

Wisconsin Insurance Law Amended to Conform with Federal Adult Child Coverage Requirements— State Tax Law Expected to be Amended Soon

Oct 26 2011

Posted By: Timothy C. McDonald

Practice Area: Compensation and Benefits/ERISA

Two recent developments under Wisconsin law eliminate disparities with federal law and may simplify health plan administration for Wisconsin employers. First, the Wisconsin insurance law requirement that dependent child coverage be offered to the adult children of covered employees has been amended to conform to the federal adult child coverage requirement. Second, Senate Bill 203, which recently passed both houses of the Wisconsin Legislature and is awaiting Governor Scott Walker's signature, would amend Wisconsin tax law to conform the state income tax exclusion for coverage provided to an employee's adult child to the federal income tax exclusion.

Background on Adult Child Coverage

In recent years, Wisconsin and federal legislators have recognized the growing need for young adults to obtain greater access to health insurance coverage. In 2009, Wisconsin added Section 632.885 to the Wisconsin Statutes, which required that insured health plans and selfinsured governmental health plans extend dependent child coverage to a covered employee's adult child if the child was under age 27, unmarried, and not eligible for less expensive coverage under his or her own employer's group health plan. Because the Wisconsin mandate was not coordinated with applicable tax laws, however, an employee could be subject to both state and federal income tax on the value of coverage provided to his or her adult child under certain circumstances.

In 2010, the Patient Protection and Affordable Care Act ("PPACA") amended federal law to require that health insurance plans that offer dependent child coverage extend coverage to all adult children under the age of 26. This federal mandate applies regardless of the adult child's marital status or ability to obtain health insurance from his or her own employer. PPACA's adult child coverage provision became effective for plan years beginning on or after September 23, 2010.

Significantly, PPACA also amended federal tax law so that an employee whose adult child is covered under the PPACA mandate would not be subject to federal income tax on the value of that coverage. The federal tax exclusion applies through the end of the tax year in which the adult child attains age 26. This change in federal tax law, however, did not solve the tax issues under Wisconsin law. As a result, an employee who resides in Wisconsin could be subject to state income tax on the value of coverage provided to his or her adult child even though that coverage would not be subject to federal income tax.

The disparity between adult child coverage mandates and the tax exclusions under state and federal law created headaches for both the human resources and payroll departments of many Wisconsin employers.

Recent Changes to Wisconsin Law

On June 26, 2011, the Wisconsin Budget Bill (2011 Wisconsin Act 32) amended Section 632.885 of the Wisconsin Statutes to generally conform to PPACA's adult child coverage requirements (special coverage rules continue to apply under Wisconsin law for adult children who are students and are called to active duty in the national guard or in an armed forces reserve component). As a result, beginning January 1, 2012, insured plans and self-funded governmental health plans in Wisconsin that offer dependent child coverage must extend coverage to all adult children under the age of 26.

The Wisconsin Budget Bill did not address the tax issue under Wisconsin law. An employee could still be subject to state income tax on the value of coverage provided to an adult child under the coverage mandate.

On October 18, 2011, however, the Wisconsin Senate unanimously passed Senate Bill 203, which excludes from an employee's Wisconsin taxable income the value of health plan coverage provided to the employee's adult child through the end of the tax year in which the child attains age 26. The Wisconsin Assembly passed Senate Bill 203 on October 20, 2011. We expect that Governor Walker will sign Senate Bill 203. Senate Bill 203 would apply retroactively to taxable years beginning on or after January 1, 2011.

In summary, the adult child coverage mandate under Wisconsin law and federal law will be the same effective January 1, 2012. In addition, effective January 1, 2011, both Wisconsin and federal law exclude from a covered employee's taxable income the value of health plan coverage provided to the employee's adult child through the end of the tax year in which the child attains age 26.

If an employer's health plan provides coverage to an employee's adult child beyond the year in which the child attains age 26, the employee could be subject to state and federal income tax on the value of that coverage unless the child qualifies as the employee's tax dependent for health plan purposes.

The attorneys in our Compensation and Benefits Group are monitoring Senate Bill 203 and will alert you to any change in Wisconsin tax law with respect to adult child coverage. We would also be happy to assist you in complying with the new adult child coverage requirements in the Wisconsin Budget Bill. Please contact us if you have questions or concerns regarding adult child coverage under Wisconsin or federal law.

von Briesen & Roper Legal Update is a periodic publication of von Briesen & Roper, s.c. It is intended for general information purposes for the community and highlights recent changes and developments in the legal area. This publication does not constitute legal advice, and the reader should consult legal counsel to determine how this information applies to any specific situation.