601 E Street, NW
Washington, DC 20049

T 202-434-2277
1-888-OUR-AARP
1-888-687-2277
TTY 1-877-434-7598
www.aarp.org

August 5, 2010

Amy Turner
Beth Baum
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

Re: **AARP HCR Comment Letter on Dependent Coverage Provision rules**
IFR; 75 Federal Register 27121, August 11, 2010

AARP is pleased to comment on the Interim Final Rule (IFR) implementing section 2714 of the Public Health Service (PHS) Act, as added by the Patient Protection and Affordable Care Act (ACA), which requires group health plans and health insurance issuers in the group and individual markets to expand dependent coverage, if any, to include dependents who have not attained 26 years of age.

Under the ACA, the adult dependent child coverage requirement applies to new as well as existing (grandfathered) plans, although until 2014 grandfathered group health plans must only provide adult child coverage to qualifying individuals who are not offered other qualifying employer-sponsored coverage. Section 2714 also requires the issuance of regulations to define the dependents to which coverage shall be made available under this rule. The ACA also applies these requirements to group health plans by providing for their application to section 715 of the Employee Retirement Income Security Act (ERISA) and section 9815 of the Internal Revenue Code (IRC). The requirements apply to plan or policy years beginning on or after September 23, 2010, although many insurers and some group health plans have volunteered to comply in advance of the statutory deadline.

AARP commends the Departments of Health and Human Services (HHS), Labor and Treasury for their efforts to implement section 2714 of the ACA on a timely basis and in a way that anticipates the complexity of applying its requirements to different family and coverage situations. As the rule's preamble acknowledges, young adults represent a disproportionate share of the uninsured population and, for many of this population, the barriers to obtaining coverage include availability and affordability. Section 2714 will rapidly extend coverage to many thousands of uninsured young adults and will make it possible for a significant number of young adults who are currently underinsured to enroll in better value, employer-sponsored plans. The expansion of meaningful coverage should decrease the cost-shifting of uncompensated care, increase the use of preventive health services and provide more timely access to high quality care, resulting in a healthier population. And young adults will be afforded greater job mobility since their health coverage will no longer be tied to their student status or required from their own jobs. Further, section 2714 of the ACA provides these young adults access to coverage without medical underwriting prior to the comprehensive reforms being put in place in 2014, and will provide another vehicle for achieving the coverage requirements in 2014 and later years.

W. Lee Hammond, President
Addison Barry Rand, Chief Executive Officer

AARP's comments on specific provisions of the Interim Final Rule reflect our generally supportive view of the way in which the Departments have implemented the ACA's adult dependent coverage requirement. We commend the Departments in particular for making it clear
early in the IFR's preamble that extending coverage to adult children under age 26 does not jeopardize grandfathered plan status.

As noted in the IFR's preamble, the ACA calls for the implementing Departments to issue regulations to define the dependents to which dependent coverage shall be made available. AARP believes that the IFR provides for an appropriate definition of dependents for purposes of section 2714's requirements—that "dependent" may not be defined other than in terms of the relationship between the child and the participant (in the individual market, the primary subscriber). In addition, we support the prohibition on plans or policies from varying dependent coverage based on the age of a child, except for children age 26 or older.

In addition, AARP supports the clarification (also communicated by the Internal Revenue Service (IRS) in its notice of April 27, 2010) that employers may exclude from the employee's income the value of any employer-provided health coverage for an employee's child for the entire taxable year the child turns 26 if the coverage continues until the end of that taxable year. We applaud the clarification that a grandfathered group health plan may exclude an adult child from coverage only if such adult child is eligible for coverage under an employer-sponsored health plan "other than a group health plan of a parent." However, we urge the Departments to further clarify the definition of "eligible employer-sponsored group health plan." We believe excepted benefits as defined in Sec. 2791(c) of the Public Health Service Act and temporary coverage policies should be excluded from the definition of eligible plans. AARP believes these plans are not adequate health coverage and should not disqualify an adult child from adequate coverage under a parent's health plan.

AARP also supports the implementing Departments' decision to include transition rules with respect to dependent coverage for young adults. These rules provide that upon section 2714 becoming effective, a plan or issuer can no longer exclude coverage for the child prior to age 26 irrespective of whether or when that child was enrolled in the plan (or coverage). The transition rules also make it possible for a child whose coverage ended, or was denied coverage because of attaining an ineligible age under his or her parent's plan or coverage, to newly enroll in that plan or coverage. As detailed in the IFR, issuers and plans are instructed as to the specific requirements (including giving timely notice of the opportunity to enroll) that they must meet to provide for such transitions. We would urge clarification, however, on the effective date for such coverage and whether it must be provided retroactive to some specific date.

Finally, AARP appreciates that the Departments make clear in the IFR's preamble that state laws that impose stricter requirements than those imposed by the ACA continue to apply. Consequently, if a state law requires, for example, that health insurance coverage allow for dependents over age 25 to be included as dependents on their parent's plan, then that requirement supersedes the ACA requirement for health insurance that is regulated by the state. However, because ERISA preempts state laws with respect to self-insured, private sector employer sponsored health plans, the state requirement would not apply to those plans. Instead, such plans would be subject only to the PPACA federal requirement.

Thank you for the opportunity to comment on this important matter. If you have any questions, please contact Nora Super on our Government Relations staff at (202) 434-3770.

Sincerely,

David Certner
Legislative Counsel and Legislative Policy Director
Government Relations and Advocacy