



Health Care Reform

LEGISLATIVE BRIEF

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90-day Waiting Period Limit—Permitted Orientation Periods

For plan years beginning on or after Jan. 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. 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.

On Feb. 20, 2014, the Departments 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](#) that were issued in March 2013, with minimal changes. At the same time, the Departments released a separate [proposed rule](#) regarding a new provision permitting **reasonable and bona fide orientation periods** under the 90-day waiting period limit.

The final regulations apply for plan years beginning on or after Jan. 1, 2015. However, the 2013 proposed rules provided that the 90-day waiting period limit would apply for plan years beginning on or after Jan. 1, 2014. **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.

Under the ACA, group health plans and health insurance issuers offering group health insurance coverage may not apply a waiting period that exceeds 90 days. Thus, 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, 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. For purposes of the 90-day waiting period, "**enrollment date**" means:

- The first day of coverage; or
- If there is a waiting period, the first day of the waiting period.

If an individual receiving benefits under a group health plan changes benefit packages, or if the plan changes group health insurance issuers, the individual's enrollment date does not change.

The waiting period limit does not require an employer to offer coverage to any particular employee or class of employees, including part-time employees. The waiting period limit 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.

PERMISSIBLE ELIGIBILITY CONDITIONS

Under the 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**

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the condition is designed to avoid compliance with the 90-day waiting period limit. Examples of permissible eligibility conditions include:

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

The final rules add a third example of a permissible eligibility condition, allowing the satisfaction of **a reasonable and bona fide employment-based orientation period**. This means that 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.

REASONABLE AND BONA FIDE ORIENTATION PERIODS

During a reasonable and bona fide 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.

Maximum Length

Separate proposed regulations published at the same time as the final regulations propose **one month** as the maximum length of any orientation period. This one-month maximum is generally a period that begins on any day of a calendar month, and would be determined by adding one calendar month and subtracting one calendar day, measured from an employee's start date in a position that is otherwise eligible for coverage.

For example, if an employee's start date in an otherwise eligible position is May 3, the last permitted day of the orientation period is June 2. Similarly, if an employee's start date in an otherwise eligible position is Oct. 1, the last permitted day of the orientation period is Oct. 31.

If there is not a corresponding date in the next calendar month upon adding a calendar month, the last permitted day of the orientation period is the last day of the next calendar month.

For example, if the employee's start date is Jan. 30, the last permitted day of the orientation period is Feb. 28 (or Feb. 29 in a leap year). Similarly, if the employee's start date is Aug. 31, the last permitted day of the orientation period is Sept. 30.

If a group health plan conditions eligibility on completing a reasonable and bona fide orientation period, the eligibility condition would comply with the 90-day waiting period limit if the orientation period did not exceed one month. **The maximum 90-day waiting period would begin on the first day after the orientation period.**

Example

The following example helps explain the rules for permitted orientation periods under the 90-day waiting period limit.

- *Facts*—Employee H begins working full time for Employer Z on Oct. 16. Z sponsors a group health plan, under which full-time employees are eligible for coverage after they have successfully completed a one-month orientation period. H completes the orientation period on Nov. 15.
- *Conclusion*—The orientation period is not considered a subterfuge for the passage of time and is not considered to be designed to avoid compliance with the 90-day waiting period limitation. Accordingly, plan

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coverage for H must begin no later than Feb. 14, which is the 91st day after H completes the orientation period. (If the orientation period was more than one month, it would be considered to be considered a subterfuge for the passage of time and designed to avoid compliance with the 90-day waiting period limitation. Accordingly, it would violate the ACA's 90-day waiting period limit rules.)

Effective Date

Under the ACA, the 90-day waiting period limit applies for plan years beginning on or after Jan. 1, 2014. However, the proposed rules on the reasonable and bona fide orientation period have not been finalized.

As a result, the Departments will consider compliance with the separate 2014 proposed regulations to constitute a reasonable and bona fide employment-based orientation period at least through the end of 2014. To the extent final regulations or other guidance is more restrictive on plans and issuers, the final regulations or other guidance will not be effective prior to Jan. 1, 2015, and plans and issuers will be given a reasonable time period to comply.

Source: Departments of Labor, Health and Human Services and the Treasury

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