

## **Employer Based Healthcare**

### **Final Ruling: 90-day Waiting Period and One Month Orientation Period**

The Big Three (Dept. of Treasury, Dept. of Labor and Dept. of Health & Human Services) issued final regulations regarding ACA's 90-day waiting period and the proposed, and much talked about, "orientation" period. The details below provide a summary of the rules. If you have any questions regarding the information below, please contact your local account management team.

#### **Employment-Based Orientation Period**

As indicated above, the Big Three have released final rules setting out a maximum one-month period as the limit for an employment-based orientation period. Some group health plans or issuers may require an employee to successfully complete a reasonable and bona fide employment-based orientation period as a condition for eligibility for coverage under a plan. This situation is addressed in the final regulations, which sets one month as the maximum length of any orientation period. The 30-day orientation period generally means a period that begins on any day of a calendar month and is determined by adding one calendar month and then subtracting one calendar day. The employment-based orientation period may not be longer than one month. The final regulations are effective for group health plans and group health insurance issuers for plan years beginning on or after January 1, 2015. As such, employers should begin making considerations for this one-month orientation period now.

As the Big Three noted in the preamble, orientation periods are common and are reasonable business practices to enable employers and employees to determine if they are a good fit. Another example of a employment-based orientation period includes a probationary period or training period for new hires. Notwithstanding the previous examples, if your health plan conditions eligibility on the employee's having completed a reasonable and bona fide employment-based orientation period, under the new rules that orientation period will not be considered to be designed to avoid compliance with the 90-day waiting period rules as long as the orientation period lasts no longer than one month and the 90-day period begins the next day. In effect, this allows employers an opportunity to have 120 days "in waiting" prior to coverage being "turned on" for a full-time employee.

#### **Interaction with 90-Day Waiting Period**

Given the employment-based orientation period, the big question is whether an employer may effectively have a 120-day waiting period for purposes of the ACA employer mandate provisions. As detailed below, the "orientation" period may precede the 90-day waiting period.

As a reminder the IRS, EBSA and HHS have published their final rule relating to the ACA's 90-day maximum waiting period. The final regulations provide that a group health plan, and health insurance issuer offering group health insurance coverage, may not apply a waiting period that exceeds 90 days. This provision applies to grandfathered and non-grandfathered group health plans and group health insurance with plan years starting on or after January 1, 2014.

The final regulations continue to define "waiting period" as the period that must pass before coverage for an individual who is otherwise eligible to enroll under the terms of a group health plan can become effective. Specifically, these final rules provide that being otherwise eligible to enroll in a plan means having met the plan's substantive eligibility conditions (such as, for example, being in an eligible job classification, achieving job-related licensure requirements specified in the plan's terms, or satisfying a reasonable and bona fide employment-based orientation period).

More specifically, if, under the terms of the plan, an individual that has first satisfied the substantive eligibility conditions, including but not limited to a reasonable and bona fide employment-based orientation period, can elect coverage that becomes effective on a date that does not exceed 90 calendar days from the date of becoming eligible, the coverage complies with the 90-day waiting period limitation. Furthermore, the plan or issuer will not be considered to violate the waiting period rules merely because individuals may take additional time (beyond the end of the 90-day waiting period) to elect coverage.

*Example: ABC Company sponsors a group health plan. ABC hires an employee for full-time. His first day on the job and full-time employment is October 16. The employee may complete his orientation period on November 15. Coverage for health care must begin no later than February 14, which is the 91st day after the employee completes the orientation period.*

If you have any questions regarding the information above, please contact your Henderson Consulting advisor or inquire at [info@hendersonconsulting.net](mailto:info@hendersonconsulting.net) .