

DOL, HHS AND TREASURY AGREE; 90 DAYS DOES NOT EQUAL 3 MONTHS

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For plan years beginning on or after January 1, 2014, a health plan cannot impose a waiting period of more than 90 days. Earlier this month, the Departments of Labor and Health and Human Services and Treasury (the “Departments”) followed up their prior guidance on the 90-day waiting period maximum with a joint set of proposed regulations.

90-Day Maximum Waiting Period

Consistent with prior guidance, the proposed regulations define a waiting period 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 the health plan can become effective. For counting purposes, all calendar days are counted beginning on the enrollment date (including weekends and holidays). If an employee has satisfied the eligibility requirements under the plan, coverage must begin once 90 calendar days has elapsed (subject to the employee’s completion and submission of the appropriate enrollment forms).

The Departments confirm that no de minimis exception exists that would permit employers to equate three months with 90 days. Therefore, plans with a three-month waiting period will need to be amended for the 2014 plan year. In addition, plans with a 90-day waiting period in which coverage begins on the first day of the month immediately following satisfaction of the waiting period will have to be amended. Employers that continue to prefer a first day of the month start date for coverage rather than random dates throughout the month could consider implementing a 60-day waiting period. Any coverage that begins on the first day of the month following the completion of the 60-day waiting period will never exceed the 90-day maximum.

The imposition of other eligibility criteria remains permissible as long as they are not designed to avoid compliance with the 90-day maximum limitation. For example, a plan can provide that the employee must attain a specific job category before becoming eligible to participate in the health plan. However, in cases where eligibility is contingent upon an employee completing a certain number of hours of service within a specified period, the hours of service requirement cannot exceed 1,200 hours and must be applied only on a one-time basis.

In the case of variable hour employees, the proposed regulations provide that an employer can take a reasonable period of time, not to exceed 12 months and beginning on any date between the employee's start date and the first day of the next calendar month to determine whether an employee meets the plan's eligibility requirements. The employer will be deemed to be in compliance with the 90-day maximum limit if the employee's coverage (if determined eligible for coverage during the measurement period) is effective no later than 13 months from the employee's start date, plus the time remaining until the first day of the following month if the employee's start date is not the first day of the month.

Note; however, that employers should be aware that compliance with the proposed regulations governing application of a 90-day waiting period does not necessarily preclude the imposition of the play or pay penalty for failure to provide coverage to full-time employees within three months of their date of hire under the employer mandate. Accordingly, any waiting period should be designed to take into account the requirements under the proposed regulations on waiting periods as well as the regulations applicable to the employer play or pay mandate.

Certificates of Creditable Coverage

With the elimination of pre-existing condition exclusions for plan years beginning on or after January 1, 2014, the Departments also announced that HIPAA Certificates of Creditable Coverage will be phased out by 2015. However, plan sponsors must continue to provide Certificates through December 31, 2014 since individuals enrolling plans with plan years beginning later than January 1 may still be subject to pre-existing condition exclusions up through 2014.

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