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## 90-Day Waiting Period - Final Rules

The Departments of Labor, Treasury, and Health and Human Services have released [final regulations](#) implementing the 90-day limit on waiting periods for health coverage beginning with plan years starting on or after January 1, 2014. The Departments also issued a companion [proposed rule](#) that limits the maximum duration of an otherwise permissible orientation period to one month. Proposed regulations implementing the law were issued last year, and the new final rules retain many of the provisions outlined in these previously issued proposed rules. For background on the proposed regulations issued last year, see our [Update](#) titled "Prohibition on Excessive Waiting Periods Begins 2014."

### Effective Date and General Rules

The waiting period provisions are effective for plan years beginning on or after January 1, 2014. The requirement applies regardless of grandfathered status and to both self-insured and insured plans. The rules do not require coverage be offered to any particular individual or class of individuals (including, for example, part-time employees).

### Waiting Period Defined

The term "waiting period" is still defined as the period of time that must pass before coverage for an employee or dependent who is otherwise eligible to enroll under the terms of a group health plan can become effective. The final and new proposed regulations provide the following guidance for applying these 90-day waiting period rules:

- Eligibility conditions based solely on the lapse of a time period are permissible for no more than 90 days.
- No group health plan may impose a waiting period that exceeds 90 days after an employee is otherwise eligible for coverage, and an employer will not be subject to employer shared responsibility (pay or play) payments for this 90-day period.
- Being "otherwise eligible" to enroll in a plan means having met the plan's substantive eligibility conditions, such as being full-time, being in an eligible job classification, achieving job-related licensure requirements specified in the plan's terms, meeting certain sales goals, earning a certain level of commission, or satisfying a reasonable and bona fide employment-based orientation period.
- Requiring employees to complete a certain number of hours before becoming eligible for coverage is generally allowed as long as the requirement is capped at 1,200 hours. The plan's waiting period must begin on the first day after the employee satisfies the plan's cumulative hours-of-service requirement and may not exceed 90 days. This provision is

designed to be a one-time eligibility requirement only and cannot be reapplied to the same individual each year.

- If a plan conditions eligibility on working a specified number of hours per period or working full-time, the plan can take a reasonable period of time to determine whether the employee meets that condition. This period can include a measurement period consistent with the timeframes for determining full-time status under the employer pay-or-play mandate rules. However, coverage must be effective no later than 13 months from the employee's start date, plus any time remaining until the first day of the next calendar month (if the start date is not the first day of the calendar month).
- A requirement to successfully complete a reasonable and bona fide employment-based orientation period may be imposed as a condition for eligibility for coverage under a plan (with the maximum duration of an otherwise permissible orientation period limited to one month).
- After an individual is determined to be otherwise eligible for coverage, any waiting period may not extend beyond 90 days, and all calendar days are counted beginning on the enrollment date, including weekends and holidays. A plan that imposes a 90-day waiting period may, for administrative convenience, choose to permit coverage to become effective earlier than the 91st day if the 91st day is a weekend or holiday.

### **Rehired Employees**

A former employee who is rehired may be treated as newly eligible for coverage upon rehire and, therefore, may be required to meet the plan's eligibility criteria and satisfy the waiting period anew, if reasonable under the circumstances. The same analysis would apply to an individual who moves to a job classification that is ineligible for coverage under the plan but then later moves back to an eligible job classification.

### **Multiemployer Plans**

If a multiemployer plan operating pursuant to an arms-length collective bargaining agreement has an eligibility provision that allows employees to become eligible for coverage by working hours of covered employment across multiple contributing employers (which often aggregates hours by calendar quarter and then permits coverage to extend for the next full calendar quarter, regardless of whether an employee has terminated employment), such provisions will be treated as designed to accommodate a unique operating structure, (and, therefore, not designed to avoid compliance with the 90-day waiting period limitation).

### **Buy-In Arrangements**

Some plans require that employees work a certain number of hours per measurement period but allow employees who do not work enough hours to make self-payments (or buy-in) so they have a sufficient number of hours within a measurement period to maintain coverage. The regulations provide that these buy-in arrangements are permissible. Hours banks (common with multiemployer plans) that allow workers to bank excess hours from one measurement period and then draw those hours down to compensate for shortages in later measurement periods to prevent lapses in coverage are also permissible.

### **Special or Late Enrollment**

If an individual enrolls as a special or late enrollee under HIPAA's portability rules, any period before the late or special enrollment is not a waiting period. The effective date of coverage for special enrollees continues to be that set forth in the HIPAA special enrollment regulations.

## HIPAA Certificates and Other HIPAA Portability Changes

The final rules confirm elimination of HIPAA certificates of creditable coverage, effective December 31, 2014, since proving creditable coverage will no longer be necessary once healthcare reform's prohibition on preexisting condition exclusions is fully implemented.

### Effective Date

The 90-day waiting period rule becomes effective for plan years beginning on or after January 1, 2014. For employees in the middle of a waiting period on the effective date, the waiting period must be limited to 90 days even if the prior plan year's rules required a longer waiting period. For plan years beginning in 2014, plans may comply with either the previously proposed regulations or the new final rules (effective for plan years beginning on or after January 1, 2015).

Plan sponsors with waiting periods need to confirm that their plans are in compliance with these rules. Should you have any questions regarding the prohibition on excessive waiting periods, please contact your Conner Strong & Buckelew account representative toll free at 1-877-861-3220. For a complete list of Legislative Updates issued by Conner Strong & Buckelew, visit our online [Resource Center](#).



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