



Frequently Asked Questions State and Federal Coverage Expansion For Older Age Children May 18, 2010

Both the **federal** government, through the Affordable Care Act, and the **state** government, through the budget that was passed in July of 2009, have passed legislation allowing older age children to remain covered under their parents' coverage. The **federal** and **state** laws are not exactly the same. The **federal** law requires plans to extend the eligibility age for dependents to age 26. Under **state** law, the employee must be allowed to pay for extending coverage for their child until the child turns 28. This FAQ will discuss the requirements of both laws and how they should work together in Ohio.

Who is Eligible?

Under **state** law, the child must be unmarried and:

- (1) the natural child, stepchild, or adopted child of the employee;
- (2) have not yet reached their 28th birthday
- (3) a resident of this state or a full-time student at an accredited public or private institution of higher education;
- (4) not employed by an employer that offers any health benefit plan under which the child is eligible for coverage, and
- (5) not eligible for coverage under Medicaid or Medicare.

Under **federal** law, the child may be married or unmarried and must:

- (1) be the child of the employee as that is defined under the plan or policy
- (2) have not yet reached their 26th birthday
- (3) not have their own employer coverage available if the parent is covered under a group health plan that was in existence on March 23, 2010 (grandfathered plan)
- (4) no other eligibility requirements are permitted.

Please note that neither the **state** nor **federal** law require the child to live with or be financially dependent upon the parent.

What type of coverage does the age expansion law apply to?

The **state** law applies to:

- (1) group policies that include coverage for dependents including COBRA and **state** continuation coverage
- (2) individual policies that include coverage for dependents including conversion, open enrollment basic and standard plans

(3) coverage issued by insurance companies¹ or Health Insuring Corporations (HICS)², also referred to as Health Maintenance Organizations (HMOs), insurance programs offered by MEWAs³, or public employee benefit plans⁴ Please note: this coverage extension does not apply to self-insured ERISA plans.

The **federal law**⁵ applies to:

(1) group health plans and insurance companies offering group or individual coverage that include coverage for dependents (this includes self-insured ERISA plans).

When does the coverage expansion take effect?

The **state law** goes into effect on July 1, 2010. For existing policies or plans, parents will be able to request coverage for older age children on the policy's first renewal date on or after July 1, 2010. Contact the insurer or employer to determine the renewal date of the policy. All new policies issued on or after July 1, 2010 will include the coverage expansion to age 28.

The **federal law** goes into effect on September 23, 2010. For existing policies or plans, parents will be able to request coverage for older age children on the policy's first renewal date on or after September 23, 2010. Some employers and insurers are allowing graduating students to stay on the parents' coverage beginning this June. Contact the insurer or employer to determine the renewal date of the policy. All new policies issued on or after September 23, 2010 will include the coverage expansion to age 26.

Enrollment and Eligibility Questions

1. How do the state and federal laws work together?

The **federal law** requires that health plans and health insurers that offer dependent coverage make coverage available under the plan until a child reaches age 26. Health insurers and health plans subject to **state law** must provide coverage or offer the parent the opportunity to purchase coverage for the child from age 26 until age 28, at which age the coverage extension ends.

2. When will coverage for older age children be available?

State law applies to new and renewing plans beginning on July 1, 2010, **federal law** applies to new and renewing plans beginning on September 23, 2010.

Example:

¹ Ohio Revised Code 3923.24

² Ohio Revised Code 1751.14

³ Ohio Revised Code 3923.24

⁴ Ohio Revised Code 3923.241

⁵ Patient Protection and Affordable Care Act (Public Law 111-148)

If an employer's plan renews on August 1, 2010, the plan must offer the extension coverage required under **state** law beginning on August 1, 2010. The plan will not be required to offer the extension coverage required under **federal** law until August 1, 2011, the first renewal after September 23, 2010, the effective date of the **federal** law.

Example:

If an employer's plan renews on January 1, 2011, the plan must offer the extension coverage required under **federal** and **state** law beginning on January 1, 2011. This means that plans that offer dependent coverage must make coverage available under the plan to eligible children until age 26 and then must continue coverage or offer the parent the opportunity to purchase coverage for eligible children from age 26 until age 28.

3. When may an older age child enroll?

The **federal** law includes a transition rule which requires the health plan or health insurer to give the parent written notice of the opportunity to enroll a currently eligible child and at least 30 days to actually enroll. The notice and opportunity to enroll may be provided during the employer's open enrollment period, but must be provided no later than the first day of the first plan year beginning on or after September 23, 2010. Coverage begins on the first day of the first plan year even if the request for enrollment is made after the first day.

In addition to during the annual open enrollment period, a parent may enroll an older age child for **state** coverage when the child reaches the **federal** limiting age of 26, or when the employer or insurer is notified that the child has experienced a change in circumstances and has become newly eligible for coverage under **state** law, for example, the 26 year old child has just moved back into Ohio.

4. How can a parent enroll an older age child for this coverage?

The parent should contact the employer or insurer to ask how to enroll the older age child and what the cost of the coverage will be.

5. Will a child be allowed to terminate individual (non-group) coverage in order to receive coverage under a parent's coverage?

Yes. As long as the child otherwise meets the eligibility criteria outlined above.

6. Will a child who previously reached the maximum age for coverage under the plan or policy and elected COBRA continuation coverage be eligible for continued coverage under the parent's plan or policy when these changes become effective?

Yes. As long as the child meets the eligibility criteria stated above.

7. Must the child have been continuously covered under the parent's plan or policy in order to be eligible for coverage under the new state or federal law?

No. Neither law requires the child to have been continuously covered under the parent's plan or policy. The child must meet the **state** eligibility criteria for **state** coverage or the **federal** eligibility criteria for **federal** coverage.

8. Must an employer who does not currently offer coverage to dependents offer coverage to older age children as a result of the state or federal law changes?

No, an employer who does not currently offer coverage to dependents is not required to do so as a result of the continuation of coverage laws.

9. Must group health plans or health insurers cover the children or spouses of older age children?

No. Neither **state** nor **federal** law require that coverage under the parent's plan or policy be offered to the children or spouse of an eligible older age child.

10. Does special enrollment apply to older age children? Is a carrier required to accept creditable coverage and waive pre-existing condition requirements? With creditable coverage can a carrier underwrite the older age child?

Yes. Older age children who have not been covered and who enroll under the **federal** or **state** coverage when it first becomes available to them will be treated as special enrollees. Older age children who become newly eligible, such as by moving back to Ohio before age 28, should be treated as special enrollees at the time they request coverage. The carrier must accept creditable coverage and waive pre-existing condition requirements for the older age child in the same manner as for any other dependent covered under the policy. The carrier may underwrite the older age child with creditable coverage if the carrier may underwrite other dependents with creditable coverage under the policy.

Premium and rate charges

1. Is there a difference between who pays for state and federal older age child coverage?

Yes. For coverage up to age 26 under the **federal** law, the cost to the parent may not vary based upon the age of the child. Surcharges that apply only to older age children are not allowed. For coverage between age 26 and age 28 under **state** law, the employer is not required to pay for any part of the cost. An employer may choose to do so, but it is not required under state law.

2. What rate can a carrier charge an older age child for coverage between age 26 and age 28?

The rate charged for coverage between age 26 and age 28 should be derived from the average child dependent rate for the group or product. The methodology to develop this rate should be actuarially sound. A carrier can charge an older age child a single rate as long as the rate is derived from the dependent rate. Carriers may not use the single employee rate without adjustment or a COBRA rate instead of the implied cost of dependent coverage.

Other Questions

1. When the child reaches the limiting age of 26 under the plan or policy, what coverage options will be available?

When the child reaches the limiting age of 26 under the plan or policy, if otherwise eligible, the child will be able to choose the **state** coverage extension until age 28, COBRA coverage, or **state** conversion coverage.

2. When the older age child reaches age 28 and loses coverage under the plan, may the child elect COBRA or state conversion coverage and receive additional coverage?

Yes, if otherwise eligible, the child will be able to elect COBRA or **state** conversion coverage.

3. Does the coverage expansion to age 28 apply to HCTC qualified plans (health coverage tax credit)?

Yes. The HCTC is a **federal** tax credit administered by the IRS that workers displaced by foreign trade can apply for to help pay part of the cost of their health plan premium.

Tax Implications

The following information was prepared by the Ohio Department of Taxation

1. Q. Are amounts paid for health coverage, including premiums paid for an accident and health insurance policy which provides coverage for adult children over age 23 up to age 28, deductible for Ohio income tax purposes?

If such amounts are paid for with money included in the taxpayer's federal adjusted gross income, the amounts are deductible on the Ohio income tax return.

(Note: An employee's payments for health coverage for an employer-sponsored plan are generally excluded from the employee's federal adjusted gross income and are not shown on the employee's W-2. Only amounts for health coverage which are paid with money which is included in federal adjusted gross income (as shown on the W-2) are deductible.)

2a. Q. May a person pay for health coverage out of a health savings account set up under the provisions of the Internal Revenue Code?

Generally no, however, there are two exceptions. With a health savings account set up under the provisions of the Internal Revenue Code you may only pay for health coverage from the account if you are collecting federal or state unemployment benefits, or if you have COBRA continuation coverage through a former employer.

2b. Q. May a person pay for the health coverage out of a medical savings account set up under the provisions of the Ohio Revised Code?

Yes.

3. Q. How do the changes in Ohio House Bill 1, effective October 16, 2009, affect the deduction on the Ohio income tax return for health coverage?

Ohio House Bill 1 expands the Ohio income tax deduction for amounts paid for health coverage. Ohio taxpayers may deduct payments made for health coverage, including premiums paid for accident and health plans for themselves and their dependents, if the plans are not subsidized (e.g. through employer contributions). For a taxpayer with a subsidized health coverage plan, the cost of the coverage must have been included in federal adjusted gross income on the taxpayer's federal income tax return in order to be deductible on the Ohio return. For purposes of this deduction, "dependent" includes qualifying children up to age 28 and qualifying relatives, without regard to the "gross income" test or the "more-than-half-support" test of Internal Revenue Code section 152. Qualifying relative includes an individual with the same principal abode as the taxpayer and who is a member of the taxpayer's household.

4. Q. During 2010 I am paying for health coverage for myself, my spouse and our 27 year-old unmarried son. The health coverage plan is not employer subsidized. Our son earns \$30,000, lives in his own house and provides all of his own support. For purposes of Ohio income tax may I deduct the entire cost of the health coverage plan paid?

Yes.

5. Q. During 2010 I paid \$8,000 for non-emergency medical care for my 27 year-old unmarried son. My son earns \$30,000, lives in his own house and provides all of his own support. For purposes of Ohio income tax may I deduct the \$8,000 medical care payment?

No, the change in the definition of "dependent" in Ohio House Bill 1 is only applicable to the cost of the health coverage plan. It does not affect payments for medical care.

6. Q. Because there is now a difference between the Internal Revenue Code and the Ohio Revised Code regarding the deductibility of the cost of the health coverage plan, will Ohio employers who offer health coverage plans need to provide additional reporting on employees' W-2's?

Yes. Employers who provide health coverage plans, the costs for which are partially excludible under the Internal Revenue Code and partially deductible under the Ohio Revised Code, will report the difference on the W-2's of the affected employees. The employer will show in Box 14 of the W-2 the amount the employee paid with taxable wages for health coverage. This will be one of the adjustments made on Line 2 of the Ohio return.

Resources:

For additional information on the Ohio tax implications: <http://tax.ohio.gov/>
Income Tax Division (614) 466-0224

For information on the federal tax changes see IRS Notice 2010-38, Tax Treatment of Health Care Benefits Provided With Respect to Children Under Age 27
<http://www.irs.gov/pub/irs-drop/n-10-38.pdf>

Information about HCTC can be viewed at the Internal Revenue Service's website which includes several links, such as frequently asked questions on related HCTC issues:
www.irs.gov/individuals/article/0,,id=109915,00.html

Technical questions about the changes discussed in this guidance should be directed to the Ohio Department of Insurance Product Regulation Division, at (614) 644-2644.

Consumers with questions may call the Ohio Department of Insurance at 1-800-686-1526 or visit <http://www.insurance.ohio.gov/Consumer/Pages/HealthCareReform.aspx>

