA does not distinguish between coverage for minor children and coverage for adult children under age 26, these factors also may not be used to determine eligibility for dependent coverage of minor children. In addition, the final regulations clarify that eligibility restrictions under a plan or coverage that require individuals to work, live or reside in a service area violate the young adult coverage requirement, to the extent the restrictions are applicable to dependent children up to age 26, even if they are intended to apply generally to all participants and beneficiaries.

Although "child" is not specifically defined in the ACA, guidance indicates that it means an individual who is a son, daughter, stepson, stepdaughter or adopted child of the participant. There is some suggestion that a foster child would be included as well, although this is not entirely clear.

Uniformity in Plan Terms

The terms of the plan or coverage providing dependent coverage of children, including premiums charged, cannot vary based on age (except for children who are age 26 or older). This means that adult children must be offered all of the benefit packages available to other plan participants and cannot be required to pay more for coverage.

Example 1: A group health plan offers a choice of self-only or family health coverage. Dependent coverage is provided under family health coverage for children of participants who have not reached age 26. The plan imposes an additional premium surcharge for children who are older than age 18. This plan violates the uniformity requirement because the plan varies the terms for dependent coverage of children based on age.

Example 2: A group health plan offers a choice among the following tiers of health coverage: self-only, self-plus-one, self-plus-two and self-plus-three-or-more. The cost of coverage increases based on the number of covered individuals. The plan provides dependent coverage of children who have not reached age 26. In this example, the plan does not violate the uniformity requirement. Although the cost of coverage increases for tiers with more covered individuals, the increase applies without regard to the age of any child.

Example 3: A group health plan offers two benefit packages—an HMO option and an indemnity option. Dependent coverage is provided for children of participants who have not reached age 26. The plan limits children who are older than age 18 to the HMO option. This plan violates the uniformity requirement because the plan, by limiting children who are older than age 18 to the HMO option, varies the terms for dependent coverage of children based on age.

This uniformity requirement does not prohibit plans from imposing cost of coverage increases for tiers with more covered individuals, because these increases apply without regard to the age of any child. In addition, distinctions based upon age that apply to all coverage under the plan are permissible. However, for individual and small group plans required to provide essential health benefits, distinctions based on age may be considered discriminatory under HHS regulations regarding essential health benefits.

Example: A group health plan normally charges a copayment for physician visits that do not constitute preventive services. The plan charges this copayment to individuals age 19 and over, including employees, spouses, and dependent children, but waives it for those under age 19. This plan does not violates the uniformity requirement because the copayments charged to dependent children are the same as those charged to employees and spouses. Although the uniformity requirement generally prohibits distinctions based upon age in dependent coverage of children, it does not prohibit distinctions based upon age that apply to all coverage under the plan, including coverage for employees and spouses as well as dependent children.

What if State Law Differs from Federal Law?

More than two-thirds of states have passed laws that require insured group health plans to cover dependents after they turn 18 years old, often into their mid to late 20s and in some cases later. For example, in New Jersey, unmarried children can stay on a parent's plan until they are 31 years old. These state mandates will continue to apply to insured health coverage, to the extent they require coverage past age 26.

What are the Tax Effects of the Extended Dependent Coverage?

Under federal tax law, employers can offer tax-free health coverage to employees' adult children through the end of the year in which the children turn age 26. It does not matter whether the children are tax dependents for federal income tax purposes. All states have passed tax laws conforming to the federal tax law.

Often, adult children that obtain coverage pursuant to state law are not tax dependents for federal income tax purposes. In the event state laws mandate coverage past age 26, federal tax law generally requires employers to impute the fair market value of the dependent coverage as income to employees for tax years after the children turn age 26, unless employees pay for the coverage on an after-tax basis.

Relationship With the ACA's Employer Shared Responsibility Rules

As noted above, the ACA's young adult coverage mandate does not require plans and issuers to offer dependent coverage at all. Instead, the mandate requires plans and issuers that already provide coverage to dependent children to make that coverage available until the child reaches age 26. Also, the mandate does not specifically define the term "child" for purposes of the requirement.

However, **effective Jan. 1, 2015**, the ACA's employer shared responsibility rules began imposing penalties on applicable large employers (those with 50 or more full-time and full-time equivalent employees) that do not offer coverage to all full-time employees and their dependent children.

> For purposes of the employer shared responsibility rules, a "dependent" is defined as a biological or adopted son or daughter who is **under 26 years of age**.
>
> The employer shared responsibility final rules clarify that a child is a dependent for purposes of the employer shared responsibility penalties **for the entire calendar month in which he or she attains age 26**. However, the final rules **exclude stepchildren and foster children** from the definition of "dependent."

As a result, applicable large employers subject to the employer shared responsibility rules must offer dependent coverage to children of their full-time employees **through the entire month in which the dependent attains age 26** in order to avoid employer shared responsibility penalties.

This means that:

- Employers are not subject to penalties under the ACA's adult coverage mandate if they do not offer dependent coverage at all, or terminate dependent coverage on the child's 26th birthday; but
- Applicable large employers that are subject to the ACA's employer shared responsibility rules may be subject to penalties if they do not offer dependent coverage to the children of their full-time employees **through the entire month in which the dependent attains age 26**.

Employers who are subject to both of these ACA mandates should be sure to comply with both requirements.

More Information

Additional information on the ACA's young adult coverage requirement is available on www.HealthCare.gov. Please contact Allen Insurance|Financial for more information on the ACA's employer shared responsibility rules.