

BenAlert

BENEFIT TRENDS AND LEGISLATIVE UPDATES

APRIL 2011



Howitt Benefit Services is pleased to provide you with periodic updates on benefit trends and legislative updates. As part of our valuable services, we want to ensure that you are in compliance and well-informed of the ongoing changes in our industry.

In this BenAlert:

- Finally, California Legislation Provides Tax Relief**

April 2011

Last week, the California legislature passed and sent to Governor Brown legislation ([AB 36](#)) which will provide both administrative and tax relief to California employers and their employees. At this time the Governor has yet to sign it into law. Upon its enactment, California will adopt the federal rules regarding the tax treatment of adult dependents electing group health care coverage pursuant to the Patient Protection and Affordable Care Act (PPACA) and related laws (HCR).

Summary

- Effective Date.** California has adopted the change in tax rule as if it took effect retroactively to the date of the original tax rules issued by the IRS for adult children ages 24 through 26.
- Plans Effected.** Group health plans which have become subject to HCR provisions - plans whose plan years began on or after September 23, 2010, who have offered coverage to adult dependent children based on the HCR rules.
- Tax Relief Provided:**
 - Employers will not be required to add imputed income for state income tax purposes to an employee's W-2 for 2011 resulting from the addition of adult dependent children to the employer-sponsored group health plan.
 - Your employees will not be taxed on the value of adult dependent coverage.

Discussion

What AB 36 Does NOT Do. AB 36 leaves California's dependent definitions intact, requiring student status to age 24 for all purposes other than group health plans. This is consistent with federal law including HCR rules.

Reminder: Rules for Adult Dependents, ages 24-26. Eligible dependents under the HCR rule are:

- Not required to live at home; and,
- Not required to be a dependent on the employee's tax return; and,
- Not required to be a student; and,
- Merely to be a child of the participant (including adopted children).
- May be married, however, coverage is not provided for spouse or dependents of Adult Dependents.

Clarification: Access to Other Coverage.

Between now and January 1, 2014, for purposes of "grandfathered plans only," adult children will not be eligible for coverage if they have access to an employer-provided health plan. This exception does not apply to "non-grandfathered plans." If you can't recall whether your plan is grandfathered or not, call us!

As of January 1, 2014, all plans must offer coverage even if group health coverage is available elsewhere.

Domestic Partners. Since domestic partnerships are not recognized under federal law, this legislation does not mandate coverage for domestic partners. Plans which cover domestic partners whether voluntarily or in compliance with state laws may consider eligible dependents as eligible, but it is not required.

Employee Contributions. The employer must charge the same premium contribution for adult children as it does for other similarly situated dependents.

Special Enrollment Rights. For purposes of the election, and as a special open enrollment right under the Health Insurance Portability and Accountability Act (HIPAA), the dependent must be offered all the benefit packages that are available to similarly situated employees who have not lost coverage. If the parent is not enrolled, but otherwise eligible to enroll, the plan must allow the parent to enroll. Additionally, if already enrolled, the parent can switch package options at the time of the dependent's election.

COBRA. If the over-age dependent has elected COBRA, he/she may elect coverage under the active plan and drop COBRA coverage. At the time the dependent loses coverage at age 26, they will have full COBRA rights restored (i.e. 36 months, etc.).

The Tax Rule ([IRS Notice 2010-38](#)):

Removal of Imputed Income Tax. The law removes the imputed income tax requirements on over-aged dependents up to age 26, relieving employers from having to impute income for employer-provided health coverage to children over-age 19 who do not meet the definition of qualifying child, which requires that they be full time students and living with the taxpayer. This rule became effective as of March 30, 2010 for federal tax purposes.

Action Plan

Employee Communication. Employees and dependents must be notified of the provisions of the new law and their rights as a result.

Were you imputing income in 2010? If so, employees must be credited for the full amount. The employer may need to issue a corrected W-2, and should seek the advice of their tax advisor.

Are you imputing income and collecting taxes in 2011? State income taxes collected and income reported to date should be credited against the remaining state income tax obligation for 2011. Some employers took a “wait and see” attitude and did not include the imputed income or state income tax withholding for adult dependent coverage. At present, it would appear they have no obligation to act on the matter.

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