



## SITZMANN ▪ MORRIS ▪ LAVIS

Employee Benefits | Life Insurance | Risk Management

**TO: Clients of Sitzmann Morris & Lavis Insurance Agency**

**RE: 90 Day Waiting Period Final Rules & a Proposed Rule**

On February 24, 2014, the Departments of Labor, Treasury and Health and Human Services published final regulations implementing the 90-day limit on waiting periods for health coverage. The Departments also issued a proposed rule that would limit the length of an otherwise permissible orientation period to one month.

California employers are still subject to a 60 day waiting period for all employees residing in California. These include both small and large group plans in the fully-insured market.

### Key Provisions:

**Final Rule** – The final regulations essentially finalize all of the provisions in the proposed regulations issued in August 2013. This provision applies to both grandfathered and non-grandfathered policies, either fully- or self-insured. It does not apply to certain “excepted benefits” such as stand-alone dental and vision.

Included in the final rule is an update to the HIPAA coverage rule requirement to provide certificates of creditable coverage. After December 31, 2014, plans will no longer be required to provide certificates. This end date will accommodate plans which are not subject to the pre-existing condition prohibition until they renew in December 2014.

The following specifics were finalized:

- The waiting period can be no more than 90 days; coverage must be effective by the 91<sup>st</sup> day from the date of eligibility. Calendar days are counted, including weekends and holidays. Plans may choose to permit coverage earlier than the 91<sup>st</sup> day for easier administration around weekends, holidays or payroll periods. However, a

requirement that coverage will become effective the first day of the following month or payroll period would not be permitted if the waiting period exceeds 90 days.

- The time in which eligible employees take to elect coverage is not counted as part of the 90-day limit.
- If a person enrolls as a late or special enrollee, any time period before the enrollment date is not counted as part of the 90-day limit.
- Employees who are rehired may be treated as a new hire subject to the waiting period. Employees who change status from non-eligible to eligible may also be subject to a waiting period.
- Employers may use cumulative hours of service requirements before the 90-day waiting period begins, as long as the cumulative hours of service do not exceed 1200 hours. This requirement can only be applied once on a new hire, and not reapplied on an annual basis.

Effective dates:

Plans must comply with the original proposed regulations for plan years beginning on or after 1/1/14. For plan years beginning on or after 1/1/15, plans must comply with the final regulations.

**Proposed Rule** – The Departments have proposed that employers may require employees to complete a reasonable and bona fide employment-based orientation period as a condition of eligibility for coverage under a plan. The Departments envision that an orientation period would be used to evaluate whether the employment situation was satisfactory to each party, and to begin standard orientation and training processes.

This period cannot exceed one month. The limit is determined by adding one month from an employee's start date, minus one calendar day. For example, an employee hired on March 15, the last permitted day of the orientation period is April 14. The 90-day waiting period would begin on April 15. If there is not a corresponding day in the next calendar month, the last permitted day for an orientation period is the last day of the month. For example, an employee hired on January 31, the last day of orientation would be February 28. There is a 60-day comment period and then after review of comments a final rule will be issued.

Effective dates:

The Departments will consider compliance with these proposed regulations as compliance with the 90-day waiting period provision at least through the end of 2014. If final regulations or other guidance with respect to the application of the 90-day waiting period limitation to orientation periods is more restrictive on plans or issuers, the final regulations or guidance will not be effective prior to January 1, 2015, and will provide plans and issuers a reasonable time period to comply.

What's Next:

If you are a California employer and you currently have a waiting period of first of month following 60 days or longer, you will need to change it at your 2014 renewal. If you have employees outside California, and you currently have a waiting period of first of month following 90 days or longer, you will also need to change it at your 2014 renewal. Your SML Account team will advise you on the options available through your carrier(s).

The information provided in this legislative update for our clients and colleagues is for general guidance only and is not intended to be, and does not constitute, tax or legal advice. We recommend that you consult with your tax and legal advisors for the interpretation or application of any laws for your particular circumstances and situation.