

**Suzanne G. Odom**  
Member  
Admitted in SC

August 11, 2010

**VIA ELECTRONIC MAIL**

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  
Attn: RIN 1210-AB41

Re: RIN 1210-AB41; OCIIO-4150-IFC

Interim Final Rules for Group Health Plans and Health Insurance  
Coverage Issuers Relating to Dependent Coverage of Children to Age  
26 Under the Patient Protection and Affordable Care Act

Charleston

Charlotte

**Columbia**

Greensboro

Greenville

Hilton Head

Myrtle Beach

Raleigh

Dear Sir or Madam:

We submit this response to the request for comments on the interim final regulations relating to dependent coverage of children to age 26 under provisions of the Patient Protection and Affordable Care Act ("PPACA"). The request was published by the Internal Revenue Service, Department of the Treasury; the Employee Benefits Security Administration, Department of Labor; and the Office of the Secretary, Department of Health and Human Services (the "Departments") in the *Federal Register*, Vol. 75, No. 92, on May 13, 2010.

Section 2714 of the Public Health Service Act, as added by the PPACA and as amended by the Health Care and Education Reconciliation Act, and the interim final regulations provide that a plan or issuer that makes available dependent coverage of children must make such coverage available for children until attainment of 26 years of age. The statute also requires the issuance of regulations to define the dependents to which coverage shall be made available under this rule.

1230 Main Street  
Suite 700 (29201)  
PO Drawer 2426  
Columbia, SC 29202  
www.nexsenpruet.com

**T** 803.540.2018  
**F** 803.727.1487  
**E** sgodom@nexsenpruet.com  
Nexsen Pruet, LLC  
**Attorneys and Counselors at Law**

The interim final regulations require uniformity of dependent coverage irrespective of age and provide that the terms of the plan or policy for dependent coverage cannot vary based on the age of a child, except for children age 26 or older (the "Uniformity Requirement"). The examples to the interim final regulations illustrate that where dependent coverage is provided for children under age 26, premium surcharges for children over age 18 but under age 26 would violate the Uniformity Requirement.

The interim final regulations also illustrate that where a group health plan offers two benefit packages and dependent coverage is provided for children under age 26, the plan would vary the terms of dependent coverage of children based on age if the plan limits children who are older than age 18 to only one of the two benefit packages.

However, the interim final regulations provide that a plan would not violate the Uniformity Requirement if the cost of coverage increases based on the number of individuals covered under various tiers of health coverage (e.g., self-only, self-plus-one, self-plus-two, or self-plus-three-or-more) offered under the plan because the cost of coverage increases would apply without regard to the age of any child.

In response to the interim final regulations, the following request for clarification is submitted regarding changes to plan administration:

1. Age-Appropriate Variations of Terms of Coverage for Dependent Children

Plans often impose age-based limitations on dependent coverage that are designed to provide benefits to those age groups for which the coverage is age-appropriate. For example, group health plans often provide benefits for children under the age 3 for or in connection with well-baby care, including physical examinations, development assessments, anticipatory guidance and appropriate immunizations and laboratory tests, but do not provide the same coverage for these benefits for dependent children age 3 and older. The Uniformity Requirement appears to suggest that a group health plan would be required to extend coverage or benefits specifically intended for babies or children in early developmental stages to all children under 26.

2. Age-Appropriate Variations of Terms of Coverage for All Covered Persons

Moreover, plans also impose age-based limitations that apply to both covered employees and their eligible dependents (i.e., plan-wide limitations), which again are designed to provide benefits to those age groups for which the coverage is age-appropriate. For example, some plans providing both medical and dental coverage limit orthodontia benefits for both covered employees and their eligible dependents to

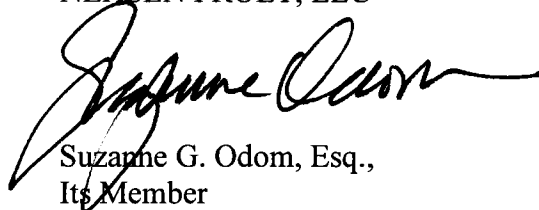
individuals who are age 19 or younger. Moreover, some plans restrict Papanicolaou ("Pap") laboratory screening tests and prostate specific antigen ("PSA") testing only to covered persons who are over the age of 3.

Clarification is requested regarding the application of the Uniformity Requirement. A strict reading of the Uniformity Requirement would suggest that these age-appropriate coverage restrictions, whether applicable only to dependents or plan-wide, are not permitted. We believe that such an interpretation is not the intended result of the PPAACA or its implementing regulations. Instead, we believe the better interpretation or application of the interim final regulations is that plan-wide or other age-appropriate restrictions or limitations on coverage do not violate the Uniformity Requirement.

We appreciate this opportunity to provide the foregoing comments regarding the interim final regulations. Should you have any questions, please do not hesitate to contact me by phone at (803) 540-2018 or by email at [sgodom@nexsenpruet.com](mailto:sgodom@nexsenpruet.com).

Very truly yours,

NEXSEN PRUET, LLC



Suzanne G. Odom, Esq.,  
Its Member

SGO/BBM