

“Kid” Stuff

Issues regarding adult-children coverage under the PPACA

THIS month’s column focuses on two key questions regarding the coverage of adult children under the Patient Protection and Affordable Care Act (PPACA).

Question: How is employer-provided health coverage for adult children up to age 26 under the new PPACA requirement taxed for state tax purposes?

Answer: In general, PPACA requires all employer-sponsored health-care plans (including grandfathered plans) to cover adult children until they reach their 26th birthday, effective for the first plan year beginning on or after September 23, 2010. Last April, the IRS issued Notice 2010-38, which, among other things, extends the federal tax exclusion for employer-provided health coverage provided to adult children through the end of the year in which the child reaches age 26, regardless of whether the child is the employee’s dependent within the meaning of Internal Revenue Code (Code) section 152. This means that the age limit, residency, support, marital status, and other tests in Code section 152(c) do not apply to such a child.

Although employer-sponsored coverage provided to adult children is excludable from income for federal income tax purposes, it may not be excludable for state tax law purposes. A large number of states (more than 20, plus Puerto Rico) do not automatically adopt the current version of the Code; therefore, there is the risk that employers will need to impute income to their employees for state tax purposes. To the extent such coverage is taxable for state law purposes, it could trigger wage reporting and withholding requirements

(and related penalties and interest for failures) for employers based on the fair market value of the coverage.

State tax laws regarding the tax treatment of adult child coverage have been changing rapidly, so employers should carefully monitor developments in their states. For example, California recently posted information on its Employment Development Department and Franchise Tax Board Web sites regarding how employers should report and calculate the imputed income of health benefits for adult children on the Form W-2, box 16, for California state tax purposes. Subsequently, the California Employment Development Department removed the posting after a bill was introduced in the state Legislature that would make the California state tax code conform to the Code on this issue.



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In addition, the Governor of Virginia recently signed a bill that updates the Virginia Tax Code so that it generally conforms to the Code as of December 31, 2010. As a result, Virginia employers should not have to impute the value of adult dependent coverage for state tax purposes beginning in 2011.

Question: Under the PPACA dependent-child coverage requirements, are premiums for young-adult children (under age 26) required to be the same as for other adults?

Answer: The Interim Final Regulation (IFR) governing dependent-children coverage to age 26 specifies that the terms of the plan cannot vary based on the age of a child (except for children who are age 26 or older). The IFR provides examples showing that a plan cannot impose a premium surcharge on certain dependent children based on age and cannot limit what benefit options are available to these dependents.

Please note, however, that in December, the agencies (HHS, DoL, and Treasury) issued a Frequently Asked Questions (FAQ) in which they clarified that, although this “uniformity” requirement generally prohibits distinctions based upon age in dependent coverage of children, it does not prohibit a plan from making distinctions based upon age that apply to all coverage under the plan, including coverage for employees and spouses as well as dependent children. In the example used in the FAQ, the plan required co-payments for nonpreventive-care office visits by individuals age 19 and older, including employees, spouses, and dependent children, but waived the co-payments for individuals under age 19. The FAQ stated that the agencies would not consider this design to violate the requirement.

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Got a health reform question? You can ask your health-care reform legislation question online at www.surveymonkey.com/s/second_opinions.

You can find a handy list of Key Provisions of the Patient Protection and Affordable Care Act and their effective dates at www.groom.com/HCR-Chart.html

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