Employee Benefits Security Admin., Labor § 2590.715–2708

§ 2590.715–2705 Prohibiting discrimination against participants and beneficiaries based on a health factor.

(a) In general. A group health plan and a health insurance issuer offering group health insurance coverage must comply with the requirements of §2590.702 of this part.

(b) Applicability date. This section is applicable to group health plans and health insurance issuers offering group health insurance coverage for plan years beginning on or after January 1, 2014.

§ 2590.715–2708 Prohibition on waiting periods that exceed 90 days.

(a) General rule. A group health plan, and a health insurance issuer offering group health insurance coverage, must not apply any waiting period that exceeds 90 days, in accordance with the rules of this section. If, under the terms of a plan, an individual can elect coverage that would begin on a date that is not later than the end of the 90-day waiting period, this paragraph (a) is considered satisfied. Accordingly, in that case, a plan or issuer will not be considered to have violated this paragraph (a) solely because individuals take, or are permitted to take, additional time (beyond the end of the 90-day waiting period) to elect coverage.

(b) Waiting period defined. For purposes of this part, a waiting period is the period that must pass before coverage for an individual who is otherwise eligible to enroll under the terms of a group health plan can become effective. If an individual enrolls as a late enrollee (as defined under §2590.701–2) or special enrollee (as described in §2590.701–6), any period before such late or special enrollment is not a waiting period.

(c) Relation to a plan’s eligibility criteria—(1) In general. Except as provided in paragraphs (c)(2) and (c)(3) of this section, being otherwise eligible to enroll under the terms of a group health plan means having met the plan’s substantive eligibility conditions (such as, for example, being in an eligible job classification, achieving job-related licensure requirements specified in the plan’s terms, or satisfying a reasonable and bona fide employment-based orientation period). Moreover, except as provided in paragraphs (c)(2) and (c)(3) of this section, nothing in this section requires a plan sponsor to offer coverage to any particular individual or class of individuals (including, for example, part-time employees). Instead, this section prohibits requiring otherwise eligible individuals to wait more than 90 days before coverage is effective. See also section 4980H of the Code and its implementing regulations for an applicable large employer’s shared responsibility to provide health coverage to full-time employees.

(2) Eligibility conditions based solely on the lapse of time. Eligibility conditions that are based solely on the lapse of a time period are permissible for no more than 90 days.

(3) Other conditions for eligibility. Other conditions for eligibility under the terms of a group health plan are generally permissible under PHS Act section 2708, unless the condition is designed to avoid compliance with the 90-day waiting period limitation, determined in accordance with the rules of this paragraph (c)(3).