Keenan & Associates

*Briefing*

# Health Care Reform: Webinar Q&A — July 2010
# Mid-Year Elections and Expanded Coverage for Children

Keenan received a number of excellent questions in response to our June 17, 2010 webinar, *Health Care Reform Dependent Changes and Mid-Year Elections Rules*. The questions have been organized into categories and reformatted for consistency. We have attempted to answer every question submitted, although we have combined some questions and deleted duplicate questions that we received. Additionally, questions from the previous *Briefing* on Adult Children have been updated and included in this Q&A.

## General Questions

**Q1: What is the new rule regarding dependent coverage of children?**

**A1:** Health Reform has a number of mandates that affect plan design. As a group, these mandates are referred to as "Insurance Market Reforms." One of these reforms requires group health plans and health insurance carriers to make coverage available to children until they reach the age of 26. There are no other requirements for coverage such as full-time student status, residency, marital status or financial support.

**Q2: When this rule becomes effective, may a group health plan continue its existing dependent coverage for full-time students, as was the case for full-time students younger than age 24, and just extend the coverage for full-time students to age 26?**

**A2:** Coverage for children of employees to age 26 ("Adult Children") is a new category of dependent in addition to tax dependents. In order to be a tax dependent, the age and student-status requirements remain the same. Student-status may not be used to exclude a child from medical coverage who is younger than age 26.

**Q3: Just to clarify, what are the current Federal child tax dependent rules?**

**A3:** The Internal Revenue Code (§105(b)) provides for favorable tax treatment for health coverage of dependents who are "qualifying children" under IRC §152. The rules are quite complex but generally refer to children who are either (i) younger than age 19 or (ii) full-time students younger than age 24. In addition, the child must live with the parent for more than half the year, not rely on themselves for more than half of their own support and not file a joint tax return with a spouse for anything other than a tax refund.

**Q4: How does Health Reform change the definition of child dependent?**

**A4:** Under Health Reform, a child who is younger than age 26 can live anywhere in the country, can make more money than his parents, can be married and still be eligible for coverage under his parents' plans. The only requirement is the relationship of being a child such as a biological child, step-child, adopted child or foster child.

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**Q5: Will plans be permitted to exclude Adult Children who are married?**

**A5:** Plans must offer coverage to all Adult Children without regard to their marital status.

**Q6: Must a plan cover children of Adult Children?**

**A6:** No. Children of Adult Children (i.e. grandchildren) may be excluded from coverage.

**Q7: Are plans required to cover spouses of Adult Children?**

**A7:** No. Plans are not required to cover Spouses of Adult Children.

**Q8: Are there any Adult Children who may be excluded from coverage under a plan?**

**A8:** Until 2014, grandfathered plans may exclude Adult Children who are eligible to enroll in another employer's plan. A grandfathered plan is a plan that was in existence on March 23, 2010 and had participating employees on that date. If a plan loses grandfather status, it cannot exclude these children. At this time, it is unknown whether a grandfathered plan can exclude an Adult Child who is eligible for coverage under a spouse's plan.

Until 2014, Adult Children who are 19 years of age and older may be excluded from a plan that contains preexisting condition exclusions. In addition, some HMOs, as a condition of eligibility, require the individual to live/work within the plan's service area. In this case, Adult Children who live and work outside of a plan's service area may be ineligible or required to travel to the plan's service area for medical services. Plan documents should be reviewed and these issues addressed with the health insurance carrier, stop-loss carrier and TPA.

**Q9: If an Adult Child is eligible for coverage under the plans of both parents, which plan may exclude the child from coverage?**

**A9:** Neither plan can exclude the Adult Child from coverage on the basis of eligibility to enroll in another parent's plan. In other words, the Adult Child is eligible to participate in both plans. There is no guidance on whether a plan may exclude an Adult Child who is actually covered (as opposed to eligible to enroll) under another parent's plan.

**Q10: Are there special coordination of benefits rules with respect to an Adult Child who is covered under a parent's plan and also has coverage under his own plan?**

**A10:** Unless regulations are issued or a self-funded plan changes its coordination of benefits rules, it appears to be business as usual with respect to the coordination of benefits rules. The law surrounding the coordination of benefits rules prohibits the denial of a participant's claim because that participant is covered under another plan as well.

**Q11: If both parents have plans that cover Adult Children and their Adult Child has no other coverage, which plan will cover the child or can they both cover the child and coordinate benefits?**

**A11:** The Adult Child is eligible for both plans and may not be excluded on the basis of the Adult Child's eligibility to enroll in the other parent's plan. There is no guidance on whether a plan may exclude an Adult Child who is actually covered (as opposed to eligible to enroll) under another parent's plan.

**Q12: May an Adult Child enroll in his parent's plan if the coverage under his employer's plan is expensive?**

**A12:** Until 2014, grandfathered plans may exclude Adult Children who are eligible to enroll in another employer's plan. So, in this case, the Adult Child would be unable to enroll in his parent's plan because of his eligibility under his own plan. If the parent's plan was not a grandfathered plan, the Adult Child could be enrolled in his parent's plan at open enrollment without the need for a reason.

**Q13: Does Health Reform impact the benefits offered to children of domestic partners?**

**A13:** The laws have not changed with respect to coverage of children of domestic partners. At this time, the Defense of Marriage Act remains in force.

**Q14: When must plans comply with the new dependent coverage rules?**

**A14:** Plans must make coverage available to Adult Children effective for the first day of the plan year beginning on or after September 23, 2010.

**Q15: May an employee choose not to enroll an Adult Child if the Adult Child otherwise meets the eligibility requirements for enrollment?**

**A15:** Yes. The employer's obligation is to make coverage available to Adult Children. It is up to the employee to decide whether or not to enroll the Adult Child.

**Q16: Our plan year begins on July 1, 2010. Must we adopt the adult child mandate sooner?**

**A16:** No. The Adult Child mandate is effective for plan years beginning on or after September 23, 2010. You are required to make coverage available to Adult Children effective July 1, 2011. Some employers are voluntarily adopting the mandate earlier than is required.

**Q17: If an Adult Child becomes ineligible for coverage under a parent's plan for any reason, can the child be dropped from coverage mid-year or must we wait until the next open enrollment?**

**A17:** There are circumstances that will allow a sponsor to drop Adult Children from coverage in the middle of the year should the child become ineligible for coverage under a parent's plan. For example, a grandfathered plan may exclude Adult Children who are eligible to enroll in another employer's plan. In this case, if during a plan year, an Adult Child became eligible to enroll in another employer's plan, the Adult Child would be ineligible for coverage under his parent's plan and may be dropped mid-year.

**Q18: Must a plan enroll an Adult Child who had a previous medical condition but no previous medical coverage?**

**A18:** Until 2014, the preexisting condition exclusion rules remain unchanged for individuals age 19 and older. Effective for plan years commencing on or after September 23, 2010, a child below the age of 19 is no longer subject to the preexisting condition exclusion rules.

**Q19: In the event of a divorce, which parent is responsible for covering the Adult Child?**

**A19:** The Adult Child is eligible under both parent's plans without regard to residency, financial support, student status or marital status. If the Adult Child was the step-child of one of the parents, then it appears that the plan of the biological parent would be responsible for making coverage available and not the plan of the step-parent because the Adult Child would not satisfy the definition of

"child" found in IRC §152(f)(1). However, there may be other reasons for coverage under the ex-parent's plan such as a court order or the issuance of clarifying regulations from the governmental agencies.

**Q20: Are there any Special Enrollment Rights under HIPAA for Adult Children?**

**A20:** Adult Children have a HIPAA Special Enrollment Right with respect to their right to enroll under the special transition rules for next plan year. We anticipate that Adult Children will have the same Special Enrollment Rights in the future that tax dependents enjoy under HIPAA.

## TRANSITION ISSUES

**Q21: Is there anything that needs to be done now to address the issue of Adult Children who have been dropped from coverage or does this wait until the next open enrollment?**

**A21:** At this time, plans are not required to re-enroll Adult Children who have already been dropped from coverage. However, some plan sponsors are evaluating whether they should cover Adult Children earlier than the required effective date. For plan sponsors who are adopting Adult Coverage early, they have a number of issues to consider such as coverage for all Adult Children as compared to coverage for a subset of Adult Children (e.g. only June graduates), increased costs, mid-year increases in premium rates, issues relating to collective bargaining agreements, health insurance carriers, stop-loss carriers and third party administrators.

**Q22: Must plans still require certification of full-time student status?**

**A22:** When coverage is extended to Adult Children, certification of full-time student status will become less important. Some plans such as certain dental and vision plans, and health FSAs may still condition coverage on a dependent status as a tax dependent subject to the full-time student requirements.

**Q23: How should a plan address Adult Children who are currently covered under the plan but who will be dropped from coverage over the next few months – knowing that they will be re-enrolled for the next plan year?**

**A23:** Adult Children who lose eligibility for coverage because they no longer satisfy the rules of the plan may not continue in the plan as eligible dependent children. It is a fiduciary responsibility to follow the terms and conditions of a plan as described in the plan document. However, if the plan provides, they may retain eligibility in a different dependent category such as a Dependent Relative or elect COBRA continuation or purchase an individual health policy in the market place.

**Q24: Will an Adult Child who has been dropped from coverage because of attaining a limiting age be subject to the preexisting condition rules when re-enrolling in a plan as an Adult Child?**

**A24:** Any child who has reached a limiting age is likely to be age 19 or older. Health Reform prohibits preexisting condition exclusions for children younger than age 19 but allows plans that contain preexisting condition exclusions to continue their use for children age 19 and older to 2014. In 2014, all preexisting condition exclusions will be prohibited regardless of age.

**Q25: Must Adult Child status be verified?**

**A25:** While not a requirement by law, verification of a dependent's status is a good fiduciary practice aimed at preserving plan assets and costs. For example, children who are eligible for coverage

elsewhere may be excluded from a plan's coverage. Tax dependent status may still be a requirement for certain dental and vision plans and health FSAs. Many employers engage independent companies to conduct dependent audits because verification of child or dependent status may be administratively burdensome or lax. Some plans will require the employee to agree to produce marriage certificates, birth certificates and other documents, if requested, in order to verify eligibility.

**Q26: If an Adult Child was already dropped from coverage under a plan, can they be re-enrolled under the new age 26 rule?**

**A26:** An Adult Child who was not covered under a plan for any reason must be offered coverage for plan years beginning on or after September 23, 2010. The parent would enroll the child subject to the plan's other eligibility rules.

**Q27: How should we address Adult Children if our open enrollment has already taken place?**

**A27:** The earliest plan year that must comply with the Adult Child mandate is the plan year beginning on October 1, 2010. If open enrollment for that plan year has already taken place, then a notice must be sent to all employees about plan eligibility for Adult Children. Adult Children must have at least 30 days to enroll in the plan. Enrollment would be effective as of the first day of the plan year.

**Q28: How should we address those Adult Children who were permitted to enroll in our plan on June 1, 2010 but didn't receive 30 days to enroll?**

**A28:** There is no notice requirement or special enrollment period for Adult Children who were continued in coverage beyond the date they would have otherwise lost coverage. However, for the upcoming plan year, it is recommended that a notice be given to all employees on behalf of Adult Children to ensure that the transition rules have been fully satisfied.

**Q29: Is an employee required to add an Adult Child even if the cost of doing so is more than the employee wishes to spend?**

**A29:** An employee is not required to enroll an Adult Child. Employers are obligated to make the coverage available to Adult Children but it is up to the employee to decide whether or not to enroll the child.

**Q30: Our insurance carrier has decided to allow Adult Children who are graduating this June to remain on the plan rather than dropping and re-adding them in October. The carrier will not allow any other Adult Child to continue coverage in the plan. For example, a child who has reached the limiting age of 19 and who is not a full-time student will lose coverage. Will we have to re-add these Adult Children?**

**A30:** All Adult Children who do not participate in the plan must be given a notice describing their eligibility and a period of 30 days to enroll for next plan year. It does not matter that they were previously dropped from coverage or ineligible for coverage.

## COLLECTIVELY BARGAINED PLAN QUESTIONS

**Q31: Our plan is renewing on October 1, 2010. The plan is subject to a collective bargaining agreement that is not due to expire until July 1, 2011. May we postpone coverage for Adult Children until the collective bargaining agreement expires or must we comply as of October 1, 2010?**

**A31:** The recent regulations clarified that collectively bargained plans that were in existence on March 23, 2010 are grandfathered plans. The regulations continue that, as grandfathered plans, collectively

bargained plans are subject to the same time frames and requirements as non-collectively bargained plans. Your plan must comply with the Adult Child mandate effective October 1, 2010.

**Q32: We began our plan year on July 1, 2010 but our Collective Bargaining Units have made mid-year changes to our insurance, effective October 1, 2010. Since this is an insurance plan change to co-pays can we still wait until our next plan year, July 1, 2011, to apply the Transition Rules to dependents and comply with the other requirements of Health Reform?**

**A32:** Because the plan year begins on July 1, 2010, this plan does not have to comply with the Adult Child mandate until July 1, 2011 and must comply with the same mandates as any other grandfathered plan in accordance with the same time frames. This rule is not impacted by changes to the plan mid-year. This plan must comply with the Transition Rules for Adult Children in anticipation of the July 1, 2011 plan year.

**Q33: Do Bargaining Unit Tentative Agreement Changes mid-year supersede plan documents?**

**A33:** There are transition rules that you should consider regarding whether or not your plan has impacted its grandfathered status because of the agreement. For example, if a group health plan makes changes pursuant to a legally binding contract entered into on or before March 23, 2010 but the changes were not effective until after March 23, 2010, the plan will not lose its grandfathered status because the transition rules will treat the changes as being effective before Health Reform became effective. Another rule allows plans to revoke or modify changes to conform to the grandfather regulations if the changes were adopted before June 14, 2010.

## COBRA

**Q34: Are there any changes to the COBRA rules with respect to Adult Children?**

**A34:** Adult Children have the same COBRA rights as anyone else when they lose coverage.

**Q35: May Adult Children be enrolled into a Parent's continuation coverage under COBRA?**

**A35:** The regulations do not address this issue directly but it appears that an individual on COBRA should be able to enroll an Adult Child to their coverage pursuant to COBRA.

## GOVERNANCE/ADMINISTRATION

**Q36: Will it be necessary to amend the plan?**

**A36:** There are a number of anticipated amendments that will be required. Sponsors who adopt the Adult Child mandate prior to their next plan year must make a retroactive amendment on or before December 31, 2010. In addition, all required amendments under Health Reform must be adopted and communicated in advance of the beginning of the next plan year,

**Q37: Are there any other requirements of Health Reform that would impact plans regarding Adult Children?**

**A37:** There is a new notice requirement for employers who are making material changes to their plans. It requires 60 days advance notice to employees prior to the effective date of the change. It is unclear when this rule is effective but we recommend that employers use their best efforts to comply with this rule now.

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**Q38: May plans increase the amount of employee contributions for families with Adult Children?**

**A38:** Plan sponsors have the right to set rates. However, they may not set rates based on age and may not offer different coverage based on age.

**Q39: What kind of verification can employers request from employees when they ask to add Adult Children? How do we know they are not trying to add the neighbor's kid next door?**

**A39:** Employers could require verification or request that the employee certify as to the status of the child. Most sponsors will hire a company to conduct a dependent verification audit. Generally, enrollment forms can require that employees agree to produce marriage certificates, birth certificates and other documents if requested to do so.

## MID-YEAR ELECTION QUESTIONS

**Q40: Is an employee allowed to enroll outside of open enrollment just because their Adult Child wants the coverage?**

**A40:** It appears that Adult Children should be eligible for the same HIPAA Special Enrollment rights that other dependents enjoy. Under HIPAA, an Adult Child who has lost coverage pursuant to a HIPAA specified event should be eligible for enrollment in a parent's plan mid-year.

**Q41: Does the tag-along rule apply to spouses?**

**A41:** In some circumstances it may be permissible to enroll a spouse using the tag-along rules. The regulations give an example whereby an employee who was married and had a child elected employee-only coverage. During the year, the employee adopted a child and was able to enroll both children and his spouse in family coverage.

**Q42: If an employee's spouse gets a new job which offers group benefits, and the employee and spouse are currently both covered under the employee's plan, can they both leave the employee's plan and go to the spouse's plan mid-year?**

**A42:** If permitted under the plan, the spouse can be dropped but not the employee. There is a special consistency rule that allows only the spouse to be dropped from coverage, provided that the spouse is actually enrolled in the other employer's plan.

**Q43: What about participants who have Medicare and want to drop the plan they have with the Company. Can they drop the coverage?**

**A43:** A plan may be written in a way to permit a mid-year election change upon Medicare entitlement. The rules are detailed and must dovetail with certain Medicare prohibitions.

## CAFETERIA PLANS

**Q44: Must an employer officially adopt a change to their section 125 plan before implementing any of the changes under Health Reform? If not, how much leeway does an employer have?**

**A44:** Cafeteria plans may only be amended prospectively. This means that plans must adopt amendments before they become effective. There is no wiggle room under the proposed cafeteria plan regulations. For the mandated changes under Health Reform, this means that amendments must be adopted prior to the beginning of next plan year. There is one exception for 2010 which allows for a retroactive amendment with respect to Adult Children. Early adopters of the Adult Child mandate may amend their plans retroactively if the amendment is adopted on or before December 31, 2010.

**Q45: Please define cafeteria plan.**

**A45:** A cafeteria plan consists of a written document that conforms to section 125 of the Internal Revenue Code. It is the cafeteria plan that allows employees to pay for benefits on a pre-tax basis.

## EXEMPT PLANS

**Q46: What does "free-standing dental and vision" mean? We have VSP Vision and CIGNA dental, but BC/BS, Kaiser, etc. for medical coverage. Does that mean our dental and vision plans are "free-standing?" As such, does that mean they do not have to extend coverage to Adult Children up to age 26?**

**A46:** Certain "HIPAA-excepted" plans are not subject to the requirement to expand coverage to Adult Children. Specifically, HIPAA-excepted benefits include limited-scope dental benefits, limited-scope vision benefits, benefits for long-term care, nursing home care, home care, community-based care and other similar benefits.

Limited-scope dental benefits are defined as benefits substantially all of which are for the treatment of the mouth (including any organ or structure within the mouth). Limited-scope vision benefits are defined as benefits substantially all of which are for the treatment of the eye. In addition, these benefits must be offered under a separate policy, certificate or contract of insurance. There are other special rules and exceptions but, generally, if there is a dental/vision plan which charges additional premiums for employees who enroll, then the dental/vision plan is not subject to the insurance reform mandates of Health Reform and does not have to expand coverage to children to the age of 26.

**Q47: We have a benefit package that allows employees to sign up for medical, dental and vision separately. Does this mean that we do not have to allow coverage for Adult Children to age 26 for the dental and vision plans?**

**A47:** The general rules with regard to HIPAA-excepted benefits are in the previous answer. For sponsors who have separate medical, dental and vision plans but require employees who enroll in medical to also enroll in dental and vision may not have dental and vision benefits that would be excluded from the Insurance Reforms of Health Reform. There are a number of special rules and exceptions which are too detailed to address in this Q&A.

## SCENARIOS

**<u>Scenario 1:</u> A calendar year plan has excluded dependents who are either (i) above the age of 18 or (ii) above age 23 and full-time students. Next plan year, they intend to comply with the special transition rules for Adult Children by offering coverage to any child who has not attained age 26. Open enrollment takes place during the month of November (30 days). In the regular open enrollment materials, the sponsor includes a prominent notice that any child who has not attained age 26 is eligible for coverage under the plan and may enroll in the plan until February 14, 2011. Does this plan satisfy the transition rule requirements?**

This plan sponsor more than satisfies the requirements for the transition rules for Adult Children. Each child was given a written notice in the open enrollment materials. The notice was prominent and may be given to employees on behalf of their Adult Children. The Adult Children had from November 1, 2010 to February 14, 2011 to enroll in the plan which is much longer than the minimum 30-day period in the regulations. Any child who was enrolled after January 1, 2011 will be a participant on a retroactive basis to January 1, 2011.

**<u>Scenario 2:</u> A plan has an employee who was not enrolled in the plan previously. The employee has an Adult Child that he would like to enroll in the plan under the special transition rule. Open enrollment for employees is two weeks. Is this permissible?**

No. This employee must be given the same 30-day enrollment right as Adult Children would have. In fact, this is a good time to clarify that all enrollments must be done by employees and not Adult Children and, in order for this Adult Child to be covered under the plan, the employee must enroll and become a participant in the plan as well.

**<u>Scenario 3:</u> An employee has a child who was dropped from coverage this year because the child was not a full-time student and the child had attained age 19. When the child lost coverage under the plan, she elected COBRA continuation. Can the plan wait until the child exhausts her COBRA continuation period before enrolling the child into the plan under the one-time special transition rules for Adult Children?**

No. Unlike the HIPAA Special Enrollment rights which require exhaustion of COBRA as a requirement for enrollment, a child on COBRA must be offered coverage in the plan at the same time that other children are offered coverage without any restrictions. If the child becomes ineligible later on, the child would have full COBRA continuation rights.

**<u>Scenario 4:</u> Suppose an Adult Child is covered under her own employer's plan and then she loses coverage due to her termination of employment. Does she have a HIPAA Special Enrollment Right?**

It appears that she would have a HIPAA Special Enrollment Right. Although no specific regulations have been issued regarding the Special Enrollment Rights of Adult Children (other than in the special transition rule), we believe that it is reasonable to treat them as any other dependent would be treated under HIPAA. HIPAA requires that she be given 30 days to enroll.

**<u>Scenario 5:</u> An Adult Child participates in her parent's plan and will be turning age 26 on July 4th. Can a mid-year election change be made to drop the coverage for the child?**

Consider age 26 as the new age 19. The Adult Child's coverage may be terminated on July 3rd. However, many plans will continue coverage to the end of the month. Some plans will make this change automatically but in any event the administration of this change should be identical to the current administration process for dropping a child who is not a full-time student upon attainment of age 19.

**<u>Scenario 6:</u> An Adult Child participates in a grandfathered plan. During the plan year, the child becomes eligible to enroll in another employer's plan. May the child be dropped from coverage mid-year because of this eligibility?**

Existing mid-year election rules state that a dependent may be dropped from coverage if they are <u>actually</u> covered under another employer's plan. This is a permissive election change. Under the Adult Child rules, a grandfathered plan may exclude an Adult Child from coverage if that Adult Child is <u>eligible</u> for coverage (as opposed to actually being covered) under another employer's plan. In this case, the Adult Child has become ineligible under the parent's plan and can be dropped in the same manner as a dependent who is a student but changes from full-time to part-time student status.

**<u>Scenario 7:</u> Suppose an Adult Child lives outside of an HMO plan's service area. Should that child be allowed to enroll in the plan?**

Some HMOs condition eligibility on the child's living or working within the HMO's service area. Other plans will allow the child to enroll with the understanding that there will be limited services available outside

of the service area (e.g. emergency services only) and, if the child wishes to receive medical services, the child would have to travel to the service area. Some HMOs have reciprocity arrangements with other HMOs that would allow the child to be covered outside of the plan's service area. If the health FSA permits coverage for Adult Children, an Adult Child's eligible medical expenses would be reimbursable without regard to where the child lives.

**Scenario 8: Suppose this same child lived in the service area when she enrolled but moved outside of the service area in the middle of the year.**

This appears to be a situation that would allow a mid-year election change. If the sponsor had another plan available, for example a PPO, the employee would be allowed to make a mid-year election to drop the HMO and elect coverage in the PPO on a prospective basis. If only HMO coverage were available, the child would have to understand that limited services were available outside of the HMO service area. It is possible that the Adult Child has become ineligible for coverage but the child would still be eligible for COBRA or may purchase individual health coverage.

**Scenario 9: An employee indicates that he would like to make a mid-year election to drop his child because the child has run away from home. Can the employee drop the child from coverage under the plan?**

The child cannot be dropped from coverage until the next open enrollment period. This is not a permissible reason for dropping an individual from coverage in the middle of the year.

**Scenario 10: A health FSA has a plan year beginning on October 1, 2010. Based on revisions to the Internal Revenue Code, effective January 1, 2011, the health FSA no longer reimburses expenses for over-the-counter drugs that are not purchased by a prescription. An employee wishes to make a mid-year election to reduce her contributions to the health FSA because of this plan change. Is this permissible?**

No. A change in cost or coverage is not a valid reason for a mid-year election change under a health FSA.

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