



Health Care Reform Update



IMPORTANT NOTICE REGARDING HEALTHCARE REFORM **Update # 35** **July, 2014**

Agencies Finalize Regulations Permitting One-Month Orientation Period Prior to 90-Day Waiting Period

The DOL, IRS, and HHS have issued final regulations addressing health care reform's 90-day limit on waiting periods. In February 2014, final regulations were issued on waiting periods, including the a proposed regulation creating a "reasonable and bona fide employment-based orientation period" as a permissible eligibility condition that would not count against the 90 day waiting period limit. The regulations issued June 25, 2014, finalize the proposed orientation period regulations without substantive changes. These final regulations apply for plan years beginning on or after January 1, 2015. Note that the proposed regulations, which are substantively the same, may be relied upon before then. The highlights are:

One-Month Maximum

An orientation period imposed as an eligibility condition does not violate the waiting period limit as long as the orientation period does not exceed one month and the waiting period begins the day after the orientation period ends. The orientation period is determined by adding one calendar month, and subtracting one calendar day, from an employee's start date in an otherwise eligible position. The preamble explains that a longer orientation period would be subject to the general rule limiting waiting periods to 90 days and disallowing other eligibility requirements if they are merely subterfuges for the passage of time.

Conduct During Orientation Period

The regulations do not require any particular activities to be conducted during an orientation period. Although the preamble notes that the agencies envision the period being for evaluation, orientation, and training. It also states that the agencies "do not intend to call into question the reasonableness of short, bona fide orientation periods."

Interaction With Employer Shared Responsibility

Caution should be taken as compliance with these rules does not determine compliance with the employer shared responsibility ("play or pay") rules. The preamble includes an example illustrating that imposing the full orientation period plus the full 90-day waiting period may delay the start of coverage beyond the first day of the fourth full month of employment, potentially exposing a large employer to penalties under Code § 4980H.

Imposing a one-month orientation period prior to a plan's waiting period provides additional flexibility and generally allows coverage to start on the first day of the month after 90 days of employment (a design that would not have been permitted prior to recognition of an orientation period as an allowable substantive eligibility condition). But, as the preamble cautions, large employers wishing to avoid play or pay penalties will need to be careful since some coverage start dates permitted under the waiting period rules may be too late to avoid Code § 4980H penalties.

Additional Information is available at <http://www.gpo.gov/fdsys/pkg/FR-2014-06-25/pdf/2014-14795.pdf>

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