UBA PPACAAdvisor

Eligibility Waiting Periods

On February 20, 2014, the Department of Health and Human Services (HHS), the Department of Labor (DOL) and the Internal Revenue Service (IRS) released [final regulations] on the eligibility waiting period requirements. The Patient Protection and Affordable Care Act (PPACA) provides that plans may not require an employee who is eligible for coverage to complete a waiting period of more than 90 days before coverage is available. This requirement is effective on the first day of the 2014 plan year. This requirement applies to all plans, including grandfathered plans, fully insured and self-funded plans, and plans offered by small employers. It applies to both full-time and part-time employees if the employer has chosen to cover part-time employees. These final regulations are effective as of the beginning of the 2015 plan year, but they largely mirror the rules that are already in place for 2014. They do not in any way delay the requirement that plans meet the eligibility waiting period requirement by the start of the 2014 plan year.

The regulations state that an eligibility waiting period cannot be more than 90 days. This, literally, is 90 calendar days – a plan that begins coverage as of the first of the month after 90 days of employment, or after three months of employment, will be out of compliance. If the 91st day falls on a weekend or holiday, the plan may not wait to begin coverage until the following work day. In that situation, the plan will need to begin coverage as of the Friday before the end of the allowed waiting period.

The waiting period may be delayed until the employee meets the plan's eligibility requirements. For example, if the plan does not cover employees who work fewer than 30 hours per week, or employees in certain job categories, and an employee moves from ineligible to eligible status, the waiting period may begin as of the date the employee first moves into the eligible class. Other acceptable eligibility requirements include earnings requirements for salespeople, cumulative service requirements of up to 1,200 hours for part-time employees, or employees covered under a multiemployer plan, and similar arrangements that are not designed to circumvent the waiting period.

> Example: Fay begins working 25 hours per week for Acme Co. on January 6, 2014. Acme's group health plan does not cover part-time employees until the employee has completed a cumulative 1,200 hours of service. Fay satisfies the plan's cumulative hours of service condition on December 15, 2014. Acme must offer Fay coverage by March 15, 2015 (the 91st day after Fay meets the service requirement.).

The regulations recognize that multiemployer plans often have complicated eligibility rules, and that is permitted as long as the eligibility requirements are not designed to avoid the waiting period rules.

> Example: A multiemployer plan has an eligibility provision that allows employees to become eligible for coverage by working a specified number of hours of covered employment for multiple contributing employers. The plan aggregates hours in a calendar quarter and then, if enough hours are earned, coverage begins the first day of the next calendar quarter. The plan also permits coverage to extend for the next full calendar quarter, regardless of whether an employee's employment has terminated. This arrangement satisfies the regulation.

An employer may require that an orientation or probationary period be successfully completed before an employee is considered an eligible employee. However, in a proposed regulation issued with the new final regulation, the agencies state that because of concerns that orientation or probationary periods will be used to improperly delay coverage, they are considering limiting permissible orientation and probationary periods to one month.

The regulation allows a waiting period that is longer than 90 days for new variable hours employees. A variable hours employee is someone whose hours cannot be predicted when the person is hired. An employer may average the time worked by a variable hours employee over his or her initial measurement period to determine if the employee is eligible for coverage. The waiting period may be imposed after the initial measurement period is completed as long as both periods are completed by the first day of the month following completion of 13 months of employment.

> Example: Ann is a variable hours employee because she is an on-call nurse. Ann's employer uses a 12-month initial measurement period for variable hours employees and a 60-day waiting period. Ann is hired May 10, 2014. If Ann averages 30 or more hours per week during the initial measurement period, she must be offered coverage with an effective date of July 1, 2015, or sooner.

Individuals who are part way through a waiting period as of the start of the 2014 plan year must be credited with time prior to 2014, so that their total waiting period as of the start of the 2014 plan year is no more than 90 days.

> Example: Ed is hired October 22, 2013. Ed's employer has a calendar year plan and during 2013 it used a six-month waiting period. Ed must be offered coverage with an effective date on or before January 20, 2014, because that is Ed's 91st day of employment.

Although not related to eligibility waiting periods, this regulation also confirms that certificates of creditable coverage need to be provided through December 31, 2014, (regardless of plan year). The certificates will not be required after that date because pre-existing condition limitations will not be permitted after the start of the 2014 plan year.

2/24/2014