Some State Dependent Health Insurance Extensions More Generous Than Affordable Care Act

May 2010

President Obama signed the “Patient Protection and Affordable Care Act” (PPACA) (P.L. 111-148) and the “Health Care and Education Reconciliation Act of 2010” (HCERA) (P.L. 111-152) into law on March 23 and March 30, 2010, respectively, completing his vision of enacting comprehensive health care reform during his presidency. Taken together, the two laws are referred to as the “Affordable Care Act.”

One component of the Affordable Care Act requires group health plans to provide coverage to an adult child until the child turns age 26, effective for plan years beginning on or after September 23, 2010 (January 1, 2011 for calendar year plans). However, states began using this extension of coverage strategy to address their uninsured young adults in 1994, and currently, 34 states have laws—with widely varying eligibility provisions—that extend health insurance to young adults. For example, in 1994, Utah became the first state to enact a law extending coverage past the “limiting age” set forth in a health plan. In general, the state requires group policies and contracts that provide coverage to a dependent child to extend his/her coverage to age 26 if he/she is unmarried. New Jersey joined the growing list of states with similar laws when in 2006, it enacted a law that requires group health plans to give certain dependents the opportunity to elect extended health coverage until age 30 (which was extended to age 31 in 2008).

While the Affordable Care Act applies to all states, including the 34 states with existing dependent health insurance extension laws, the laws of the following nine states are more generous to adult children:

- Florida
- Illinois
- Nebraska
- New Jersey
- New York
- Ohio
- Pennsylvania
- South Dakota
- Wisconsin

Therefore, in these states, young adults will be able to continue coverage under the current state insurance laws. However, young adults in states with insurance laws that are less generous than the Affordable Care Act will now be able to take advantage of the extended eligibility provisions.

Tax implications of providing/subsidizing such coverage should be considered. The Affordable Care Act and clarifications issued by Internal Revenue Service Notice 2010-38 generally allow adult children to receive such coverage up to age 27 without an adverse federal tax impact to his or her parent. Regardless, an employer also will need to consider any state tax impact of both the federal changes to coverage of adult children, as well as varying state laws.
In addition, before complying with any state law that may relate to an employee benefit plan, an employer should consider the impact of the preemption provisions of the Employee Retirement Income Security Act of 1974 (ERISA). Employers take a variety of approaches to deal with these types of dependent eligibility laws. If a plan is self-insured, ERISA likely preempts the state law and an employer is not required to comply. If a plan is fully-insured, the insurer or health maintenance organization (HMO) likely is required to comply, so additional discussions with the employer’s vendor should take place.

If you have questions or need additional information, please contact your Hewitt Consultant.