



MORE RULES FOR MASSACHUSETTS HEALTH CARE

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During the holidays, State regulators were formulating new guidance for sponsors of health plans in Massachusetts. The focal point was continued coverage for children beyond the time when they can be claimed as dependents on a federal tax form. This article explains [Bulletin 2008-1](#) (the "Bulletin") from the Division of Insurance, and [TIR 07-16](#) (the "Release") from the Department of Revenue.

Effective for 2008, the Bulletin assures parents that they can continue children under the age of 26 on employer group policies for two years following the last year in which they provided more than 1/2 of the child's support, regardless of whether the child was claimed as a tax dependent. The Release advises that, effective for 2007, coverage during the two year continuation period is tax-free for Massachusetts purposes, even though the IRS treats it as a taxable fringe benefit to the employee-parent.

The guidance was necessary due to the Legislature's fine-tuning in late 2007 of the two year continuation requirement of Section 49 of the 2006 [Health Care law](#). The 2007 law also provided a Massachusetts tax break for parents who continue their children's coverage during the two year period.

The two year continuation requirement is not new. The 2006 law provided that employees could continue dependents on an employer's group policy for a two year period "following loss of dependent status under the Internal Revenue Code", but not later than age 26. Section 5 of [Chapter 205 of the Acts of 2007](#) expanded the continuation requirement of the 2006 law in a subtle way. As amended, the law now provides that the two year continuation period runs from "the end of the calendar year in which such persons last qualified as dependents under 26 U.S.C. 106."

In case you are not a tax lawyer, here's the difference. A tax dependent under IRC Section 152 can be claimed on your federal tax return. An IRC 106 dependent is a broader set. In addition to IRC 152 tax form dependents, a child will qualify as a 106 dependent as long as more than 1/2 of the support comes from parents. And, if you are a tax lawyer, note that an IRC 106 dependent is the same as an IRC 105(b) dependent. (In tandem, IRC 105 and 106 say that the cost of coverage and the benefits provided for dependents described in 105(b) are not taxable.)

Let's review what this means for Massachusetts employers who provide group insurance.

1. A child is a 106 dependent if more than 1/2 of the support comes from either or both parents. The child does not have to live at home or be claimed as a tax dependent on a tax form. The child does not have to be a student. It's OK if the child has a minor job or other income, as long as the majority of support comes from parents. Support is the only test for 106 dependent status. For divorced spouses, it does not matter who pays the support. If the child is claimed as a 152 tax form dependent on the tax return of the non-insuring parent, the child can still be a 106 dependent for the insuring parent.

Example: *Polly is 20, goes to college, lives with her divorced Mom and receives more than 1/2 of her support from Mom. Mom claims Polly as a 152 tax dependent on her US tax return. Polly is insured through the policy of Dad's employer. Because Polly gets more than 1/2 of her support from parents, she is a 106 dependent. She can be continued on Dad's policy for two years following the last year in which she received more than 1/2 of her support from parents (Mom, in this case), but not later than age 26.*

Example: *Pete dropped out of college at the age of 20. He wants to be a poet and shares an apartment with three roommates. Mom and Dad pay more than 1/2 of Pete's support during the years of his 20th and 21st birthdays. Pete gets a full-time job in the year of his 22nd birthday. Pete, who is not a student, cannot be claimed as a 152 tax dependent after he leaves home. However, he is a 106 dependent in the years of his 20th and 21st birthdays, because more than 1/2 of his support comes from parents. Dad can elect to cover Pete on the plan of Dad's employer for two years following loss of 106 dependent status, i.e. until December 31 of the year of Pete's 23rd birthday.*

2. During the period in which they are 106 dependents, and during the two following calendar years, these children must be offered health insurance during open enrollment in the same manner as other eligible dependents. The child does not have an independent right to enroll. It's the employee's decision, just like with other dependents. On reaching age 26, the two year extended coverage period ends, even if less than two years has elapsed.

3. What about COBRA? The Bulletin points out that the 36 month continuation period for COBRA (and [mini-COBRA](#) for groups less than 20) runs from the date the child loses coverage. It does not run concurrently with the two year continuation period of State law.

Example: *Parents last provided more than 1/2 of support to daughter Jill in the year of her 22nd birthday. Employee-parents must each be offered the right to continue Jill on employer group policies in the calendar years of her 23rd and 24th birthdays. When coverage stops (December 31 of the year she reaches age 24), Jill then has 36 month continuation rights under COBRA (or mini-COBRA if Jill's parents work for small employers).*

4. The Release reminds employers that coverage during the two year period when a child is no longer a 106 dependent is a taxable fringe benefit, and that federal taxable income must be imputed to the employee-parent. The Department of Revenue obviously has no jurisdiction to interpret how the IRS should interpret the Internal Revenue Code, but it correctly determined that Massachusetts taxpayers (and their lawyers) might need a little help in sorting through the different types of dependents which are defined in the Internal Revenue Code. The Release is

carefully silent on how to quantify the imputed income. The general view is that the cost of single-premium coverage is the proper taxable amount to impute to the employee-parent.

5. The hardest chore for employers will be to report on 2007 W-2s that coverage in 2007, during a two year continuation period, is taxable only for federal purposes. Employers who have extended coverage in 2007 (under the two year continuation requirement as it existed under the original version of the law) will have a logistical problem. The amendment which exempted the imputed tax cost from Massachusetts income was not enacted until the last weeks of 2007. The Release was later than that. The first run of many W-2's will probably be incorrect. Employers should make every effort to amend them so that the employee-parents' Massachusetts reported income does not include the cost which must be imputed for federal purposes.

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