



WAITING PERIODS

What is the final rule on enrollment waiting periods?

The PPACA prohibits employers from imposing enrollment waiting periods that exceed 90 days. This provision applies to both grandfathered and non-grandfathered health plans.

Note: Final guidance issued on June 20, 2014 confirmed that employers may have a one-month orientation period, as defined in the proposed regulations, before the 90-day waiting period begins.

On February 20, 2014, two regulations on the 90-Day Waiting Period Limitation were issued jointly by the Departments of Health and Human Services, Labor, and the Treasury. The first regulation is the final rule as it pertains to originally proposed regulations in August, 2013. The second is a proposed regulation that focuses on limitations to employee orientation periods.

Final Rule

There are no substantial changes from the proposed regulations in August, 2013. The waiting period limitation is the period 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. This limitation can be no more than 90 days; coverage must become effective by the 91st day from the date of eligibility.

Two notable differences from the originally proposed regulations are allowance for a “reasonable and bona fide employment-related orientation period,” and employees that are terminated and later rehired to be treated as a new employee for purposes of the waiting period.

Plans must comply with the original proposed regulations with the first plan year that begins on/after 1/1/2014. For plan years beginning on or after 1/1/2015, plans must comply with the final regulations.

The final rule confirms the following specifics:

- Calendar days are counted in determining the 90-day period, including weekends and holidays. Plans may choose to permit coverage earlier than the 91st day for easier administration around events such as weekends, holidays or payroll periods. However, a requirement that coverage will become effective the first day of the following month or payroll period would not be permitted if the waiting period is 90 days. The employer defines the eligibility criteria.
- The time in which eligible employees take to elect coverage is not counted as part of that 90-day limit.



- If a person enrolls as a late or special enrollee, any time period before the enrollment date is not counted as part of the 90-day limit.
- Employees that were once terminated then rehired may be treated as a new hire subject to the plan's eligibility and waiting period requirements. The same applies to employees moving between eligible and non-eligible employment positions.

Newly Proposed Regulations

These proposed regulations would ensure that orientation periods are not used to avoid compliance with the 90 day waiting period limitation, or used as a loop-hole in the passage of time. An orientation period could be used to evaluate the employment situation and would allow employers to begin standard orientation and training processes. The proposed orientation period cannot exceed one month, determined by adding one month from an employee's start date, minus one calendar day.

For example, if an employee's start date is October 1, the last permitted day of the orientation period is October 31. The 90-day waiting period would then begin November 1. The proposed rule is open for a 60-day comment period.

HIPAA Certificates of Creditable Coverage

The final regulations also addressed the issuance of HIPAA Certificates of Creditable Coverage ("HIPAA Certificate") in light of the prohibition on applying pre-existing condition limitations ("PCL") starting in 2014. Because this prohibition applies to plans based on their plan year (rather than immediately on 1/1/2014), terminating individuals may still have a need for a HIPAA Certificate to receive credit toward a PCL under another employer's plan. Therefore, all plans must continue to provide HIPAA Certificates until 12/31/2014.