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# ClientAlert

## U.S. Departments of Treasury, Labor, and Health and Human Services Redefine “Dependent” and Mandate Health Coverage Through Age 26

Dear Clients and Friends:

On May 10, 2010, the United States Departments of Treasury, Labor, and Health and Human Services promulgated interim final regulations under the Patient Protection and Affordable Care Act (“Affordable Care Act”). The new regulations require group health plans and health insurance issuers to extend coverage to dependents up to the age of 26 years old (that is, 25 years old and younger). Generally, the new rule will apply to all policies beginning on or after September 23, 2010. Therefore, for calendar year plans, the rule will apply to policies starting January 1, 2011.

The Affordable Care Act amended a portion of the Public Health Service Act as it applied to group health plans and health insurance issuers. Prior to this rule, a group health plan or health insurance issuer could look to other factors in addition to the child’s age to determine if the child was a “dependent” of the primary holder. Some factors health insurance plans and providers considered were: the child’s student status, their residency, whether they received financial support from the primary holder, employment, whether they were eligible for other coverage, and whether the child was listed as a dependent on the primary holder’s tax return. The Affordable Care Act’s expansion of dependent coverage until age 26 no longer permits a plan or provider to establish additional requirements to obtain dependent status that look to any factor beside the dependent’s age.

The new rule has an effect on COBRA coverage as well. In the event a dependent of an active employee is under 26 years old and is covered by COBRA solely because the child aged out of a previous plan, that dependent must be given the opportunity to once again be covered as a dependent of an active employee (as opposed to a COBRA qualified beneficiary). If the primary holder is covered by COBRA, every dependent under the age of 26 will also be covered so long as the primary holder elects to continue their COBRA coverage during the 18 month permissible timeframe. However, if during the period when the primary holder is covered by COBRA a dependent has a qualifying event, including turning 26 years old and aging out, they too may elect to be covered by COBRA. If the dependent has a separate qualifying event, they may elect to be covered for a full 18 months even if prior to the event they were already covered under COBRA as a dependent.

**If you have any questions regarding the new healthcare rule, its applications, or its effects, please do not hesitate to contact:**

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