



May 14, 2010

*(Updated May 27, 2010)*

## **Interim Final Regulations Regarding Dependent Child Coverage to Age 26**

### **Introduction**

Under the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Affordability Reconciliation Act (the “Health Care Reform Acts” or the “Acts”), group health plans that offer dependent child coverage, including grandfathered plans, must begin offering this coverage to children of covered employees up to age 26. The Department of Health and Human Services (HHS), together with the Internal Revenue Service (IRS) and Department of Labor (DOL), has issued an interim final rule (“Rule”), in the *May 13 Federal Register* (29 CFR Part 2590), to be effective with respect to any plan on the first day of the plan year that begins after September 23, 2010, i.e., January 1, 2011 for most annual conference plans.

### **Coverage to Age 26**

Under the Rule, a group health plan that offers dependent coverage of children must make such coverage available for children until age 26 (“Young Adults”). A plan may not condition eligibility for dependent coverage of children on anything other than relationship between child and the participant. Plans may not deny or restrict coverage for a Young Adult (or other dependent) based on financial (tax) dependency, residency, student status, marital status, employment or any combination of those factors.

In addition, a plan may not deny or restrict coverage of a Young Adult based on eligibility for other coverage—except for plan years before January 1, 2014 in grandfathered health plans (explained below).

### **Parties Excluded from Coverage**

Plans are not required to cover children of Young Adults (participants’ grandchildren). Nor are plans required to cover spouses of Young Adults.

### **Uniformity**

The terms of the plan providing dependent child coverage cannot vary based on age (except for children who are age 26 or older). Young Adults must be offered the same benefit options as other children in the plan. The Young Adult (or his or her parents) cannot be required to pay more for coverage than similarly situated children. Current tier structures may continue to apply, but surcharges or separate premiums for this coverage are not permitted.

### **Special Rule for Grandfathered Plans**

For plan years beginning before January 1, 2014, a grandfathered group health plan may exclude a Young Adult from coverage only if the Young Adult is eligible to enroll in an employer-sponsored health plan *other than a parent's group health plan*. *A plan may exclude the Young Adult if he or she is eligible for employer-based coverage through his or her own employment or that of his or her spouse.*

The Acts' initial provisions change in 2014. For plan years beginning on or after January 1, 2014, a grandfathered group health plan will no longer be allowed to exclude Young Adults based on the Young Adult's eligibility for his or her own employer-provided coverage.

### **Transitional Relief**

Plans must give eligible Young Adults a special enrollment opportunity for plan years beginning on or after September 23, 2010. Plans must give eligible Young Adults a *minimum 30-day opportunity to enroll*. This enrollment opportunity and a required written notice must be provided not later than the first day of the plan year beginning on or after September 23, 2010. The written notice must include a statement that children whose coverage ended, were denied coverage or were not eligible for coverage because the availability of dependent coverage of children previously ended before age 26 will now be eligible to enroll in the plan. The enrollment opportunity may be incorporated into a plan's existing open enrollment period. The written notice may accompany other enrollment materials and communications, but must be prominent.

### **Early Adopters**

The Rule clarifies that plans adopting this provision or other provisions of the Acts early will not jeopardize their grandfathered plan status. In addition, the IRS has issued IRS Notice 2010-38 clarifying that, effective March 30, 2010, this Young Adult coverage will be considered tax-free health coverage to employees, and that cafeteria plans may be amended through December 31, 2010 to retroactively adopt this provision. The Secretaries of HHS and DOL have encouraged Plan Sponsors to adopt this provision early or implement policies to prevent currently covered Young Adults from losing coverage in 2010.

### **Questions**

If you have questions about the impact of health care reform, please send your inquiry to:

[healthcarereform@gbophb.org](mailto:healthcarereform@gbophb.org).