

Update

March 26, 2008



States extend age of children entitled to dependent health coverage

One strategy many states are using to address the problem of the uninsured is extending the age of children eligible for dependent coverage under insured group health and HMO plans. Some states are also applying this coverage requirement to stand-alone dental and vision plans, as well as to insurance policies and contracts issued in another state that cover state residents. For employers, these extension mandates raise several issues related to benefit cost and taxation, compliance, notice, and COBRA. This *Update* explores those issues.

State laws extend dependent eligibility for health or HMO coverage

Group health plans commonly offer coverage for employees, their spouses and children. Traditionally, employers could limit dependent coverage to unmarried children under a certain age – such as 19 years, or 23 years for full-time students. In recent years, many states have enacted so-called limiting-age laws or mandates that specify and usually extend age limits for dependent coverage under an insured health plan. (See sidebar on page 2.)

Affected plans. State limiting-age laws apply to insured medical plans issued within the state, including employer-sponsored insured group plans. However, none of these mandates applies to *self-insured* medical plans governed by ERISA. Most of the laws do apply to HMOs, and many cover stand-alone insured dental and vision plans. Some also extend to policies and contracts issued outside the state – a concept commonly referred to as “extraterritoriality.”

Extraterritoriality. State insurance laws with extraterritorial provisions apply to policies or health plan contracts issued elsewhere if they cover individuals who live or work in the state. These complex laws vary by state and may include rules that extend mandates:

- to any policy, wherever issued, to the extent it covers state residents; or
- to policies if a majority of covered employees work in the state.

States with extended dependent coverage provisions

Colorado
Connecticut
Delaware
Florida
Georgia
Indiana
Louisiana
Maryland
Massachusetts
Michigan
Minnesota
Missouri
Montana
New Hampshire
New Jersey
New Mexico
New York
North Dakota
South Dakota
Tennessee
Texas
Utah
Vermont
Virginia
Washington
West Virginia
Wisconsin

Types of extensions. Not all state limiting-age laws contain the same provisions, but most generally follow one of the following three approaches:

- Extended dependent coverage becomes part of the plan's terms without an affirmative election by employees.
- Insurers must allow covered employees the chance to elect continued coverage for their eligible dependents.
- Insured health plans must extend coverage only for full-time students on a medical or military leave of absence that would otherwise cause loss of coverage.

Issues for employers

Employers providing insured coverage for their employees can face a variety of issues related to limiting-age laws.

Cost. Although states can require extended dependent eligibility under insured plans and HMOs, employers aren't legally required to pay the cost of extended coverage. All or part of the additional cost can be passed on to the covered employee.

Taxation of benefits. Some dependents eligible for extended coverage under state mandates don't qualify for tax-free health benefits under the federal tax code. In such cases, the employer must tax the employee for the full value of the dependent's coverage by imputing income, having the employee pay the full coverage cost on an after-tax basis, or using a combination of these approaches. (For a useful checklist to help determine which dependents can have tax-free health coverage, see [Update: Which dependents can have tax-free health coverage?](#), Oct. 25, 2006.)

Compliance and communication. Generally, insurers and HMOs are responsible for conforming their policies and contracts to applicable state laws and communicating extended dependent eligibility information. But all employers with both insured and self-insured coverage will need to carefully communicate any differences in eligibility rules to their employees.

COBRA. In those states where extended dependent coverage is an optional election for employees rather than a requirement for the insured plan, employees' dependents must also be given the option of electing COBRA coverage. This is because the dependent child will lose coverage under the plan's standard age limit, and that loss of coverage is a COBRA qualifying event.



For more information

For additional information, please contact your Mercer consultant.

*This **Update** is for information only and does not constitute legal advice; consult with legal and tax advisers before applying this information to your situation.*

Conclusion

While it is generally up to carriers to comply with the various state mandates, employers with insured plans and HMOs should be aware of the laws and how they may affect plan administration, taxation and communication. Employers with self-insured ERISA plans don't need to comply with the mandates but may need to answer inquiries from employees who have heard of the laws elsewhere. A general understanding of issues that may arise can help in both situations.

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