

# American Federation of Labor and Congress of Industrial Organizations



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*Submitted via email to: [E-OHPSCA.EBSA@dol.gov](mailto:E-OHPSCA.EBSA@dol.gov)*

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

Attention: RIN 1210-AB41

Re: Dependent Coverage of Children to Age 26 Interim Final Rule  
Docket ID EBSA-2010-0011-0001  
RIN 1210-AB41

Ladies and Gentlemen:

These comments are submitted on behalf of the AFL-CIO and its 57 affiliated unions in response to the Interim Final Rule for Group Health Plans and Health Insurance Issuers Relating to Dependent Coverage of Children to Age 26 ("Rule") issued jointly by the Department of the Labor, Department of Treasury, and Department of Health and Human Services (the "Departments") on May 13, 2010.<sup>1</sup> Together with its community affiliate, Working America, the AFL-CIO represents more than 11 million workers. Collectively, our unions negotiate health benefits for almost 40 million workers, retirees and their family members.

The AFL-CIO, its affiliates, allied organizations and members have worked for decades to reform our health care system. We were pleased to help gain passage of the Patient Protection and Affordable Care Act and the Health Care and Education and Reconciliation Act of 2010

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<sup>1</sup> The Interim Final Rule is at 75 Fed. Reg. 27122 (May 13, 2010).

(together, the “Affordable Care Act” or “Act”), legislation that makes progress toward quality, affordable health care for all.

The Affordable Care Act’s requirement that group health plans and health insurance issuers provide coverage to children up to age 26 will extend coverage to a growing group of uninsured. Young adults are one of the largest segments of our population without health insurance, and they are more likely to be uninsured than any other age group. In both 2008 and 2007, thirty percent of those between ages 19 and 29 had no coverage, the highest uninsured rate of any group.<sup>2</sup>

The Rule provides straightforward guidance to meet the Act’s goal of making coverage available to young adults. We applaud the Departments’ speedy release of the Rule, as well as the other interim final rules on the reforms that become effective with the first plan year beginning on and after September 23, 2010. However, as we discuss below, there are four areas where the Departments could provide greater clarity in order to eliminate ambiguity and address issues confronting plans as they extend coverage to children up to age 26.

### **Definition of Child (29 CFR 2590.715-2714(a) – (c))**

The Rule appropriately prohibits plans from limiting coverage to children by using traditional dependency requirements similar to those included in Internal Revenue Code (“Code”).<sup>3</sup> Under the Rule which implements new Section 2714 of the Public Health Service Act, plans must provide coverage to children up to age 26 based solely on the relationship between a child and a participant.

Because many plans now cover minors, other than the children of participants, who are eligible under the terms of the particular plan,<sup>4</sup> it would be helpful for the Departments to clarify whether coverage must be provided, without any additional restrictions or conditions, to this expanded class of individuals until they reach age 26.

### **Duration of Coverage (29 CFR §2590.715-2714(a))**

The Rule provides that plans offering dependent coverage for children must make that coverage available until those children reach age 26. However, the Act’s changes to the corresponding sections of the Code provide tax-favored treatment for extended coverage through

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<sup>2</sup> Karyn Schwartz and Tanya Schwartz, *How Will Health Reform Impact Young Adults?*, Kaiser Commission on Medicaid and the Uninsured (May 2010) available at <http://www.kff.org/healthreform/upload/7785-03.pdf>; Jennifer L. Nicholson, Sara R. Collins, et al. *Rite of Passage? Why Young Adults Become Uninsured and How New Policies Can Help, 2009 Update*, The Commonwealth Fund (August 2009) available at [http://www.commonwealthfund.org/~media/Files/Publications/Issue%20Brief/2009/Aug/1310\\_Nicholson\\_rite\\_of\\_passage\\_2009.pdf](http://www.commonwealthfund.org/~media/Files/Publications/Issue%20Brief/2009/Aug/1310_Nicholson_rite_of_passage_2009.pdf).

<sup>3</sup> The dependent definition in Code Section 152 includes age, relationship, residency and support requirements. The changes to the Code extending tax-favored treatment to coverage provided to children until they reach age 26 do so by using the existing definition of “child” in Code Section 152(f) and that definition does not include the residency, support and age requirements that must be satisfied in order to be considered a dependent. See Section 1004 of the Health Care and Education Reconciliation Act of 2010 and IRS Notice 2010-38.

<sup>4</sup> The eligibility rules providing coverage for these individuals will vary from plan to plan, but they generally track the requirements in Code Section 152(a) and (c) including residency, age and support.

the end of the tax year in which the child reaches age 26. *See* Section 1004 of the Health Care and Education and Reconciliation Act of 2010 (amending Code Sections 105(b), 162(l), 401(h) and 501(c)(9)) and IRS Notice 2010-38.

We suggest that the Rule be modified to clarify that plans may continue coverage to children through the end of the tax year in which they turn 26, consistent with the changes made to the Code.

**Notice Requirement under Transitional Rule (29 CFR § 2590.715-2714(f))**

Under the transitional rule provisions of the Rule, plans must provide a written notice of the opportunity to enroll two categories of children who become eligible for coverage when the extension of coverage becomes effective: those whose coverage ended before they reached age 26 and those who were never eligible for coverage because they were already older than the eligibility age under the particular plan. However, there is no requirement that these newly eligible children receive a separate notice of the opportunity to enroll in their parents' plan. The Rule permits plans to provide the notice to the parent. 29 CFR §2590.715-2714(f)(2)(ii).

We suggest that plans be required to notify newly eligible children separately where the child's address is known and in particular where the child is currently enrolled in COBRA continuation coverage.

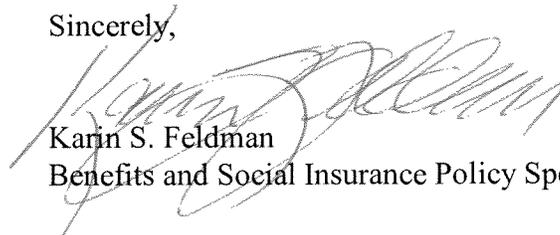
**Definition of "Eligible to Enroll" (29 CFR §2590.715-2714(g))**

For plan years beginning before January 1, 2014, grandfathered plans are not required to provide coverage to "an adult child ...who is eligible to enroll in an eligible employer-sponsored health plan ...." 29 CFR §2590.715-2714(g). However, the term "eligible to enroll" is not clearly defined in the Rule.

To ensure plans do not use this ambiguity to deny coverage to adult children, the Departments should clarify the meaning of "eligible to enroll." In particular, adult children should be covered under a parent's plan if there is either a waiting period before their employer plan coverage would become effective or a pre-existing condition exclusion that would apply for any period following enrollment. Coverage under a parent's plan should be available until the coverage under the adult child's employer plan is actually and fully effective. To allow plans to exclude these children before they, in fact, have coverage in effect undermines the purpose of the extension of coverage.

We appreciate the opportunity to comment on the Rule implementing the extension of dependent coverage of children, and we urge the Departments to incorporate the modifications we suggest in the final rule or other guidance they issue.

Sincerely,



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