The Affordable Care Act (ACA) requires all health plans to comply with a waiting period that is no longer than 90 calendar days, effective for plan years beginning on or after January 1, 2014. Today, final regulations defining this requirement have been issued by the ACA’s governing agencies (IRS/DOL/HHS). This provision applies to virtually all types of plans, including insured and self-funded plans, whether grandfathered or not, and without regard to plan size.

90-DAY WAITING PERIODS
In large part, the final regulations followed previously issued guidance. In summary, the regulations affirm that the maximum waiting period that can be imposed by plans is 90 calendar days. If the 91st day falls on a weekend, and if coverage cannot commence that day, the applicability date cannot be carried forward to the next business day. If coverage can only commence on a business day, it would have to begin on the last business day prior to the expiration of the 90-day waiting period.

The regulations affirm that the 90-day waiting period is a one-time occurrence and cannot be imposed over and over again unless the individual’s employment terminates and the individual is re-hired. However, the regulations underscore that an individual cannot be terminated and re-hired as a way to avoid the requirement.

Effective date. These final regulations apply to group health plans for plan years beginning on or after January 1, 2015. For plan years beginning in 2014, plans must comply with either the proposed rules or the final rules.

Background CBIZ Health Reform Bulletins – 90-day waiting period:
- ACA Updates: 90-Day Waiting Period Limitation (2/10/12)
- Guidance Issued Relating to 90-day Waiting Period and Defining Full-time Employee (9/4/12)
- 90 Day Wait and Other Updates (3/26/13)
- See 90-day Waiting Period in Guidance and Updates (9/11/13)

ORIENTATION PERIOD
The ACA governing agencies also released today a proposed regulation relating to orientation periods. This regulation would allow the imposition of a one-month orientation period prior to the start of a waiting period. The orientation period would be a time of assessment to determine whether an individual has the requisite qualifications, licensure, or other standard to perform the job. The regulations propose that the way to calculate the one-month orientation period is to add one calendar month and subtract one calendar day; after which time, the maximum 90-day waiting period would have to commence. The preamble to the regulation indicates that orientation periods are only used infrequently.
**Effective date.** Comments on the proposed regulation must be received by April 25, 2014. This provision may be relied upon at least through the end of 2014.

**CONFORMING CHANGES TO HIPAA RULES**
Effective for all individual and group health plans, both grandfathered and non-grandfathered plans, whose plan anniversary occurs on or after January 1, 2014, no preexisting condition exclusion can be imposed on anyone. The final regulations issued today include additional examples on what constitutes a preexisting condition, all of which are impermissible.

Because of this ACA provision, several conforming changes were required to be made to the following HIPAA portability rules:
- Late and special enrollment periods;
- HMO affiliation periods; and
- Prohibiting discrimination against participants and beneficiaries based on a health factor.

**Effective date.** These changes to the HIPAA portability rules apply to group health plans for plan years beginning on or after April 25, 2014. Until these amendments to the existing HIPAA rules regulations become applicable, plans are required to continue to comply with the existing rules, as applicable.

**Certificates of Creditable Coverage.** Beginning January 1, 2015, plans of all sizes, insured or self-funded, and grandfathered or not, are no longer required to provide a Certificate of Creditable Coverage. This should come as a ray of sunshine amidst all of the increased burden placed on HR departments as a result of ACA.

**WHAT SHOULD AN EMPLOYER DO?**
Review your health plan. Make certain it is or will be compliant with the waiting period restriction by the first plan year beginning on or after January 1, 2014. Note: the consequence of failing to comply with this requirement is significant—$100 per employee/per day of noncompliance. The minimum excise tax for a compliance failure is $2,500, up to $15,000 if the violations are determined to be more than ‘de minimis’. The maximum excise tax for unintentional failures for a single employer plan is the lesser of 10% of the amount paid during the preceding tax year by the employer for the group health plan, or $500,000. However, no maximum cap applies if the failure to comply is intentional.

Also note, some state insurance laws, California, for example, have more restrictive waiting periods. If a health plan is insured, it must comply with the relevant state’s insurance law.

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