

Rae Anne Beaudry

From: Larry Grudzien, Attorney at Law <larry@larrygrudzien.com>
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Subject: Final Regulations Released on 30-day Orientation Period

From the Desk of

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Final Regulations Released on 30-day Orientation Period

June 21, 2014

On June 20, 2014, the Departments of Labor (DOL), Health and Human Services (HHS) and the Treasury (the Departments) released new final regulations on application of the 30-day orientation period under the 90-day waiting period limit. On February 20, 2014, the Departments had published proposed regulations to address orientation periods under the 90-day waiting period limitation of PHS Act section 2708 when the final regulations on the 90-day waiting period were published. The following summarizes the provisions of these final regulations. The final regulations contain several clarifications.

The Proposed Regulations

The proposed regulations had provided that one month would be the maximum allowed length of any reasonable and bona fide employment-based orientation period. The Departments stated that, during an orientation period, they envisioned that an employer and employee could evaluate whether the employment situation was satisfactory for each party, and standard orientation and training processes would begin. Under the proposed regulations, if a group health plan conditions eligibility on an employee's having completed a reasonable and bona fide employment-based orientation period, the eligibility condition would not be considered to be designed to avoid compliance with the 90-day waiting period limitation if the orientation period did not exceed one month and the maximum 90-day waiting period

would begin on the first day after the orientation period.

The Final Regulations

The final regulations continue to provide that one month is the maximum allowed length of an employment-based orientation period. For any period longer than one month that precedes a waiting period, the Departments refer back to the general rule, which provides that the 90-day period begins after an individual is otherwise eligible to enroll under the terms of a group health plan. While a plan may impose substantive eligibility criteria, such as requiring the worker to fit within an eligible job classification or to achieve job-related licensure requirements, it may not impose conditions that are mere subterfuges for the passage of time.

These final regulations provide that the one month period would be determined by adding one calendar month and subtracting one calendar day, measured from an employee's start date in a position that is otherwise eligible for coverage. For example, if an employee's start date in an otherwise eligible position is May 3, the last permitted day of the orientation period is June 2. Similarly, if an employee's start date in an otherwise eligible position is October 1, the last permitted day of the orientation period is October 31.

If there is not a corresponding date in the next calendar month upon adding a calendar month, the last permitted day of the orientation period is the last day of the next calendar month. For example, if the employee's start date is January 30, the last permitted day of the orientation period is February 28 (or February 29 in a leap year). Similarly, if the employee's start date is August 31, the last permitted day of the orientation period is September 30.

The final regulations continue to provide that if a group health plan conditions eligibility on an employee's having completed a reasonable and bona fide employment-based orientation period, the eligibility condition is not considered to be designed to avoid compliance with the 90-day waiting period limitation if the orientation period does not exceed one month and the maximum 90-day waiting period begins on the first day after the orientation period.

But compliance with these final regulations is not determinative of compliance with Section 4980H of the Code (employer mandate), under which an applicable large employer may be subject to an assessable payment if it fails to offer affordable minimum value coverage to certain newly-hired full-time employees by the first day of the fourth full calendar month of employment.

For example, an applicable large employer that has a one-month orientation period may comply with both PHS Act section 2708 and Code section 4980H by offering coverage no later than the first day of the fourth full calendar month of employment. However, an applicable large employer plan may not be able to impose the full one-month orientation period and the full 90-day waiting period without potentially becoming subject to an assessable

payment under Code section 4980H.

For example, if an employee is hired as a full-time employee on January 6, a plan may offer coverage May 1 and comply with both provisions. However, if the employer is an applicable large employer and starts coverage May 6, which is one month plus 90 days after date of hire, the employer may be subject to an assessable payment under Code section 4980H.

Effective Date

These final regulations apply to group health plans and health insurance issuers for plan years beginning on or after January 1, 2015. Until these final rules are applicable, as stated in the preamble to the proposed rules, the Departments will consider compliance with the proposed regulations to constitute compliance with PHS Act section 2708.

A copy of the final regulations can be obtained by clicking on the link below:

http://www.ofr.gov/OFRUpload/OFRData/2014-14795_PI.pdf

For More Information:

If you have any comments or questions regarding any of the above information, please do not hesitate to call me at (708) 717-9638 or e-mail me at larry@larrygrudzien.com

Thank-You,

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