
Office of Consumer Information and Insurance Oversight
Department of Health and Human Services
P.O. Box 8016
Baltimore, MD 21244-1850
Attention: OCHIIO-4150-IFC

RE: Interim Final Rules for Group Health Plans and Health Insurance Coverage Relating to Dependent Coverage of Adult Children to Age 26 under the Patient Protection and Affordable Care Act.

To Whom It May Concern:

The U.S. Chamber of Commerce (the “Chamber”) is submitting these comments in response to the Interim Final Rules for Group Health Plans and Health Insurance Coverage Relating to Dependent Coverage of Children to Age 26 under the Patient Protection and Affordable Care Act (“IFRs” or “regulations”), which were published in the Federal Register on May 13, 2010.1 The IFRs provide guidance pursuant to the statutory language of the Patient Protection and Affordable Care Act (the “Affordable Care Act”) and the Health Care and Education Reconciliation Act (the “Reconciliation Act”). As with other guidance under these Acts, the IFRs were published jointly by the Department of the Treasury, the Department of Labor and the Department of Health and Human Services (the “Departments”).2

The Chamber is the world's largest business federation, representing the interest of more than three million businesses and organizations of every size, sector and region, with substantial membership in all 50 states. These comments have been developed with the input of member companies with an interest in improving the health care system.

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1 Group Health Plans and Health Insurance Coverage relating to Dependent Coverage of Children to Age 26 Under the Patient Protection and Affordable Care Act, 75 Fed. Reg. 34,538 (May 13, 2010) (to be codified at 26 C.F.R. pts. 54 & 602; 29 C.F.R. pt. 2590; 45 C.F.R. pts. 144, 146 &147.) [hereinafter Coverage of Children to Age 26].
2 Pursuant to the request in the IFRs, the Chamber is submitting these comments to one of the Departments - The Department of Labor, with the understanding that these comments will be shared with the Department of Health and Human Services and the Department of Treasury as well.
OVERVIEW

As employers, plan sponsors and health plan issuers implement necessary plan changes to comply with the new health reform requirements, we appreciate the Departments’ efforts to balance the importance of flexibility with the need for clarity. With the expansion of dependent coverage to adult children under the age of 26, plans that currently offer dependent coverage will need both the flexibility to make necessary plan changes as well as clarity to ensure compliance with specific mandates. While we support the general goals of health reform, including expanded health insurance coverage and improved access to preventive services, we continue to believe that flexibility is necessary to foster innovation and competition. Regulations implementing the expanded dependent coverage requirement must also permit plan flexibility to ensure that compliance does not put fiscal solvency at risk. Because the requirement to offer extended adult child coverage only applies to those plans that offer dependent coverage, the practical requirements of implementing this provision must not become so burdensome on plans as to inadvertently force plans to drop coverage for all participants, classified as “dependents.”

With the myriad of other regulatory and statutory requirements, tax implications and policy goals, the possibility of unintended consequences that may negatively impact employers as this provision is implemented is high. With this in mind, there are a number of details that need to be clarified. There are also several nuances that the Chamber would like to highlight for the Departments’ consideration.

DEFINITION OF ADULT CHILD

It is important to clarify that the definition of adult child must be made by the plan or issuer, as far as to whom a plan must offer coverage until the age of 26 (if the plan offers dependent coverage as of March 23, 2010). Plans should not be required to extend coverage until the age of 26 to all dependents covered under the plan.

The regulations explicitly state that “with respect to a child who has not attained age 26, a plan or issuer may not define dependent for the purposes of eligibility other than in terms of the relationship between the child and participant.”3 However, because the requirement to offer coverage to adult children up to age 26 is imposed on plans that currently offer dependent coverage, the Chamber respectfully requests that a critical clarification be made. Many plans and employers voluntarily extend dependent coverage to a more expansive group than that included in the Internal Revenue Code’s definition of child.4 Simply because a plan elects to provide dependent coverage for a larger population (i.e. dependent grandchildren, nieces or nephews), that plan must not be required now under the new requirements to offer extended coverage up to age 26 to those voluntarily covered non “child” dependents.

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3 Coverage of Children to Age 26; 75 Fed. Reg. at 27,134 (to be codified at 26 C.F.R. §54.9815-2715T(b) ) (emphasis added).
4 Internal Revenue Code §152(f)(1) Child defined: (A) The term child means an individual who is - (i) a son, daughter, stepson or stepdaughter of the taxpayer, or an eligible foster child of the taxpayer. (B) Adopted child. (C) Eligible foster child.
The statutory language highlights this critical nuance by repeatedly using the term adult child instead of dependent: extended “coverage… shall [be made] available for an adult child until the child turns 26.”\(^5\) This intent is also highlighted in the preamble to the regulations that asserts the Departments have chosen to defer to plans on how they define a child for purposes of expanded coverage.\(^6\) However, because of the interplay of the Internal Revenue Code, and the earlier statutory language referring to dependent coverage, this needs to be explicitly stated. We appreciate the intent of the Departments to defer to the plans on the definition of child for purposes of flexibility. However, we ask the Departments to further clarify that this extended coverage until the age of 26 is only required to be offered to adult children as defined by the plan; merely because a dependent is covered by the plan does not mean that a plan must extend this same coverage to that dependent until the age of 26. We believe that the Departments intended for this nuance to be clear, but ask for an example to highlight this fact pattern specifically.

**EXCLUSION FROM INCOME**

*The important clarification regarding the tax treatment of employer contributions contained in the Internal Revenue Service’s Notice 2010-38 should be incorporated explicitly in the regulation themselves.*

We applaud the guidance issued by the Internal Revenue Service which extends the general exclusion from gross income for reimbursements for medical care under employer provided accident or health plan to any employee’s child who has not attained age 27 as of the end of the taxable year.\(^7\) This notice proactively addresses an issue of critical importance to employers and employees and appropriately responds with guidance that clarifies nuances such as how tax treatment is impacted when an adult child turns 26 during a plan year. We would ask that the content of this guidance be formally incorporated into the final regulations to ensure consistency as the provision on adult child coverage is implemented.

**ALL AVAILABLE BENEFIT PACKAGES**

*In requiring that adult children be eligible for all available benefit packages, the regulations must clarify that plans may require an adult child and his/her enrolled parent participant to be enrolled in the same benefit package.*

The Chamber respectfully requests that an important clarification regarding the availability of benefit packages to the plan participant and the dependent enrollee be made. The regulations state that “the child (and the participant through whom the child is otherwise eligible for coverage) must be offered all the benefit packages available to similarly situated individuals.”\(^8\)


\(^6\) Coverage of Adult Child Up to Age 26, 75 Fed. Reg. at 27,131. “These interim final regulations have not limited a plan’s or policy’s flexibility to define who is a child for purposes of the determination of children to whom coverage must be available.”

\(^7\) Internal Revenue Notice 2010-38: Tax Treatment of Health Care Benefits Provided with Respect to Children Under Age 27.

\(^8\) Coverage of Adult Child Up to Age 26, 75 Fed. Reg. at 27,135 (to be codified at §54.9815-2714T f (4))
This point is addressed somewhat in the examples where the Departments state that both the employee and the adult child “must have an opportunity to enroll in any benefit package available to similarly situated individuals who enroll when first eligible.” However, further clarification is needed. If a plan requires employees and his/her dependents to be enrolled in the same plan, then an adult child with extended coverage to age 26 must also be required to enroll in the same plan as the employee. This clarification, while implied by the “similarly situated” reference, should be clarified explicitly: if required by the plan, an employee must enroll in a benefit package that permits adult child coverage (i.e. employee +1) and the adult child must enroll in the same benefit package as the participant employee.

OTHERWISE ELIGIBLE FOR EMPLOYER SPONSORED INSURANCE

The regulations must clarify that an adult child should not be classified as “otherwise eligible for employer sponsored insurance” (ESI) until the waiting period requirements of the other employer sponsored insurance have been satisfied. Additionally, it should be clarified that an adult child, who is eligible for coverage through a spouse’s employer sponsored insurance, should be considered to be “otherwise eligible for employer sponsored insurance.”

According to both the statute and the regulations, grandfathered group plans are not required to offer dependent coverage to a child under 26 who is otherwise eligible for employer sponsored insurance other than a group health plan of a parent for plan years beginning before January 1, 2014. There are a few clarifications that must be made to this requirement as well. First, what specifically does “eligible” mean? Second, what are the specific parameters defining the “employer sponsored insurance (ESI)?”

The Chamber expects that the Department will define “eligible for employer sponsored insurance” as “eligible to enroll,” but would ask for explicit clarification on this point. For instance, employer sponsored insurance plans may elect to have waiting periods that require employees to be employed for 30 days until they are eligible to enroll. If an adult child begins employment but is not yet able to enroll in his employer’s sponsored insurance due to a 30 day waiting period, based on our reading of the regulations, then the adult child would therefore not be considered “eligible for ESI.” In this scenario, the Chamber expects that the adult child would still need to be offered coverage under the grandfathered ESI plan of his or her parent.

We would urge the Departments to broadly interpret the term “employer sponsored insurance.” The statute extends coverage for adult children without other offerings of employer sponsored insurance. In defining when a grandfathered plan offering dependent coverage before 2014 must offer coverage to an adult child, an adult child must be considered to be otherwise eligible for employer sponsored insurance, if he or she is eligible for coverage through a spouse’s employer sponsored insurance. This result should also be reached when an adult child has access to coverage through the continuation of health coverage under COBRA of either his own former

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9 Coverage of Adult Child Up to Age 26, 75 Fed. Reg. at 27,135 (to be codified at §54.9815-2714T f (5) example 2 and example 3.
10 Id.
employer’s ESI or that of his spouse’s former employer’s ESI. If an adult child is eligible for COBRA coverage under the ESI of his (or his spouse’s) former employer, he should be deemed to be otherwise eligible for ESI and a parent’s grandfathered ESI plan should not be required to offer him coverage.

**PLAN COVERAGE & BENEFITS**

In order to ensure that coverage offered to adult children is administratively and operationally feasible, the Chamber requests that the Departments clarify that certain necessary requirements may be imposed by plans when offering this coverage. Plans must be permitted: to require adult children to reside within the plan’s provider network area; to vary the coverage of benefits in compliance with the offering of age appropriate preventive services; to continue to comply with HIPAA requirements regarding the pre-existing conditions of adult children between the ages of 19-26 before 2014, as intended by the health reform law.

The Chamber asks the Departments to clarify several operational issues regarding the provision of plan coverage and benefits to adult children. First, while we understand the stipulation that coverage of an adult child cannot hinge on residency with, or financial dependency on, the participant or primary subscriber, we believe that plans must be permitted to impose an area network residency requirement on adult children. It is unduly burdensome to require a plan to offer coverage to an adult child living in an out-of-network area. While plans do offer out-of-network benefits in emergency situations, it would be financially and administratively arduous for a plan to offer essentially all benefits on an out-of-network basis.

Secondly, while the regulations specify that the plan cannot vary benefits based on the age of the child\(^\text{12}\), we urge the Departments to clarify that this is not meant to conflict with requirements prohibiting cost-sharing for preventive services. Pursuant to the new prohibition on cost-sharing for preventive services for non-grandfathered plan\(^\text{13}\) which are recommended for different populations based primarily on age, plans must be permitted to vary benefits based on the age of the child in some circumstances. Clearly, the Departments do not intend to require plans to cover annual pap-smears for infants with no cost-sharing or to cover colorectal cancer screening for newborns. Plans must be permitted to vary benefits as appropriate by age based on recommendation by the Centers for Disease Control and Prevention, Health Resources and Services Administration, and the United States Prevention Services Task Force as contemplated by statute and regulations.\(^\text{14}\)

Finally, plan coverage requirements under this provision must clarify that a plan is not required to cover an adult child’s pre-existing condition (when the adult child is over the age of 19), before plan years beginning on January 1, 2014. Reform requirements mandate that plans beginning in 2014 cover pre-existing conditions not effective for those over the age of 19. Therefore, the interplay between the reform provisions and implementing regulations on the prohibition of pre-existing condition exclusions and mandated adult child coverage must be explicitly clarified. As the adult child regulations state, the Health Insurance Portability and

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\(^{12}\) Coverage of Adult Child Up to Age 26, 75 Fed. Reg. at 27,124 (to be codified at §54.9815-2714T(d) ).


Accountability Act’s (HIPAA’s) 15 portability provisions continue to apply. Therefore, pursuant to the HIPAA, if an individual has a break in coverage that exceeds 63 days, a plan is not required to cover a pre-existing condition regardless of prior creditable coverage. The regulations nearly clarify this issue in example 5 (i) 16 but must incorporate an additional explanation. In the example, while the adult child’s break in creditable coverage (in excess of 63 days) does not affect her eligibility to enroll in her parent’s plan, it would permit the parent’s plan to exclude coverage for her pre-existing condition. By statute, plans are not required to cover pre-existing conditions for anyone age of 19 before plan years beginning January 1, 2014. For this reason, we urge the Departments to clarify that plans are not required to cover pre-existing conditions of adult children age 19 or older who have had a break in creditable coverage. To interpret or clarify this regulation in any other way, would go against the statutory language and contradict the regulations’ assertion that HIPAA continues to apply.

**PREMIUM & PLAN CHANGES**

*In order to ensure that plans offering coverage to adult children can remain fiscally solvent, the Chamber requests that the Departments clarify that the certain necessary premium variation and plan changes are permissible.*

On the issue of plan changes, the Chamber respectfully disagrees with the regulatory language that prohibits plans from varying the terms of the plan based on age. 17 As discussed earlier this is not only impractical as it relates to the offering of specific preventive benefits (infants necessarily require different benefits than adolescents or adults – more well baby visits, etc.) but it is also unreasonable as it relates to premiums and rates. There is nothing in the statute that contemplates restricting plans in this way as they comply with this new requirement. Not only does the regulatory language far exceed what is contemplated by the statute, but it also serves to undermine the ability of plans to effectively, appropriately and reasonably comply with this new requirement.

Particularly duplicitous is the discussion the Departments give for issuing these regulations on an interim final rule basis, as opposed to through the formal rule making process. The Departments cite the need to afford plans the opportunity to “take the cost associated with this new obligation into account in establishing their premiums and in making other changes to the designs of plan or policy benefits.” It seems improper to at once argue the necessity of issuing interim final rules to afford plans the opportunity to change premiums and benefits, while in the very same regulation prohibiting plans from doing so.

From a practical standpoint, plans must be permitted to make the following changes in order to comply with this new requirement. Plans must be permitted to vary benefits based on age, where appropriate, based on approved preventive care recommendations. Plans must be permitted to vary plan structure to appropriately align the premiums paid with the number of people covered. To do this, many plans will need to change coverage tiers. Where previously employees could

15 “Any child enrolling in group health plan coverage pursuant to this enrollment right must be treated as a special enrollee, as provided under the regulations interpreting the HIPAA portability provisions.”
16 Coverage of Adult Child Up to Age 26, 75 Fed. Reg. at 27,135 (to be codified at §54.9815-2714T(f) (5)).
17 Coverage of Adult Child Up to Age 26, 75 Fed. Reg. at 27,134 (to be codified at §54.9815-2714T (d) and (e)(ii)).
elect coverage in increments of self, or self -plus spouse, or self- plus-family, plans will likely need to change to tiers simply based on number of dependents – employee plus 1, employee plus two, employee plus three, etc. This change will be critical for plans to survive given the new coverage requirements. It would run counter to the intent of both the grandfathered regulations and the adult child coverage regulation, to not only penalize plans with the loss of grandfathered plan status for incorporating such necessary changes, but to also prohibit plans entirely from making such benefit changes. In order to reconcile two very important policies of reform (covering adult children and maintaining grandfathered status), plans must be permitted to revise coverage tiers without risking grandfathered status.

Plans must also be permitted to vary premiums based on age. The regulations assert: “plans will need to take the cost associated with this new obligation into account in establishing their premiums.” Clearly the Departments appreciate that this new obligation will impose additional costs on plans. Yet, one of the fundamental principles behind health reform was the notion of individual responsibility. Dovetailing with this principle was the critical reform goal of reducing cost shifting from the uninsured and underinsured onto the insured. To prohibit plans from varying premiums based on age while in the same breath recognizing that this new requirement will impact premiums, suggests that the Departments view cost-shifting as the appropriate method of implementing this particular provision of the law. The quantitative analysis seems to concede as much. The analysis appears to advocate that plans increase premiums to all enrollees in order to “take into account the cost associated with this new obligation.” Instead of permitting (and in essence requiring) plans to pass the cost of this additional new requirement (covering adult children) onto everyone across the board, the Chamber urges the Departments to instead permit plans to increase premiums on the individuals that will benefit from the coverage.

**COBRA ELIGIBILITY**

*The Departments must permit plans to make operational changes to facilitate the offering of COBRA to adult children, where and as required by statute.*

The preamble to the regulations speaks to scenarios where an adult child may be eligible for continued coverage under the Consolidated Omnibus Budget Reconciliation Act (COBRA) after aging out of adult child coverage. There are several scenarios and operational aspects involving the offering and extension of COBRA coverage to adult children that we would recommend the Departments clarify. First, we are uncertain how the premium for an adult child will be calculated for purposes of COBRA, particularly for plans that offer family coverage without

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18 That is, “to ease the transition of the health care industry into the reforms established by the Affordable Care Act”. Group Health Plans and Health Insurance Coverage Relating to Status as a Grandfathered Health Plan Under the Patient Protection and Affordable Care Act, 75 Fed. Reg. 34,541 (June 17, 2010) (to be codified at 26 C.F.R. pts. 54 & 602; 29 C.F.R. pt. 2590; 45 C.F.R. pt. 147) [hereinafter Grandfathered Health Plans].

19 Coverage of Adult Child Up to Age 26, 75 Fed. Reg. at 27,127 Table 1 – “If the rule causes family health insurance premiums to increase, there will be a transfer from individuals with family health insurance coverage who do not have dependents aged 19-25 to those individuals with family health insurance coverage that have dependents aged 19-25.”

20 Coverage of Adult Child Up to Age 26, 75 Fed. Reg. at 27,125. “In this situation, if the child loses eligibility for coverage due to a qualifying event (including aging out of coverage at age 26), the child has an opportunity to elect COBRA continuation coverage.”
regard to the number of covered individuals. As discussed earlier, it is critical that plans be permitted to change benefit election tiers to allow them to more appropriately align premiums with the number of individuals covered.

We ask the Departments to also clarify that a plan/employer is not required to offer COBRA coverage to the adult child of a former employee. We understand the scenario outlined in the regulations regarding an adult child’s eligibility for COBRA when a parent is a current employee and the adult child has aged out of adult child coverage. However, we believe that it would be inappropriate to require a plan to offer COBRA coverage to the adult child of a former employee because current COBRA coverage in this instance is afforded to non-spouses based on dependency standing. Given that the regulations specifically distinguish between the definition of adult child and the definition of dependent, it is inappropriate to expand this benefit afforded to individuals based on their dependent status to adult children.

Additionally, we ask for clarification regarding the application of the 36 months of COBRA coverage and when coverage would expire in scenarios where it is applied to an adult child who would have previously been eligible as a result of aging out. For instance, given the 36 months of COBRA coverage, it seems that an adult child could be covered under COBRA until the age of 29-30. In the situation where an employee’s adult child is 27 and the employee has been working for an employer for 4 years, how many months of COBRA coverage would the adult child be eligible for and when would it begin? Would the 36 months of COBRA coverage begin when the adult child enrolls in COBRA at the age of 27 or would the 36 months of COBRA coverage begin retroactively to when adult child would have been eligible for COBRA – i.e. at the end of the plan year when he/she would have turned 26?

Finally, the Chamber requests that the Departments clarify that the coverage period for each adult child with COBRA (when COBRA coverage is offered due to the qualifying event of aging out) is evaluated in the aggregate, based on the combined months of coverage under COBRA. Under many circumstances, the coverage period for each adult child to whom a group health plan must offer COBRA to an aged out adult child will need to be reduced by the period of any prior continuation coverage provided to that adult child when he/she previously aged out. For example, a child that aged out and started COBRA continuation coverage in July 1, 2009 may then (pursuant to the Affordable Care Act requirements) enroll in the parent’s plan as an adult child during the special enrollment period and commence adult child coverage under the plan as of January 1, 2011. In this circumstance, any COBRA coverage offered after that same adult child, upon attaining age 26, must be reduced by the 18 months of COBRA coverage previously provided. To do otherwise, would provide the qualified beneficiary with more than the maximum COBRA continuation coverage period for the same qualifying event (aging out).

FINANCIAL IMPACT

The Chamber is concerned that the regulatory assessment underestimates the number of adult children impacted by this regulation and that this inaccuracy will dramatically change the regulation’s forecasted costs, benefits and transfers.

21 Coverage of Adult Child Up to Age 26, 75 Fed. Reg. at 27,125.
The Departments have asked for comments on regulation’s assessment of the potential costs, benefits and transfers. For several reasons, we believe that more individuals are likely to be impacted than the regulations anticipate or predict. This in turn will affect premiums significantly.

There are a number of incentives and nuances that are not considered in estimating the number of individuals affected.

- **Insurance effectively cheaper with new favorable tax treatment**
  Prior to the enactment of health reform and the issuance of the IRS notice 2010-38, coverage of adult children – while permitted in some states, did not provide the same favorable tax treatment that policyholders, their spouses and minor children received. Employers were required to impute income when adults were covered by the plan. Now with the removal of this restriction, the value of employment based health benefits provided to adult children will not be treated as taxable income. This effectively reduces the price of insurance, which is likely to increase take-up rates. Instead, the regulations assert that 2.61 million adult children are unlikely to enroll because they “are already allowed to enroll through their state’s existing laws, but have chosen to do so.” It would seem that this fails to contemplate the impact of these important tax changes.

- **Public plan enrollees now eligible for ESI**
  The analysis does not account for the nearly 3 million adult children between the ages of 19-25 who are currently enrolled in other forms of coverage (Medicaid and Tricare) but will now be eligible for coverage under their parent’s employer sponsored coverage.

- **For employees paying for family coverage, adding adult children is free**
  Because employers are unable to add a premium for 19-25 year old, employees that are already paying for a family premium are encouraged to enroll additional eligible children. Employees with younger children will not have to pay any additional premium for the coverage of adult children.

Premiums are also likely to be higher than anticipated for several reasons.

- **Enrollment understated**
  The premium increases are likely to be higher than anticipated, because for reasons detailed above, the regulations understate the increased enrollment of adult children in the plans of their “parents.”

- **Basis for the premium impact calculation is flawed**

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22 Paul Fronstin, Coverage of Dependent Children to Age 26 Under the Patient Protection and Affordable Care Act, ebri.org Notes, Vol. 31, No. 8 (August 2010), page 3.
23 Coverage of Adult Child Up to Age 26, 75 Fed. Reg. at 27,128.
24 Paul Fronstin, Coverage of Dependent Children to Age 26 Under the Patient Protection and Affordable Care Act, ebri.org Notes, Vol. 31, No. 8 (August 2010), page 3.
25 Id.
The premium impact is calculated based on an estimated incremental insurance cost per newly covered individuals as a percent of average family premiums.\(^{26}\) The problem with this assumption is that family premiums do not necessarily reflect the number of covered individuals – particularly in scenarios where benefit election tiers include a family coverage option. In such instances, the premium is fixed, regardless of how many individuals are in the family. Premiums for family coverage are the same, regardless of whether the family has one child or eight.

- **Regulations inaccurately assume that all plans will be grandfathered in 2011**
  Contrary to the estimates included in the regulations implementing the grandfathered plan status provision,\(^ {27}\) these adult child coverage regulation’s assume that all plans begin 2011 with grandfathered status\(^ {28}\) which directly contributes to this flawed calculation.

The statute requires that all non-grandfathered plans that offer dependent coverage must offer adult child coverage for plan years beginning after September 23, 2010. Grandfathered plans (before 2014 that offer dependent coverage) do not have to comply with this requirement if the adult child is otherwise eligible for employer sponsored insurance. By assuming that all plans will retain grandfathered plan status, the regulations also assume that those adult children with an offer of ESI will be unable to enroll in their parent’s grandfathered ESI plan as an adult child. However, despite the assumption in the adult child regulations, it is estimated in the grandfathered plan regulations that as much as one third of all plans will lose grandfathered plan status in 2011. As plans lose grandfathered plan status, they will have to offer adult child coverage. The adult child regulations themselves concede as much: “To the extent that some of the coverage in which these parents are enrolled is not grandfathered, the effect of these interim final regulations will be larger than the estimates provided here.”\(^ {29}\) By contrast, the interim final regulations implementing the grandfathered plan status provisions estimate that between 15% - 33% of all employer plans will lose grandfathered plan status in 2011.\(^ {30}\) Therefore the adult child regulations err in estimating that nearly half a million adult children will be unaffected by this new requirement. It is unlikely that all of the 0.5 million adult children with access to ESI will be pre-empted from accessing coverage through the new adult child coverage requirement. Clearly not all of these adult children will have parents enrolled in employer grandfathered plans. Instead, many of these parents will in fact be in non-grandfathered plans which will be required to offer adult child coverage to children, even with access to ESI.

- **Adverse selection**
  Finally, the assumptions do not contemplate the possibility that healthy adult children are likely to continue to choose not to enroll in coverage while the adult children that require health care services (those with chronic conditions) are more likely to enroll in coverage through their parents. This will also likely to contribute to increased premiums.

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\(^{26}\) Coverage of Adult Child Up to Age 26, 75 Fed. Reg. at 27,127.

\(^{27}\) Grandfathered Health Plans, 75 Fed. Reg. at 34,533.

\(^{28}\) Coverage of Adult Child Up to Age 26, 75 Fed. Reg. at 27,128.

\(^{29}\) Coverage of Adult Child Up to Age 26, 75 Fed. Reg. at 27,128.

\(^{30}\) Grandfathered Health Plans, 75 Fed. Reg. at 34,553.
CONCLUSION

We appreciate the hard work of the Departments in promulgating these rules swiftly in an effort to provide clarity. While we support the general principles of health reform, we are concerned by some critical elements of the Interim Final Rules implementing the adult child coverage provision. To reconcile the worthy elements of reform, these regulations must preserve the ability of plans to change in a way that improves consumer choice, strengthens innovation and encourages competition. We hope that with our comments and examples, the Departments will make the necessary changes, as we have suggested, ensuring that inadvertent consequences do not result. We look forward to working with you to protect the fundamental goals of health reform that we jointly support. We appreciate the opportunity to comment on the IFRs and are available to discuss any of our comments informally, or by way of testimony in hearings conducted by the Departments.

Sincerely,

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