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Hewitt

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Submitted electronically via the Federal Rulemaking portal @ www.regulations.gov

Attention: RIN 1210-AB41
Office of Health Plan Standards and Compliance Assistance
Employee Benefits Security Administration
Room N-5653
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

Dear Sir or Madam:

Subject: Comments Relating to Dependent Coverage to Age 26 Under the Patient Protection and Affordable Care Act, as Amended by the Health Care and Education Reconciliation Act (Collectively Referred to Herein as "PPACA") (RIN 1210-AB41)

Hewitt Associates (Hewitt) welcomes the opportunity to submit for consideration our comments relating to the interim final rules pertaining to dependent coverage to age 26 published in the *Federal Register* on May 13, 2010.

Who We Are

Hewitt Associates (NYSE: HEW) provides leading organizations around the world with expert human resources consulting and outsourcing solutions to help them anticipate and solve their most complex benefits, talent, and related financial challenges. Hewitt works with companies to design, implement, communicate, and administer a wide range of human resources, retirement, investment management, health care, compensation, and talent management strategies. With a history of exceptional client service since 1940, Hewitt has offices in more than 30 countries and employs approximately 23,000 associates who are helping make the world a better place to work. For more information, please visit www.hewitt.com.

Hewitt commends the agencies for their timely issuance of these interim final regulations with a request for comments. Accordingly, Hewitt is submitting comments that are intended to assist the agencies in understanding the issues that may arise under these interim final rules and to make some suggested clarifications and modifications.

Definition of a Child

The Internal Revenue Service (IRS) released Notice 2010-38 on April 27, 2010 to provide guidance on the tax treatment of health coverage provided to adult children up to age 27. Notice 2010-38 provides that for purposes of the tax treatment, the IRS is using the definition of a child contained in Internal Revenue Code ("Code") section 152(f)(1). Under Code section 152(f)(1), a child is an individual who is the son, daughter, stepson, or stepdaughter of the employee, and also includes both legally adopted individuals of the employee and individuals who are lawfully placed with the employee for legal adoption and legally placed foster children.

However, the interim final rules do not contain a definition of a child similar to what the IRS used. The interim final rules do, however, allow plans to determine eligibility based on the relationship between a child and the participant, which would seem to allow a plan to follow the definition in Code section 152(f)(1). However, it is unclear whether a plan that prior to the law voluntarily covered individuals, such as nieces and nephews, who do not fall under the Code section 152(f)(1) definition of a child would have to now cover those individuals to age 26. Further, it is unclear whether a plan that prior to the law did not provide coverage to certain children, such as legally placed foster children, will now have to extend coverage to these individuals.

To provide clarity and consistency on this issue, Hewitt requests that the agencies:

1. Follow the definition of a child in Code section 152(f)(1); and

2. Clarify that if an employer-sponsored plan did not cover certain children prior to the law, that the plan not be required to now extend coverage to these individuals.

Inapplicability to Retiree-Only Plans

When the interim final rules were released in May, neither the preamble nor the regulatory text addressed the issue of whether retiree-only plans that cover dependents also would be required to offer coverage to children up to age 26. It was not until the interim final regulations addressing grandfathered health plan status were issued a few weeks later that the issue of whether the PPACA group market reforms apply to retiree-only plans was addressed. The preamble to the grandfather rules states that retiree-only plans that cover fewer than two participants who are current employees are not subject to the PPACA group market reforms added to Part 7 of the Employee Retirement Income Security Act (ERISA). This was subsequently confirmed on June 28, 2010 when the agencies released the interim final regulations implementing the PPACA “Patient’s Bill of Rights.”

Because the requirement to provide coverage to adult children to age 26 was added to Part 7 of ERISA, it follows that this provision does not apply to retiree-only plans. Hewitt requests that the agencies confirm and clarify that this adult child coverage requirement under section 2714 of the PPACA does not apply to retiree-only plans with fewer than two participants who are current employees.

Enrollment Periods That Coincide With Open Enrollment

The interim final rules provide transitional relief for a child whose coverage ended, or who was denied coverage (or was not eligible for coverage), under a group health plan or health insurance coverage because, under the terms of the plan or coverage, the availability of dependent coverage of children ended before the attainment of age 26. The interim final rules require a plan or issuer to give such a child an opportunity to enroll that continues for at least 30 days (including written notice of the opportunity to enroll) but also allow plans to use their existing annual open enrollment period to satisfy this enrollment opportunity requirement.

Most plans operate on a calendar year basis, meaning that open enrollment will begin in the fall of 2010 for the plan year beginning January 1, 2011. Any plan changes, including compliance with the PPACA provisions will be communicated to employees well in advance of the start of open enrollment. This provides employees with the opportunity to ask any questions about their benefits as well as make any determinations regarding the benefits they plan to enroll in for the following year, whether it be flexible spending arrangement contribution amounts, the addition of life insurance benefits, or any other changes made each year. Hewitt believes that because benefit changes are communicated well in advance of the start of open enrollment, employees will have ample time to decide whether to elect coverage for their adult children, whether those children are eligible for coverage, and which parent's plan to enroll the child in if the spouse has employer-provided coverage as well. Therefore, the 30-day open enrollment period places an undue administrative burden on plan sponsors and does not convey a significant benefit to the employee or adult children.

For those plans that provide the transitional enrollment opportunity in conjunction with their existing annual open enrollment period, Hewitt suggests that the enrollment period be limited to the regular open enrollment period.

COBRA Coverage Considered "Other Employer Coverage"

The statute and interim final rules provide that for plan years beginning before January 1, 2014, a group health plan that maintains grandfathered health plan status may exclude an adult child who has not attained age 26 if the child is eligible to enroll in an employer-sponsored health plan other than the group health plan of the parent. Although the interim final rules address the situation where the adult child "ages out" of eligibility under his/her parent's plan and then elects Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage, the rules do not address the situation where an adult child under age 26 is eligible for COBRA through his/her own former employer.

In the latter situation, Hewitt requests that the agencies clarify that if an adult child under age 26 is eligible for COBRA through his/her own former employer, a grandfathered health plan may exclude the adult child from coverage under his/her parents' plan until he/she exhausts COBRA. This clarification would be consistent with the Health Insurance Portability and Accountability Act (HIPAA) special enrollment rules that provide a special enrollment right only to COBRA enrollees who exhaust their COBRA coverage as described in 26 CFR 54.9801-2.

Conclusion

If you have any questions or comments, please contact the undersigned at the telephone number or e-mail address provided below.

Sincerely,

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