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### HEALTH CARE REFORM

#### How Long is Too Long: Guidance on 90-Day Waiting Period

The Departments of Labor, Treasury and Health and Human Services (the “Departments”) recently issued temporary guidance on the 90-day waiting period limitation set out in Health Care Reform. The guidance is effective at least through **December 31, 2014**.

**Applies to Group Health Plans.** The 90-day waiting period limitation applies to all group health plan benefits other than excepted benefits like separately offered dental and vision benefits.

**90-Day Waiting Period Limitation.** For plan years beginning on or after January 1, 2014, the maximum waiting period for a group health plan cannot exceed 90 days. A waiting period is the length of time that must pass before coverage for an employee (or dependent) who is otherwise eligible to enroll under the terms of the plan can become effective. An individual is “eligible” for coverage if he or she meets the plan’s eligibility requirements (*e.g.*, being in a particular job classification) and may elect coverage.

**Eligibility Requirements.** Eligibility requirements that are based on a lapse of time are permissible as long as the time period does not exceed 90 days. Other eligibility conditions are permissible, **unless** the condition is intended to circumvent the 90-day waiting period limitation.

For example, the guidance explains that eligibility conditions requiring an employee to complete a specified number of cumulative hours of service in order to be eligible for coverage under the plan would be permissible, *e.g.* requiring part-time employees to complete 1,200 cumulative hours of service. Once the employee works 1,200 hours, group health coverage must be available no later than the 91st day after the employee worked 1,200 hours.

**Next Steps.** Employers should evaluate their group health plan eligibility requirements and reduce any waiting period in excess of 90 days that is solely based on the lapse of time. For example, an eligibility provision that makes coverage effective the first day of the month following three consecutive months of full-time employment would not comply with the 90-day waiting period limitation.

**Contact Information.** For more information from Mazursky Constantine, please

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