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With the passage of health care reform there has been a flurry of activity and so many articles written on different aspects of the new rules. In fact, based on the number of articles being written on health care reform, I think the new legislation is a bigger threat to the rain forest than climate change because of the increased demand for paper. I am going to devote the bulk of this newsletter on one topic of health care reform and how it dovetails with the new Ohio rules. However, before I get into that one topic I will touch on a couple of current developments.

Premium Subsidy

The Federal government continues to extend the premium subsidy for short periods. In fact, this is the third extension and it is scheduled to expire on May 31, 2010. The Federal government has issued new guidance on the most recent extension. That guidance is available at the following links:

<http://www.dol.gov/ebsa/newsroom/2010/ebsa041610.html>

<http://www.dol.gov/ebsa/newsroom/fsCOBRAPremiumreduction.html>

<http://www.dol.gov/ebsa/faqs/faq-PPACA.html>

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The last article talks about how health care reform and COBRA interact. Also, for smaller employers and public entities in Ohio that are exempt from COBRA, the state continuation rules (i.e. Ohio Mini-COBRA) were amended to say group insurance policies issued, delivered or renewed on or after February 25, 2010, increase the period of continuation coverage from 12 to 15 months. This Ohio extension is temporary and lasts only as long as newly terminated employees are eligible for federal premium subsidies. When those federal subsidies are no longer available to newly terminated employees, the temporary extension will end and the Ohio law will return to 12 months of continuation coverage.

TRICARE Regulations Finalized

For those of you who have retired military employees, you should note that there are rules that preclude employers from providing incentives to employees for waiving coverage under an employer sponsored health plan so that they will enroll in TRICARE. These rules are very similar to the Medicare Secondary Payer Rules. The Department of Defense recently issued final regulations explaining the rules. The following article is a brief discussion of those rules plus a link to the actual rules themselves.

<http://www.ifebp.org/Resources/News/Regulatory+Updates/DOD+TRICARE.htm>

Although employers can not offer incentives for waiving the employer's group health plan in favor of TRICARE, the final rules do allow employers to offer cash out plan to ex-

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military personnel as long as the cash out plan is offered to everyone on the same terms and conditions. In other words, the employer could not offer a cash out plan just to those employees who also are eligible for TRICARE. However, the government has approved cash out plans for all employees (including those eligible for TRICARE) as long as the cash out plan provides uniform benefits to all participants.

Coverage for Adult Children

I said I would devote the bulk of this newsletter to one topic and one of the most confusing areas has to do with extending health coverage to adult children. Therefore, I thought I would take a stab at trying to clear up some of the confusion. There are a number of moving (but inter-related) parts to this topic. You have national health care reform that imposes new rules (albeit) at different times on all employers (i.e. those with self funded and fully insured plans) and a different set of rules for employers in Ohio with insured plans and Ohio public entities with both insured and self funded plans. On top of that you also have tax issues on both the Federal and state level.

Federal Law

Let's start with the new Federal rules under health care reform applicable to adult children. Again, these rules apply to all employers with both fully insured and self funded health plans. The rules do not apply to dental and visions plans. These rules are effective for

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plan years beginning on or after October 1, 2010. This means, for example, if the employer's group health plan is maintained on a calendar year basis, that employer's group health plan will be subject to these rules January 1, 2011.

Under Federal law the group health plan must provide coverage to adult children up to age 26. This means the coverage ends when the child turns age 26. It does not matter if the child is married or if the child qualifies as the employee's dependent. Stated another way, the plan must cover both married and unmarried children up to age 26 even if the child does not live at the employee's home and even if the employee does not claim the child as a tax dependent. The Federal law specifically states the plan does not have to cover the employee's grandchildren.

However, there is a special twist to the rules if the employer's group health plan is considered a "grandfathered" plan. A grandfathered plan is a plan that was in existence on the date President Obama signed the law (i.e. March 23, 2010). So if the employer's group health plan was in place on March 23, 2010, special transitional rules apply. Under the special transitional rules, the employer need not cover the adult child if that child is eligible for other group coverage. This transitional rule expires for plan year beginning on or after January 1, 2014.

If the employer's group health plan is not a grandfathered plan, then it does not matter that the adult child has other group coverage available. That is, a health plan that is not

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grandfathered must offer coverage to children up to age 26 even if the child has other group coverage available. Since the transaction rule for grandfathered plan expires for plan years beginning on or after January 1, 2014, this means grandfathered plans and plans that are not grandfathered will be treated the same after that date.

As a practical matter, many people believe employers with grandfathered plans will not go through the trouble of excluding children who otherwise qualify for the extension except for the fact they have other group coverage available. For one thing, it will be difficult to gather the information to determine if the child has other coverage available. Also, this special rule goes away for plan years beginning on or after January 1, 2014. So the "bottom line" is it may not be worth it to go through all the administrative hassle for only a couple of years for a group of individuals that probably will not have a high claims experience.

There are a number of unanswered questions under the new Federal rules. For example, the rules are silent about who pays for the child's coverage and how this extended coverage coordinates with COBRA. There also are a number of other issues that are not addressed like enrollment issues and how this law impacts Michelle's Law. As currently written, Michelle's Law seems irrelevant now since the maximum extended coverage under that statute also ended at age 26. I will spend a few minutes expanding on these topics later on in this article.

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Finally, the Internal Revenue Code was revised to say that there is no imputed income to the employee for the value of the adult child's coverage. This means that there are no adverse tax consequences to the employee because the employer is covering the adult child under the health plan. This is the case even if the child is not the employee's tax dependent.

To recap the Federal rules:

1. All employers must allow employees to cover children to age 26 under the employer sponsored group health plan.
2. Grandfathered health plans may deny coverage to adult children under age 26 IF that child has other group coverage available but this special provision ends for grandfathered plans for plan years beginning on or after January 1, 2014.
3. The Internal Revenue Code was amended to say there is no imputed income to the employee for the value of the health coverage for adult children up to age 26.

We will save a detailed discussion on grandfathered vs. non-grandfathered plans for another newsletter.

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Ohio Law

Ohio law was modified for all insured health plans and health plans (i.e. both insured and self funded) for public employers to require coverage for adult children. As with the Federal statute, the Ohio mandates do not apply to dental and vision plans. The adult children who are covered under the new Ohio rules are:

1. Unmarried children up to age 28;
2. Who live in Ohio or go to school full time outside of Ohio; and
3. Who are not eligible for another group health plan, Medicare or Medicaid.

As with the Federal rules, the child does not have to be the employee's tax dependent and does not have to live with the employee. The Ohio rules specifically state the carrier can impose a separate charge for the child's coverage. The rules also state that the child does not have to be offered COBRA or Ohio's Mini-COBRA when the child attains age 28. Finally, the Ohio law was changed to afford favorable tax treatment for Ohio purposes. That is, the value of the coverage does not have to be included in the employee's Ohio taxable income.

The Ohio law applies to plan years beginning on or after July 1, 2010. So the Ohio rules may become effective before the Federal rules.

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Comparison Between Federal Law and Ohio Law

	Federal Law	Ohio Law
Age	To Age 26	To Age 28
Marital Status	Married & Unmarried	Only Unmarried
Residence	No Restrictions	Live in Ohio Unless Full Time Student
Events That Cause Loss	Other Employer Coverage*	Other Employer Coverage, Medicare Medicaid
Tax Implications	Exempt from Federal & Ohio	Exempt From Federal Until end of Calendar Year in Which Child Attains Age 26 and Totally Exempt from Ohio Income Tax until Child Attains Age 28

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The following is a link to a Ohio government article that talks about the Ohio rules:

<http://www.insurance.ohio.gov/Consumer/Documents/Dependent%20Age%20FAQs.pdf>

This information was prepared by the Ohio Department of Insurance and answers the most common questions surrounding the Ohio rules.

Miscellaneous Issues

Michelle's Law

This law requires employers to continue health coverage for up to a year for students who lose their status as a student due to an illness or injury. Under Michelle's Law the employer could terminate coverage once the child attained the maximum age for dependent coverage. For example, assume the employer's group health plan provided coverage for children up to age 19 unless the child is a full time student. In that case, the child could stay on the plan until age 25 as long as the child remains a full time student.

Under Michelle's Law if Joe is a full time student and is age 22 but is unable to attend school because of an injury, Michelle's law required the employer to keep Joe on the plan for at least one year. However, if Joe was 24 ½ Michelle's Law would only require the

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employer to keep Joe on the plan until age 25 which is the age all children lose coverage.

With the new Federal requirement to keep all children on the plan until they attain age 26, Michelle's Law most likely will have limited application.

Cost of Coverage

The Ohio law specifically states there can be an additional charge for the child's coverage. The Federal statute is silent on this point. In short, it is unclear if the employer, child, parent or plan is responsible for the cost of the coverage.

COBRA and Ohio Mini COBRA

The Ohio rules state that a child is not entitled to COBRA or Ohio Mini-COBRA when the coverage ends because the child attains age 28. The Federal statute does not address COBRA. Hopefully this will be addressed before the Federal rules become effective.

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Children

Neither the Federal or Ohio rules actually define the term "child." However, the Internal Revenue Code defines child as a son, daughter, stepson, step daughter, adopted child and eligible foster child. Until there is some official guidance to the contrary, prudent employers probably should consider those individuals as children for these purposes.

Domestic Partners

The children of domestic partners probably do not fall under the new rules. That is, only the employee's children are entitled to continue coverage until age 26 under the Federal rules and until age 28 under the Ohio law.

Administrative Issues

There are a number of open administrative issues. For example, it is not entirely clear under the Federal rules exactly when the employer should enroll a child not currently on the plan. One approach is to simply wait until the first day of the first plan year after the Federal rules become effective. Assume the plan is maintained on a calendar year basis. The plan would be subject to the Federal rules on January 1, 2011 and this might be the date the employer elects to cover the child who (1) is not currently enrolled in the plan and (2) is under age 26.

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The Ohio rules say that employers have to enroll the children on or after the date the plan becomes subject to the Ohio rules (i.e. plan years beginning on or after July 1, 2010).

Practical Implications

It is our understanding many of the major carriers will begin covering children up to age 26 sooner rather than waiting until the actual effective date of the Federal laws. That is, from an administrative standpoint, some of the major carriers have made the decisions to begin implementing the new rules before the required deadline. See link to article:

http://www.plansponsor.com/Insurers_Beat_HCR_Deadline_on_Adult_Children_Coverage.aspx

This article simply touches on the main points of the two new laws that will have a major impact on employer sponsored plans. In the case of the Ohio statute the bulk of the requirements will fall on the carriers. The Federal statute probably will have a greater impact on more employers. Nevertheless, Ohio employers will have to become familiar with both statutes in a short period of time.

Please call if you have any questions regarding these topics.

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