



## Health Care Reform – Special Edition

### Health Care Reform: Age 26 Rule

#### LEGISLATIVE BRIEF

April 9, 2010

You may remember all the “buzz” leading up to the passage of the Health Care Reform bills ([H.R. 3590](#) and [H.R. 4872](#)). Post passage, the volume of buzz has grown exponentially. Unfortunately, but certainly understandably, the airwaves are filled with bad information, incomplete at best, and downright wrong at worst. At the request of Leavitt Benefit Services, we will address each of the most critical and imminent changes brought about by the Health Care Reform bills, with targeted bulletins over the next few weeks. During this process, it is possible that the Department of Health and Human Services (HHS) and the Treasury Department (IRS) will begin publishing interim rules, clarifying our obligations under the law.

#### Dependents Covered to Age 26

The most commonly misunderstood and most immediate piece of the new Health Care Reform legislation is the provision that group health plans must cover an employee’s dependents to age 26. I actually have talked to more than one client company that has received calls from employees requesting enrollment materials on the assumption that the provision is now in effect!

#### Here is What We Know

**Effective Date.** Health plans must begin covering eligible dependents to age 26 as of the first day of the Plan Year beginning on or after September 23, 2010 (six months after enactment).

**Applicability.** This provision will apply to all group health plans, whether insured or self-insured, in existence at the time of enactment as well as those who become effective subsequent to the date of enactment. In other words, for purposes of the age 26 rule, there are no grandfathered health plans.

**Eligibility.** Dependents are eligible for coverage regardless of marital status so long as they don’t have access to group health coverage elsewhere.

**Grandchild Exception.** The rule will not mandate coverage availability for grandchildren.

## Discussion

1. **Interim Rules.** HHS will produce rules for the implementation of this provision.
2. **Ambiguities.** What we don't know, based on the statutory language (attached) is whether these new "dependents" must meet the dependent child status (under IRC Section 152) or be a full-time student. We expect that HHS will clarify this in its Interim Rules.
3. **The Marriage Issue.** As you may know, the Health Care Reform Bill itself contained an "unmarried" requirement. The Reconciliation Bill removed this requirement. The assumption is that Congress intends to extend the additional coverage to dependents whether married or unmarried. Our opinion is that Congress agreed to allow HHS to draft its own rules with or without this requirement.
4. **Michelle's Law.** Federal law now requires health coverage to continue for up to one year for students who take a medically necessary leave of absence from a post-secondary institution. Depending upon the HHS regulations, the Health Care Reform provision may eliminate the need for the federal Michelle's law as well as any state versions of Michelle's law.
5. **Stop loss Coverage.** Since most stop loss policies are casualty policies, they are not subject to the Health Care Reform laws. At present, the stop loss market could elect to limit its claims exposure to a more restrictive dependent definition. It is also possible that market forces may change their policies with regard to dependent coverage to conform to the Health Care Reform provision. Once again, we have no clear answer at this time.

## Action Plan

1. Determine the effective date on which this law will apply to you (first day of your Plan Year beginning on or after September 23, 2010).
2. Contact your health care carrier(s) regarding its interpretation absent HHS regulations, and an idea of the potential rate adjustments at renewal.
3. Survey your participating employees to obtain a count of potential eligibles.
4. Wait for regulations.

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