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**To:** [E-OHPSCA-ER.EBSA](#)  
**Cc:** [Brad Van Winkle](#); [Keith Carmichael](#); [Cheryl House](#)  
**Subject:** Technical Release 2012-02  
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Good afternoon,

Thank you for the opportunity to comment on the 90-Day Waiting Period guidance released on August 31, 2012. I am an independent benefits advisor who has worked in this industry for 19 years with employers and individuals. I have studied the Patient Protection & Affordable Care Act extensively and educated employer clients on how to manage their plans in the face of these new regulations. MHBT, the firm I work for, is one of the top 50 largest independent insurance agencies in the country. Insurance can be confusing without a proper advisor. As benefits advisors, we take it upon ourselves to properly educate clients about their benefits as we believe an educated employer and its employees will make better use of the benefits offered.

The recent flexible guidance is welcome and we believe this will allow some employers to continue to provide employer-sponsored coverage. Future guidance that lessens the administrative burden to employers is appreciated. Additional regulation could cause an employer to drop benefits altogether.

### **90-Day Waiting Period**

Please clarify when coverage must begin – on the 90<sup>th</sup> day of employment or on the first day of the plan month following the 90<sup>th</sup> day of employment. It could be administratively burdensome to have coverage begin on the 90<sup>th</sup> day of employment due to the pro-rating of the premium for billing purposes. In Texas, fully insured plans must abide by a state law (effective in 2006) requiring plans to cover a member to the end of the month regardless of the termination date during that month. As Texas plans can no longer pro-rate for a termination of coverage, this law effectively ended pro-rating for newly eligible members. Health insurers now only offer coverage beginning on the first day of a plan month following the employer's waiting period. While we understand federal regulation would supersede state law; again, it would be administratively burdensome for an employer to keep up with coverage that does not begin on the first day of a plan month.

In addition, clarify whether 90 days will be equal to 3 calendar months. Not all months have 30 days so it would be beneficial from an administrative standpoint to be able to use calendar months rather than 90 days.

May we suggest the waiting period maximum could be stated that a full-time employee's coverage must be effective no later than the 1<sup>st</sup> day of the 4<sup>th</sup> calendar month following the employee's eligibility for coverage.

### **Waiting Period Defined**

In Section III, A., "being eligible for coverage means having met the plan's substantive eligibility conditions (such as being in an eligible job classification or achieving job-related licensure requirements specified in the plan's terms)."; please offer examples of substantive eligibility conditions. Specifically, would an employer be able to define eligibility in the plan terms as a job classification like a full-time cook, registered nurse, or manager and exclude full-time job classifications such as dishwasher, server, or housekeeping? If this is allowed, would this employer be subject to the employer shared responsibility penalty for excluding several full-time employee job classifications?

**Additional Example Requested – Late Enrollee**

Please clarify if employers will be allowed to have a 12 month waiting period (from the date of application) for late entrants before coverage is effective once the 90-day waiting period regulations take effect.

Please feel free to contact me if you have any questions.

Regards,  
Becky

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**MHBT Inc.**

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