AUGUST 17, 2010

Definition of "Child" for Age 26 Requirements

The age 26 regulations require all applicable plans to cover dependant children until they reach age 26. Unfortunately, the regulations created tremendous uncertainly by not providing for a definition of "child." Therefore, plan sponsors do not know to which classifications of children the age 26 rules should apply. However, hope may be on the horizon. Last week, a meeting took place with DOL/IRS/HHS and as part of this meeting, industry attendees suggested that the age 26 rules apply the definition of child used in IRC 152(f)(1). This would include biological children, adopted children, step-children and foster children. It is too soon to tell whether the agencies will accept this definition, but because employers need to make decisions now, that definition is certainly the most logical, because it is the same definition used for purposes of the new tax code exclusion for children. Also, since the current age 26 interim final rules are silent regarding any definition, any change in the regulations when they are finalized could only be applied prospectively.

If the above definition holds, this means that applicable plans would be required to cover biological children, adopted children, step-children and foster children up to the age of 26. QMCSOs would be covered based on the relationship of the child to the employee. No other requirements can be applied. (However, if you are a grandfathered plan, you can exclude dependents who have coverage due to their own employment, but not due to coverage under another parent's plan.

Under the above definition, other children, such as children of a legal guardian, children of a domestic partner or grandchildren, would not be covered by the mandatory age 26 rules. This means that applicable plans could apply the usual dependency tests to these children as they have in the past (e.g., age 19 and age 25 if a full time student). Of course, there would be administrative issues by having different requirements for purposes of the same benefit option.