



NAVIGATING HEALTHCARE REFORM

March 13, 2014

ACA In The News: 90 Day Waiting Period

For plan years beginning on or after January 1, 2014, the Affordable Care Act (ACA) prohibits group health plans and group health insurance issuers from applying any waiting period that exceeds 90 days.

ACA's 90-day waiting period limit does not require an employer to offer coverage to any particular employee or class of employees, including part-time employees. It only prevents an otherwise eligible employee (or dependent) from having to wait more than 90 days before coverage under a group health plan becomes effective.

On February 20, 2014, the Department of Labor (DOL), Health and Human Services (HHS) and the Treasury (the Departments) released [final regulations](#) on the 90-day waiting period limit. These regulations generally finalize provisions in [proposed rules](#) issued in March 2013, with minimal changes.

At the same time, the Departments released a separate [proposed rule](#) regarding a new provision permitting orientation periods under the 90-day waiting period limit.

The final regulations apply for plan years beginning on or after January 1, 2015. However, the 2013 proposed rules provided that the 90-day waiting period limit would apply for plan years beginning on or after January 1, 2014. **Thus, for plan years beginning in 2014, the Departments will consider compliance with either the 2013 proposed rules or the final regulations to constitute compliance with the 90-day waiting period limit requirement.**

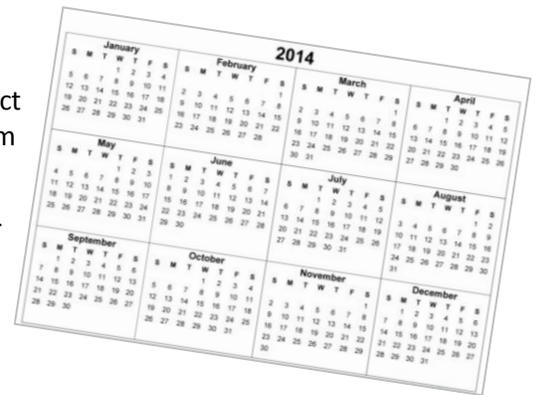
OVERVIEW OF THE 90-DAY WAITING PERIOD LIMIT

A waiting period is the period of time that must pass before coverage for an employee or dependent who is otherwise eligible to enroll in the plan becomes effective. An employee or dependent is otherwise eligible for coverage when he or she has met the plan's substantive eligibility conditions.

After an individual is determined to be otherwise eligible for coverage under the terms of the plan, any waiting period may not extend beyond 90 days. All calendar days are counted beginning on the enrollment date, including weekends and holidays.

However, the ACA does not:

- Require a plan or issuer to have any waiting period at all; or
- Prevent a plan or issuer from having a waiting period that is shorter than 90 days.



If, under the terms of the plan, an individual can elect coverage that becomes effective on a date that does not exceed 90 days, the coverage complies with the 90-day waiting period limit. Thus, a plan or issuer does not violate ACA merely because employees take additional time to elect coverage.

In addition, if an individual enrolls as a late enrollee or special enrollee, any period before the individual's late or special enrollment is not a waiting period. The effective date of coverage for special enrollees is set forth in the 2004 HIPAA regulations governing special enrollment (and, if applicable, in HHS regulations addressing guaranteed availability).

OTHER PERMITTED ELIGIBILITY CONDITIONS

Under ACA, eligibility conditions that are based solely on the lapse of time are permissible for no more than 90 days. However, other eligibility conditions that are not based solely on the lapse of time are generally allowed, unless the condition is designed to avoid compliance with the 90-day waiting period limit.

The 2013 proposed regulations included the following examples of permissible eligibility conditions:

- Being in an eligible job classification; or
- Achieving job-related licensure requirements specified in the plan's terms.

Reasonable and Bona Fide Employment-based Orientation Periods

The final rules add a third example of permissible eligibility conditions, permitting the satisfaction of a **reasonable and bona fide employment-based orientation period**. Under the final regulations, 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. During an orientation period, the Departments envision that an employer and employee could evaluate whether the employment situation was satisfactory for each party, and standard orientation and training processes would begin.

The final regulations do not specify the circumstances under which the duration of an orientation period would not be considered "reasonable or bona fide." However, separate proposed regulations published at the same time as the final regulations propose **one month as the maximum length** of any orientation period.

INDIVIDUALS IN A WAITING PERIOD PRIOR TO EFFECTIVE DATE

Under the ACA, the 90-day waiting period limit is effective for plan years beginning on or after January 1, 2014. The 2013 proposed rule stated that, with respect to individuals who are in a waiting period for coverage before January 1, 2014, the waiting period can no longer apply to the individual if it would exceed 90 days. This is the case even if the waiting period began before the first day the rules apply to the plan.

EMPLOYEES THAT ARE REHIRED OR CHANGE JOB CLASSIFICATIONS

The final regulations provide that a former employee who is rehired may be treated as newly eligible for coverage upon rehire. Therefore, a plan or issuer may require that individual to meet the plan's eligibility criteria and to satisfy the plan's waiting period anew, if reasonable under the circumstances. The requirement would not be reasonable if the termination and rehire is a subterfuge to avoid compliance with the 90-day waiting period limit.

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.

