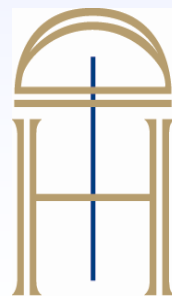


**American Benefits Council**  
Initial Agency Guidance on PPACA

**New Interim Final Regulations Regarding Adult Child Coverage**  
May 13, 2010

**Seth Perretta**



**DAVIS &  
HARMAN** LLP

# Adult Child Extended Coverage

- Act requires a plan to provide adult child coverage if it provides for any dependent coverage of children
  - Two important pieces of guidance
    - IRS Notice 2010-38 (issued 4/27/10) – Governs taxation of coverage
    - Interim Final Regulations (“IFR”) (issued 5/9/10) – Governs coverage extension
- Effective for plan years beginning on or after September 23, 2010 (i.e., 2011 for calendar year plans) **REGARDLESS OF PLAN’S GRANDFATHERED STATUS**
  - For plan years beginning prior to 2014, a “grandfathered” group health plan must only provide adult child coverage to qualifying individuals who are not eligible for other qualifying employer-sponsored coverage
    - IFR clarifies that such plan may exclude an adult child from coverage if such adult child is eligible for coverage under an employer-sponsored health plan “other than a group health plan of a parent”
    - Coordination of benefit issues



# Adult Child Extended Coverage

- **IFR** – Requires all group health plans and issuers that provide dependent coverage of children to “make such coverage available for children until attainment of 26 years of age”

**Q: What types of coverage are subject to the coverage extension?**

**A:** Generally all group health plan coverage, unless HIPAA-excepted

**IN** 

- ✓ Major Medical
- ✓ HRA
- ✓ Mini-Medical

**OUT** 

- ✓ HIPAA-Excepted
  - Health FSA
  - HSA
  - Dental
  - Vision
  - LTC
  - Specified Disease
  - Fixed/Hospital Indem
  - Med Supplemental
  - Disability
  - On-Site Medical

Does your plan currently provide dependent coverage?

**NO**

**\*\* Sponsor's Choice \*\***  
May offer adult child coverage at plan sponsor's election

**YES**

Must provide adult child coverage generally beginning for plan years after 9/22/10 (i.e., 2011 for calendar year plans)

# Adult Child Extended Coverage

## ➤ IFR

- Essentially requires plans that make available “dependent coverage of children” to make available the coverage to all “children” under the age of 26
- *Appears can only limit eligibility based on relationship*
  - For example, could provide coverage only to children of employees



***CANNOT place restrictions on eligibility based on a child's age***

- For children through age 25; restrictions on children 26 and over permitted



***CANNOT make available coverage with different “terms” based on a child's age***

- “Term” not defined in the IFR, but likely should be read broadly based on examples to include benefits, coverage levels, and pricing



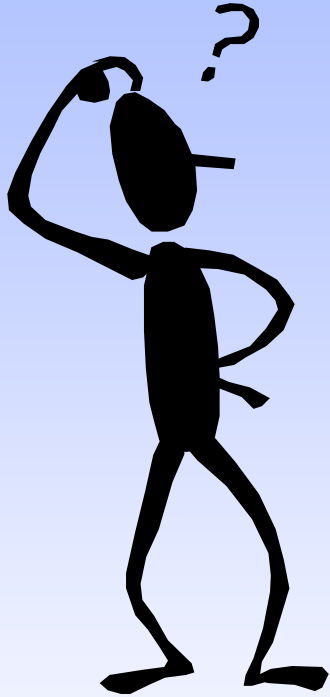
***CANNOT charge more for coverage based on child's age***

- Clearly applies to any premium surcharge
- Silent on issue of copayments and deductibles, but presumably included

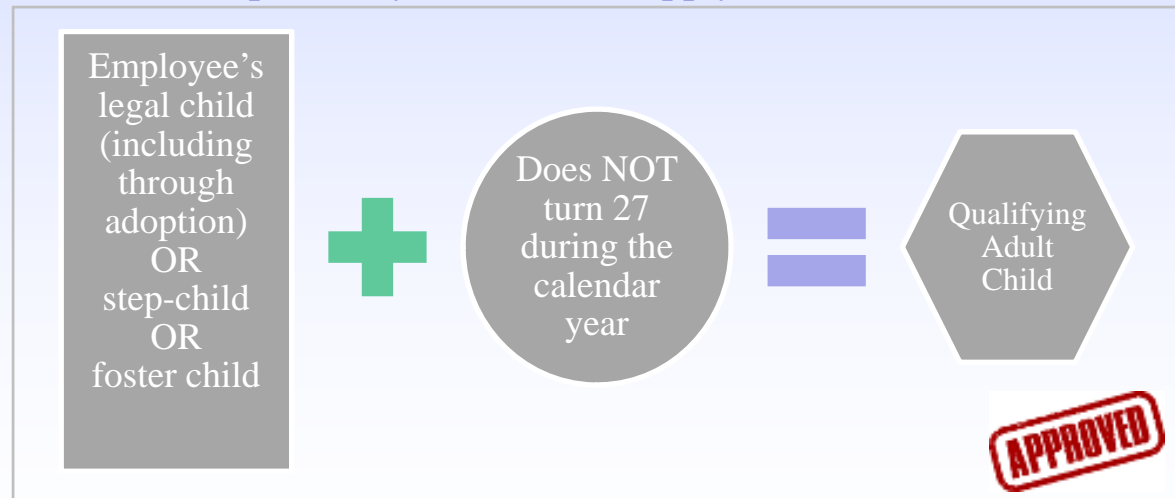


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# Adult Child Extended Coverage



- Who is covered by the extension?
  - NOTE: IRS Notice 2010-38, which pertains to the corresponding tax “fix” for adult child coverage, defines “child” by reference to IRC 152(f)(1) (which defines child as legal child, foster child or step-child of the employee)
    - Clear Dependency Tests do not apply

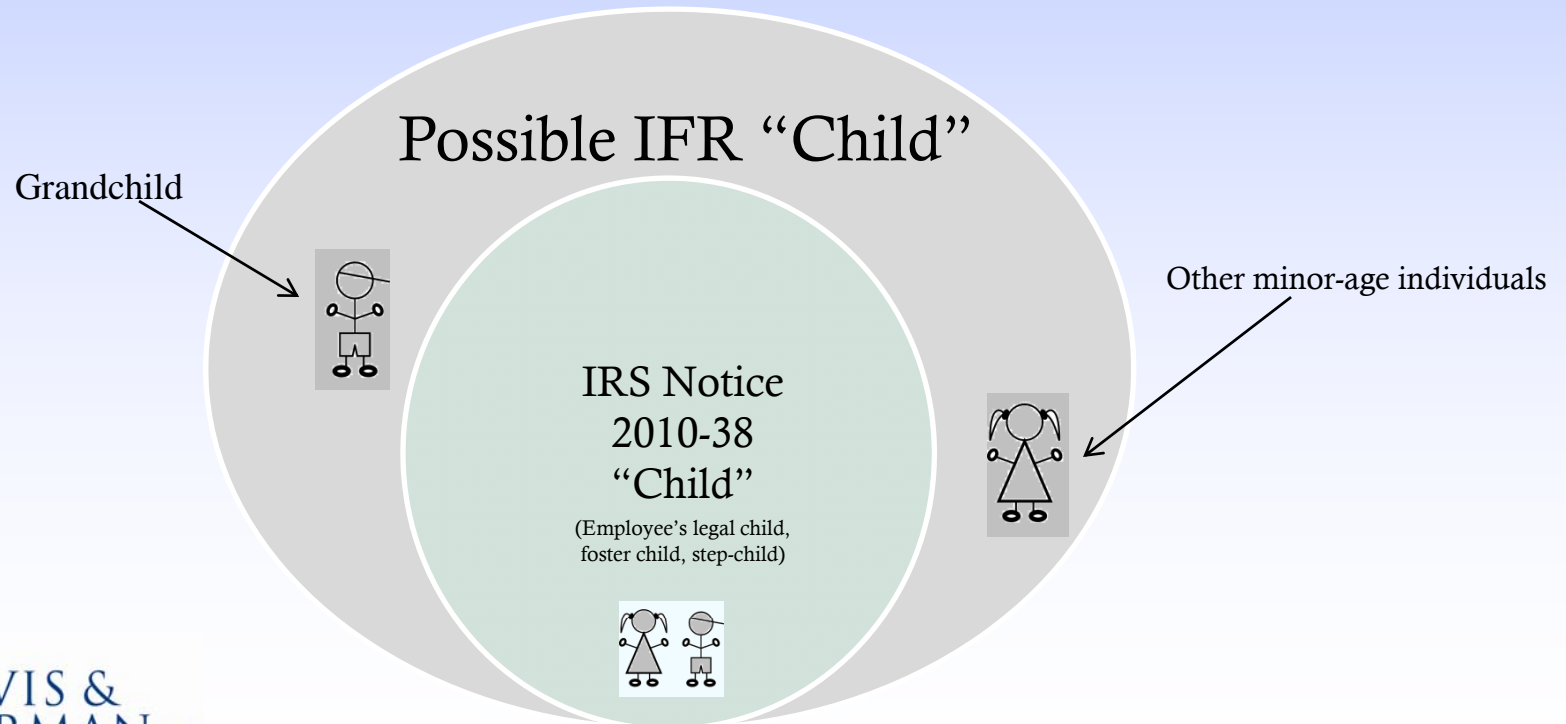


# Adult Child Extended Coverage

## ➤ Who qualifies?

– IFR does **NOT** include an express definition of “child”

- Lack of agency agreement
- Concerns regarding allowing plans/issuers to use dependency tests to exclude non-familial minor age children and grandchildren



# Adult Child Extended Coverage

- Implications for employers regarding grandchild and other coverage:
  - Coverage decisions needed
  - State taxation issues are likely to arise

<b>Option #1 Preserve Dependency Tests</b>	<ul style="list-style-type: none"><li>• Some potential risk here</li><li>• Leg history and Notice 2010-38 helpful</li></ul>
<b>Option #2 Eliminate Dependency Tests</b>	<ul style="list-style-type: none"><li>• Clearly compliant with IFR</li><li>• Potential adverse selection</li><li>• Likely increased negative claims experience</li></ul>
<b>Option #3 Eliminate Coverage</b>	<ul style="list-style-type: none"><li>• Clearly compliant</li><li>• Potential employee relations “hit”</li></ul>



# Adult Child Extended Coverage

## ➤ IFR

- Also mandates **special enrollment opportunity** for certain adult children
  - Applies to plan years beginning on or after September 23, 2010 (i.e., for the 2011 plan year for calendar year plans)
- **Requirements** for compliant special enrollment
  - At least 30-day open enrollment opportunity
  - To children who are not yet age 26 and who either (i) were dis-enrolled from the plan by reason of “aging out,” or (ii) were ineligible or otherwise denied for coverage because they were too old
  - Provided “not later than the first day of the first plan year beginning on or after September 23, 2010,” (i.e., January 1, 2011 for calendar year plans)
    - Plans may use existing open enrollment period (so long as made at least 30 days)
    - With retroactive coverage?

# Adult Child Extended Coverage

## ➤ IFR

### – Requirements for compliant special enrollment (cont'd)

- Must provide **written** notice to eligible adult children
  - May be provided to parent employee on behalf of employee
  - May be included as part of regular enrollment materials BUT must be “prominent”
    - » “Prominent” is NOT defined. Presumably should use same-size font and consider offsetting or highlighting
- Employer considerations
  - Can employer accurately identify all individuals who should be noticed?
  - If not, probably best to include notice as part of open enrollment materials generally

# Adult Child Extended Coverage

## ➤ 2010 Transition Year Issue

**\*\* IFR makes clear extending coverage does NOT jeopardize grandfathered plan status \*\***

### OPTION 1 – Status Quo

- PRO: Easy to administer
- PRO: To extent self-insured, increased premiums for plan sponsor
- CON: Increased employee premium cost in form of COBRA premiums for adult child
- CON: No employee relations “bump”

### OPTION 2 – Status Quo with Pre-Taxing of COBRA Coverage Through Cafeteria Plan

- PRO/CON: Same as Option 1 except that employee’s premium cost for adult child COBRA coverage is reduced to extent of marginal tax rate; also some marginal employee relations “bump”

### OPTION 3 – Extend Coverage to Adult Children Who Would Otherwise Lose Coverage

- PRO: Good for employee relations
- PRO: Reduces disruption in coverage
- CON: Likely need to amend health plan and cafeteria plan documents
- CON: For employer, increases cost because lose COBRA premiums, unless increase premium cost for adult child coverage during transition period

### OPTION 4 – Extend Coverage to All Qualifying Adult Children Regardless of Whether Enrolled Now

- PRO: Good for employee relations (arguably even better than Option 3)
- PRO: Reduces disruption in coverage
- CON: Likely need to amend health plan and cafeteria plan documents
- CON: For employer, increases cost because they lose COBRA premiums, unless increase premium cost for adult child coverage during transition period
- CON: Possible adverse selection



# Wrap-Up

- Questions?
- Contact Information

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