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Employers May Offer Coverage of Children up to Age 26 Now

The recent healthcare reform legislation requires group health plans to provide coverage for children up to age 26, without regard to marital or student status. Although such coverage is not required until the first plan year beginning on or after September 23, 2010 (January 1, 2011 for calendar year plans), many insurers are now offering employers with fully insured plans the opportunity to continue the health coverage of children who would otherwise lose coverage this year. They are doing this, in part, to avoid a gap in coverage for college students graduating this spring before the required coverage under healthcare reform takes effect.

Although employers with self-insured plans are not affected by this change by insurers, as employees of self-insured employers become aware that some employers have continued coverage for children losing student status, they may ask for the same benefits. The Internal Revenue Service recently issued a Notice clarifying that under healthcare reform, employers, including self-insured employers, can enjoy the tax benefits of this extended coverage at any time after March 30, 2010. Consequently, employers will not have tax impediments to offering the coverage before it otherwise is legally required.

In deciding whether to offer coverage before the required deadline, self-insured employers should consider the following:

- Whether their stop loss insurance providers will honor coverage for dependents up to age 26 before the effective date of the healthcare reform mandate.
- The additional cost their plans will incur through increased claim costs, administrative costs and stop loss premiums.
- Whether they will permit this coverage to be paid for on a pre-tax basis through the employer's cafeteria plan. The IRS Notice states that this new eligibility for coverage constitutes a "change in status" and permits such coverage to be paid for on a pre-tax basis through a cafeteria plan so long as the employer amends its cafeteria plan by December 31, 2010. Such coverage also may be funded through a VEBA or 401(h) account.
- Whether to allow dependents under the age of 26 who are currently receiving COBRA coverage to re-enroll in the group health plan.
- Whether to allow children who are not currently covered to enroll in the group health plan before next year, or whether to only allow continued coverage for children who would otherwise lose coverage this year due to loss of student status or attainment of a limiting age under 26.
- Whether making this amendment before the required effective date would affect the plan's grandfathered status.

Employers may also want to consider providing such coverage through the end of the tax year in which the child turns age 26, instead of providing coverage only through the child's 26th birthday. Although healthcare reform only requires coverage until age 26, the cost of coverage provided to a child through the end of the tax year in which such child attains age 26 may be excluded from an employee's gross income.

For more information, please feel free to contact any [lawyer](#) in the [Employee Benefits Group](#).