Q&A on US Health Reform:

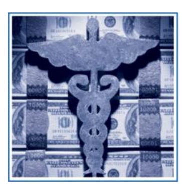
Changes in 2010 and 2011 for Employer-Sponsored Plans

Developed from Conner Strong's web briefing of May 26, 2010

On May 26, Conner Strong held its second web briefing covering several important employer requirements related to the new health reform law. Since its passage, new and emerging details have become available that pose issues and challenges for employer plan sponsors.

The May 26 web briefing addressed recent administrative rules on the handling of dependent to age 26 coverage and the early retiree reinsurance program application process. We also provided some advice on how sponsors might contend with employee communication issues for 2011 and provided a copy of our updated Year-by-Year Summary that illustrates when the various aspects of the health reform law will take effect.

We have prepared this Q&A in response to questions received from participants. To help keep our clients informed, we have also created a special section on our website providing information and tools you can use to review the major aspects of the law, what they mean, when they will take effect and what steps need to be taken to ensure compliance. Check back for daily updates, for news and analysis, and for updated tools to help you navigate this complex process.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Q. When does the "special open enrollment" begin and does the time frame apply to all employers?
A. Special open enrollment rules require that adult children must be given a 30-day opportunity to enroll. The enrollment period has to begin by the first day of the first plan year beginning on or after Sept. 23, 2010 (Jan. 1, 2011, for calendar year plans). This timeframe applies to both insured and self-insured plans and applies to all plans, whether grandfathered or not. There may be special delayed effective dates for certain collectively bargained plans.

Q. What are the tax benefits for small businesses?
A. This year there is a tax credit for certain small employers providing health benefits. Employers with less than 25 full time employees whose average annual wage is less than $50,000 can receive a tax credit equal to a percentage of the employer contributions that must be at least 50% of the premium for the qualified health plan.

Q. What are the requirements that we need to implement for the expanded dependent coverage?
A. There are two separate reform provisions. The first is that plans must make dependent coverage available until a child turns 26. The second is that the value of the employer-provided coverage for these children is not taxable to employees – and that is true through the end of the year in which the child reaches age 26.

Q. When do the dependent to age 26 rules become effective?
A. Plans will have to extend medical coverage to adult children up to age 26 for plan years beginning on or after September 23, 2010 (e.g., January 1, 2011 for a calendar year plan; October 1, 2010 for an October plan year; July 1, 2011 for a July plan year).

Q. Does the dependent to 26 provision apply to medical, dental and rx?
A. The law applies to medical, including prescription drug, but does not apply to limited-scope dental and limited-scope vision benefits.

Q. When does the early retiree reinsurance program (ERRP) start and end?
A. The temporary government reinsurance program that would pay a portion of the benefit claims of certain early retirees and their dependents is effective on June 1, 2010. The program ends January 1, 2014 when the Exchanges go live or when the $5B fund runs out (which is expected to be much sooner than 2014).

Q. Which retirees are eligible and which retiree plans are eligible?
A. Eligible retirees are those 55 and older, not on Medicare and not actively working for the employer providing health coverage. Their eligible dependents can be any age. To be eligible a plan must include programs that have generated or have the potential to generate cost-savings in connection with high-cost and chronic conditions. The plan must be able to demonstrate the cost savings or potential cost savings. The plan must also have an anti-fraud program in place.

Q. What is the ERRP application process?
A. It’s similar to the Retiree Drug Subsidy on-line application. There is a requirement to have an estimate of expected reinsurance claims. The sponsor must have a written agreement with its health plan or health insurance issuer authorizing the disclosure of Protected Health Information to the Secretary. Speed and accuracy is very important in filing for this program as HHS has established a first-come, first-served process for distributing the limited funds. Any filing glitch, no matter how minor, could result in HHS returning the application and pushing the claim to the back of the line.

Q. Is our plan obligated to extend dependent child coverage early if our insurer is offering this option?
A. Employers are not obligated to extend dependent child coverage early if their insurer is offering this option The insurer’s offer of early extended dependent coverage does not mean that the plan must offer such coverage before the applicable effective date.

Q. Can the employer still have a cost share that the employees pay?
A. Nothing in the law prohibits employee cost sharing.

Q. Can we charge more for coverage provided to a child under age 26?
A. No. You cannot vary the terms or conditions of coverage based on the age of a child. But per-dependent contributions are permitted, so you can charge premiums for enrolling adult children in the same way you would charge for other minor children of the employee. For example, you could charge per dependent, regardless of age.

Q. Are there drawbacks to offering dependent to 26 coverage before the mandate applies?
A. There could be drawbacks as many employers have determined that it is less burdensome to just rely on COBRA for students graduating before the mandate takes effect. Early coverage may result in special challenges around enrollment effective dates for different classes of children – such as those who are not currently enrolled but would become eligible for the extended coverage or children who are currently enrolled as qualified beneficiaries under COBRA.

Q. What specifically is a "Grandfathered Plan" and how will it impact implementation by the employer?
A. If your plan was in existence on March 23, 2010, it will generally be a grandfathered plan. The new law contains a number of health coverage reforms that require fully insured and self-insured plans to meet certain coverage and reporting requirements as early as January 1, 2011 for many plans. However, the law "grandfathers" certain plans that were in existence on March 23, 2010, with respect to some of these requirements. As to how it will impact implementation, employers with grandfathered plans will have fewer rules applicable to their plans.

Q. What changes can you make to a plan without losing grandfathered status? If you are considered a grandfathered plan and decide to make some plan design changes, do you lose your grandfathered status? What are the rules around losing your grandfathered status?
A. You can add family members to a plan and not lose your grandfathered status and new employees (and their families) can also be allowed to join the plan. One issue that was recently clarified is that changes to comply with the age 26 mandate, even if voluntarily complying early, will not result in loss of grandfathered status. As to other plan design type changes and changes to carriers, we are awaiting guidance on this which we understand could be released any day.

Q. If you have one employee who is not provided insurance, do we have to provide insurance?
A. Nothing in the law requires an employer to provide insurance. Effective in 2014, employer shared responsibility penalties will come into play if at least one full time employee obtains exchange based coverage and is eligible for financial assistance.

Q. What is the EXACT period that a dependent is to come off of the benefit plan? Is it the end of year in which the 26th birthday is attained or the end of the month of the 26th birthday?
A. It is actually neither. It is the day of the 26th birthday, so plan eligibility provisions can terminate coverage effective at 12:01 a.m. on the dependents' 26th birthday.

Q. If a 24-year old child is enrolled for coverage from January 2010 through December 2010 as required by state law, how do we account for that?
A. The child's coverage can be provided tax-free starting on March 30, 2010. The value of the coverage must be imputed as income to the child for the period from January 1, 2010 to March 29, 2010.

Q. We have an insured plan subject to the NJ state extension of child coverage to age 31. How is this taxed if one of our employees enrolls an adult child as of 1/1/11 and the child remains on the plan until the 31st birthday?
A. The value of the coverage would be tax-free until the end of the year in which the child turns age 26. Your company will have to impute the value of the coverage as income for all months starting in January of the year the child turns 27.

Q. Is the termination of the child's coverage at age 26 a qualifying event under COBRA?
A. Yes. The loss of dependent status under the terms of the plan is a COBRA qualifying event and these adult children would be eligible for up to another 36 months of continuation, at COBRA rates.

Q. Are we required to offer pre-tax contributions now under our cafeteria plan?
A. No you are not required to offer pre-tax contributions now. In fact you are not required to offer a cafeteria plan at all – but if you do you can start in 2011 or even wait for the next open enrollment period. This will give you time to collect employee certifications about whether dependents enrolled for 2011 meet the relaxed standard.

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Q. Is our insured health plan subject to both the new federal mandate and the NJ state law requiring coverage be offered to unmarried children up to age 31.
A. Yes, the insured arrangement is subject to both laws. So once health reform is effective for your plan, at open enrollment children must be offered coverage to age 26 regardless of marital status, but children aged 26 through 30 must only be offered plan coverage if unmarried.

Q. Do we have to make coverage available to children under age 26 if they are eligible for other employer-sponsored group coverage?
A. No as long as your plan is grandfathered (through 2014). You can use a process similar to what many employers already use to determine existence of other coverage when administering coordination of benefit or spousal surcharge rules. These processes can range from employee certifications to full document collection.

Q. How long do we have to continue to cover adult children?
A. You can terminate coverage of a child on the date of his/her 26th birthday. However, you could for administrative reasons decide to continue their coverage until the end of that month or the end of that plan year, and you may do so without adverse tax consequences to the employee.
