

**America's Health
Insurance Plans**

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March 30, 2012

Office of Health Plan Standards and Compliance Assistance
Employee Benefits Security Administration
U.S. Department of Labor
Room N-5653
200 Constitution Ave., NW
Washington, DC 20210

Re: Frequently Asked Questions from Employers Regarding Automatic Enrollment, Employer Shared Responsibility, and Waiting Periods (Technical Release 2012-01)

Filed Electronically: e-ohpsca-er.ebsa@dol.gov

Dear Sir or Madam:

America's Health Insurance Plans ("AHIP") is writing in response to Technical Release 2012-01 which provides guidance on a number of provisions of the Affordable Care Act (ACA) related to group health plan coverage. This guidance was issued in substantially identical form by the Departments of Health and Human Services, Labor, and the Treasury ("the agencies") to address automatic enrollment into a group health plan, the "shared responsibility" requirements for certain employers to offer health coverage, and the imposition of waiting periods before an individual becomes eligible for coverage.

AHIP appreciate the opportunity to provide comments on the Technical Release. We support efforts to preserve employer-sponsored health coverage and offer the following recommendations to streamline compliance with the ACA requirements for group health plans.

Automatic Enrollment

The ACA amends the Fair Labor Standards Act to require employers with more than 200 full-time employees to automatically enroll new employees into one of the employer's health benefit plans starting in 2014. The guidance notes that the Department of Labor ("DOL") has concluded that its guidance related to automatic enrollment will not be ready to take effect by 2014 and, as a result, the provisions will not be effective until such rules are issued. We support this approach to delay compliance until the release of final rules and further recommend that the agencies include a delayed implementation date that would make the final rules applicable for plan years that begin on or after 12 months from the date the final rule is published in the *Federal Register*.

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The implementation of automatic enrollment will require employers to establish new administrative and operational systems that will need to be integrated with a variety of service providers of the group health plan, including third party administrators, brokers, and insurance carriers. It is critical to give employers and their business partners sufficient time to correctly implement the changes necessary to conduct automatic enrollment, and to avoid an expedited applicability date that might cause confusion and lead to errors in implementation.

The agencies have previously recognized the importance of giving group health plans sufficient time to implement new requirements based on operational requirements. We also note the Technical Release states that “[g]uidance that employers may rely upon with respect to the issues addressed [in the guidance] will be provided with sufficient lead time for employers to comply.” Given the potential implementation and integration challenges, we support the agencies’ intent to provide sufficient time for group health plans to come into compliance with the automatic enrollment rule.

We recommend the final rule regarding automatic enrollment into a group health plan include a delayed implementation date that would make the requirements applicable for plan years that begin on or after 12 months from the date the final rule is published in the *Federal Register*.

Employer Responsibility Requirements

Effective in 2014, large employers (i.e., businesses with 50 or more full-time employees) will be required to provide health coverage or pay a penalty. A full-time employee is defined as anyone employed on average at least 30 hours per week. The Technical Release recognizes that there are a variety of employment situations where the employee’s hours may vary over the course of a year. For example, a retail employee may work greater hours during a holiday season, but work fewer than 30 hours per week during the remainder of the year.

It is important that the final rules provide employers with flexible and simple tests to determine whether an employee is working on average at least 30 hours per week. Such an approach would give employers clear guidelines to determine whether they fall within the ACA provision requiring an offer of health coverage. The guidance suggests a number of ways an employer can measure an employee’s hours worked, including (1) a “look-forward” test that considers the time the employee is reasonably expected to work at the time of hire and (2) a “look-back” test that measures whether the time worked by the employee during the first three months of employment can be reasonably viewed as representative of the average number of hours they will work on an annual basis. We support both approaches.

Additionally, the guidance mentions that, if the employee works on average at least 30 hours per week and thus must be offered coverage under the employer’s group health plan, such coverage

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must be offered “as of the end” of the applicable “look-back” period. We note that group health plans would not be able to make an offer of coverage to individuals “as of the end” of the look-back period because such an offer of coverage is based on an assessment that necessarily must occur after the close of this period. Any reasonable administrative process would, under the scenarios detailed in the guidance, encounter at least a slight delay in the offer of coverage to such individuals. As a result, we believe that the final guidance on this issue should provide some leeway with regard to the offer of coverage to such individuals.

AHIP believes simple and flexible tests should be provided for employers to determine whether an employee is working an average of at least 30 hours per week for purposes of the employer responsibility requirements. We support both the “look-forward” and “look-back” approaches outlined in the Technical Release. In addition, we recommend that the final guidance on this topic provide that at the end of a “look-back” period applicable employees must be offered coverage as soon as administratively possible after it is determined that that they are entitled to such coverage.

Waiting Periods

The ACA provides that group health plans and group health insurers may not apply a waiting period in excess of 90 days before an individual is eligible for health coverage. The guidance clarifies that the 90 day waiting period is integrated with the requirements for certain employers to provide health coverage to full-time employees. As a result, an employer will not be subject to a penalty for failure to offer coverage to a full-time employee during the waiting period. Additionally, the Technical Release indicates that an employer may impose a condition of eligibility, such as full-time employment status, obtaining a license or having a bona fide job category, as long as such conditions are not designed to avoid compliance with the 90 day waiting period requirements. For example, if an employer’s plan requires a part-time employee to complete a specific number of hours of service before they are eligible for health coverage, the 90 day waiting period may begin when the required hours of service are completed.

We recommend that the final rule with respect to the employer responsibility requirements be integrated with the provisions regarding the 90-day waiting period limits. We support not counting the first 90 days of employment when determining if an employee must be offered health coverage for purposes of the employer responsibility provisions. In addition, we support allowing employers to impose reasonable conditions on eligibility for health coverage, such as having full-time employment status or completing a minimum period of service, before the 90 day waiting period begins.

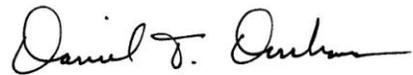
AHIP believes the final rules on automatic enrollment, the requirements for certain employers to provide health coverage, and the 90 day limit on health coverage waiting periods should be instituted in a way that preserves the ability of employers to offer health coverage. We support

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the guidance provided in the Technical Release and appreciate the opportunity to provide comments on these important regulatory issues.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel T. Durham". The signature is written in a cursive style with a prominent initial "D".

Daniel T. Durham
Executive Vice President
Policy and Regulatory Affairs