



RESEARCH MEMO

New Law Changes Definition of "Dependent"

Group Health Plans Should Review Their Plans To Determine If Amendments Are Needed

A recent law that may impact health plans was effective January 1, 2009. The law is *The Fostering Connections to Success and Increasing Adoptions Act of 2008* ("Adoptions Act") (H.R.6893). While the *Adoptions Act* is aimed at promoting adoption, it also amended the definition of a "qualifying child" under Section 152 of the Internal Revenue Code which defines who is a "dependent" under the Code.

This change is important to health plans because the definition of a "qualifying child" forms the basis for determining if employees can cover certain individuals under their employers' group health plans on a tax preferred basis. The Code definition of "dependent" is cross-referenced for several employee benefits purposes, including tax free employer provided medical care under Code Section 105. Under Code Section 152, to be a "dependent" an individual must be a "qualifying child" or a "qualifying relative." See [Research Memo 2005-14](#) which discusses these concepts in Code Section 152.

A copy of Section 501 of the *Adoptions Act* which contains these changes is available by "[clicking here](#)." A copy of Code Section 152(c) with the amendments made by the *Adoptions Act* in red font is available by "[clicking here](#)." In light of these changes under the *Adoptions Act*, plan sponsors should review the definition of "dependent" in their group health plan to determine whether an amendment is required to comply with changes made by the *Adoptions Act*.

A Closer Look At The Changes

The *Adoptions Act* revised Section 152(c), the portion of the tax code that defines who a *qualifying child* is and made the following three specific changes to Section 152(c):

- 1. Child Must Be Younger Than Taxpayer.** Previously a *qualifying child* generally had to be under age 19 or be a student under age 24 at the end of the calendar year in which the taxpayer's tax year begins for the child to be considered a *qualifying child* for that tax year. The *Adoptions Act* adds a

requirement that a *qualifying child* must also be younger than the taxpayer/employee.

2. **Child Must Be Unmarried.** Section 152(b)(2) prohibits a person from being a "dependent" if the person filed a joint return with his or her spouse. The *Adoptions Act* applies the same limitation to the definition of *qualifying child*.
3. **Child May Be Dependent of Non-Parent If Non-Parent Has Higher Income Than Any Parent.** Previously, if a person could be considered the *qualifying child* of both a non-parent and a parent, then the person would have been treated as the *qualifying child* of the parent. The *Adoptions Act* changes that rule, allowing an individual to be treated as the *qualifying child* of a non-parent **if:** (A) no parent claims the person as a *qualifying child* and (B) the non-parent has a higher adjusted gross income (AGI) than any parent.

One commentator noted that essentially this change will require group health plans that to verify:

- that if an employee is covering someone *other than their child* under the Plan, such as a *foster child* or *grandchild* (or other child-relative), the parent of that foster child or grandchild is not claiming that child as a *qualifying child*, and
- such employee has a higher AGI than the foster child's parent or grandparent.

Commentary

It appears that the first two of the three changes made by the *Adoptions Act* (*Child Must Be Younger Than Taxpayer* and *Child Must Be Unmarried*) will probably have little impact on multiemployer group health plans we are familiar with as:

- (1) it is doubtful a *qualifying child* would be older than the employee or taxpayer and
- (2) Such plans generally do not cover married children.

However, the third change (*Child May Be Dependent of Non-Parent If Non-Parent Has Higher Income Than Any Parent*) would affect any group health plans that allow coverage for foster children or grandchildren, or other non-immediate family members who would meet the new definitions under the *Adoptions Act*. If the Plan provides such coverage, the Plan would need to verify the conditions for such coverage are met just as it verifies other eligibility criteria - such as marriages, births, etc. Tax documents or an affidavit of AGI may need to be obtained. The Plan's Dependent section would need to be amended to reflect these criteria.

Plans that need to be amended should do so before the end of 2009.

Plans that do not allow coverage for such children will not need to be amended. Plans should verify compliance with these new provisions with Fund counsel.

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