



LEGAL ADVICE FOR HEALTH PLANS

HEALTH LAW ALERT

June 25, 2014

HHS Amends 90-Day Waiting Period Rule Employers May Impose One-Month Orientation Periods on Employees

Today, the Departments of Health and Human Services, Labor, and the Treasury (the Agencies) formally¹ published a final rule permitting employers to delay the beginning of a 90-day health plan eligibility waiting period for up to one month during an “orientation period” for employees who are new to a job. The orientation period is designed to allow the “employer and employee [to] evaluate whether the employment situation is satisfactory for each party [and to begin] standard orientation and training processes.” The Rule limiting the length of an orientation period is effective for plan years beginning on or after January 1, 2015.

The amendment will permit employers to withhold health plan coverage from new employees (including those moving to a new position) for up to 120 days—30 days for an orientation period plus 90 days under the Affordable Care Act’s waiting period provision. The Agencies stress that compliance with this Rule does not affect an employer’s “shared responsibility” obligations under Internal Revenue Code § 4980. That provision imposes an “assessable payment” on certain large employers that fail to give full-time employees the opportunity to enroll in minimum essential coverage by the first day of the fourth full-calendar month of employment. The agencies point out that the “shared responsibility” payment may affect a large employer that does not offer an employee the opportunity to enroll before the full orientation and waiting periods expire.

The final rules are published at 79 *Federal Register* 35942 ([click here](#)). [Click here](#) for my compilation of Selected Federal Health Insurance Provisions incorporating the amendment into previously-published rules (*see* first line under “Compiled Rules”) (or see the “Resources” page at tbixbylaw.com). [Click here](#) for my Health Law Alert on the Rule implementing the Affordable Care Act’s 90-Day Waiting Period.

¹ The Department informally published the Rules and released them to the public on June 20 when they were filed with the Office of the Federal Register.

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