



# HEALTH CARE REFORM update



BlueCross BlueShield  
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## Dependent Coverage

On Tuesday, March 23, President Obama signed into law the “Patient Protection and Affordable Care Act” (PPACA). A reconciliation bill making changes to the Act was signed by the President on March 30. The PPACA as amended by the reconciliation bill is collectively referred to as the Act in this summary. This summary provides an overview of the dependent coverage provisions of the Act.

The Departments of Health & Human Services, Treasury and Labor issued Interim Final Regulations implementing the mandate on May 13, 2010 (referred to as the Regulations in this summary). In addition, the Internal Revenue Service issued guidance (referred to as the IRS Notice in this summary) on April 27, 2010 clarifying that premiums associated with the expanded coverage are tax exempt beginning in 2010.

### *Summary*

Requires group health plans and insurers providing group or individual insurance coverage that provides coverage for dependent children to continue to make coverage available for an adult child until the child turns 26 years of age. (§ 1001 of PPACA adding § 2714 to the Public Health Service Act; §§ 1004(d) and 2301 of Reconciliation Bill)

### *Scope*

Applicable to all group health plans (whether insured or self funded) and individual insurance coverage

### *Coverage Requirements*

If a plan provides coverage for children, the Act requires continued coverage of dependent children until the child’s 26th birthday, regardless of marital or student status. The Act also amends section 105(b) of the Internal Revenue Code to allow premiums for the expanded dependent coverage to be tax deductible (e.g. these premiums are tax deductible as long as the child has not attained age 27 by the end of the tax year). Coverage is not required to be extended to children of covered children (e.g. grandchildren) or spouses of covered children.

The Regulations clarify that the following factors may not be used for defining dependents:

- Financial dependency on the participant or primary subscriber (or any other person);
- Residency with the participant or primary subscriber (or any other person);
- Student status;
- Employment;
- Eligibility for other coverage (see exception for grandfathered group coverage); or
- Any combination of these.

### ***Enrollment Rights***

Health plans and insurers are required to provide children who qualify for dependent coverage (and who have not enrolled) with an open enrollment period. This enrollment opportunity and a written notice must be provided no later than the first day of the first plan year beginning on and after September 23, 2010. The enrollment opportunity must continue for at least 30 days and must be offered not later than the first day of the first plan year beginning on or after September 23, 2010. Coverage elected during this enrollment opportunity must begin no later than the first day of the first plan year beginning on or after September 23, 2010.

### ***Enrollment Options***

The Regulations clarify that any child, who enrolls in a group health plan indicated in the *Enrollment Rights* section above, must be treated as if the child were a special enrollee (under HIPAA). Accordingly, the child and other eligible family members must be offered all the benefit packages available to similarly situated individuals who did not lose coverage by reason of cessation of dependent status. For example, an employer offering an HMO and a PPO to its employees must allow the employee and the newly eligible adult dependent to switch from HMO to PPO (or vice versa) if the adult dependent elects coverage.

For this purpose, any difference in benefits or cost-sharing constitutes a different benefit package. The child also cannot be required to pay more for coverage than similarly situated individuals who did not lose coverage by reason of a cessation of dependent status.

The Regulations prohibit group health plans and insurers in both the group and individual markets from varying rates based on the age of the child.

### ***Tax Exclusion for Adult Dependent Coverage***

The IRS Notice explains that the coverage for children under age 27 extends to the following types of health plans, effective March 30, 2010:

- Cafeteria Plan (Section 125);
- Health Flexible Spending Account (Health FSA);
- Health Reimbursement Arrangement (HRA);
- Section 401(h) Retiree Medical Account;
- Voluntary Employees' Beneficiary Association (VEBA); and
- Self-employed Health Care Deduction (§ 162(l)).

The IRS Notice also provides that the cafeteria plan regulations will be amended to provide that a change in status event occurs (which permits an employee to make a mid-year election change for a cafeteria plan and a Health FSA) when the child becomes eligible for coverage due to PPACA beyond the date on which the child otherwise would have lost coverage. Importantly, the IRS Notice provides an exception to the general rule that a cafeteria plan may not be retroactively amended. Under this exception, the cafeteria plan must be amended by December 31, 2010 to provide for a retroactive plan amendment to cover these adult children.

This relief is helpful for employers who intend to implement the extended coverage rule under PPACA in advance of the statutory deadline (i.e., during the plan year when elections are irrevocable in the absence of a mid-year change in election event).

### ***Effective Date***

Plan years beginning on or after September 23, 2010 (§ 1004 of the PPACA). For grandfathered group plans, for plan years beginning before January 1, 2014, this mandate only applies to children who are not eligible to enroll in other employer sponsored coverage. (See Blue KC's *Federal Healthcare Reform: Grandfathering* fact sheet for more information.)

*This summary is provided for informational purposes only and is not intended as legal advice. Please consult your legal advisor for additional information.*

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#### References

PPACA: [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111\\_cong\\_bills&docid=f:h3590enr.txt.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h3590enr.txt.pdf)

Reconciliation: [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111\\_cong\\_bills&docid=f:h4872pcs.txt.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h4872pcs.txt.pdf)

Regulation: <http://frwebgate4.access.gpo.gov/cgi-bin/PDFgate.cgi?WAISdocID=363480461393+0+2+0&WAIAction=retrieve>

IRS Notice: <http://www.irs.gov/pub/irs-drop/n-10-38.pdf>