



For Immediate Release: March 2013 - Volume 2013 Issue 6 - Employee Benefits - Compliance Breaking News

Proposed Regulations Released on Ninety-Day Waiting Period Limitation and Technical Amendments to Certain Health Coverage Requirements

Breaking News Highlights

90-Day Waiting Period

A waiting period is defined as the period of time an already eligible employee or dependent must wait before an employee can elect coverage under a group health plan¹.

Once an employee is eligible for coverage, then coverage must be effective within 90 days of eligibility.

- Employers should institute a first of the month following 60 days waiting period for all eligible employees
- If the 91st day following eligibility is a weekend or holiday, an employer is only permitted to make coverage effective earlier than the 91st day
- The effective date of this provision will be for plan years beginning in 2014
- For variable hour employees, a measurement period prior to eligibility is allowed, without penalty to the employer

Multi-State Plans

- Subject to the same requirements as all non-grandfathered health insurance plans
 - State or Federal government external review process
 - Internal claims and appeals process
- Recent technical amendment
 - Multi-State Plans will be reviewed by the Federal external review process
 - All plans not subject to a State's external review process are now subject to the Federal external review process

Certificates of Creditable Coverage

- Employers should issue certificates of creditable coverage until December 31, 2014

¹For example, an employee eligible for benefits on date of hire is subject to only a waiting period. An employee that must complete some criteria before becoming benefits-eligible is not subject to a waiting period until becoming benefits-eligible.

This past Friday, March 22nd the Department of Health and Human Services (HHS) published proposed regulations on the 90-Day Waiting Period Limitation and other Technical Amendments to portions of health care reform. Highlights are below:

IN-DEPTH ANALYSIS OF NINETY-DAY WAITING PERIOD

Although a maximum 90-day waiting period applies after an employee becomes *eligible*, an employer could institute certain requirements *prior* to an employee becoming eligible for coverage. HHS has stated that, for employers who are not subject to the Employer Mandate, a one-time substantive eligibility requirement (i.e., criteria or conditions required prior to becoming benefits-eligible) under the following conditions would be acceptable:

- Cumulative hours-of-service up to 1,200 hours
- Up to 90 days for eligibility requirements based solely on a passage of time
- Self-payment (i.e., buy-in) equal to the amount which would allow an employee to have a sufficient number of hours within a measurement period to qualify for benefits

Carriers may also rely on the eligibility information provided to them by an employer, so long as:

- The carrier requires the plan sponsor to make a representation regarding the substantive eligibility requirements or waiting periods imposed by the plan sponsor; and
- Those representations are made before an individual employee becomes eligible (and is updated by the employer with any changes); and
- The carrier has no specific knowledge of the imposition of a waiting period that exceeds the permitted 90-day waiting period

Warning! Eligibility requirements (e.g., length of service, hours of service completed and licensure) may not meet the requirements of the Employer Mandate. Under the Employer Mandate, a full-time employee must be offered coverage within three months of employment. Therefore, it is not advised to use these eligibility requirements above. Please consult with legal counsel when contemplating use of the above eligibility requirements.

- Under the Employer Mandate of the Affordable Care Act (ACA), an applicable large employer may be subject to a penalty if the employer fails to offer coverage to a full-time employee within three months from date of hire, generally²
- An applicable large employer may also be subject to a separate fine for failing to offer coverage within 90 days (i.e., maximum 90-day waiting period) from the date an employee becomes **eligible** for group health benefits. Therefore, an employer may be subject to fines under both the Employer Mandate, in addition to a separate fine for violating the 90-day waiting period limit

ACTION PLAN FOR EMPLOYERS

- ❑ For large group employer plans beginning in 2014, institute a first of the month following 60 days waiting period for all eligible employees
- ❑ For variable hour employees, be aware that employers may still institute a measurement period prior to eligibility, without penalty to the employer
- ❑ Talk with your Barney & Barney team
- ❑ Wait for further regulations on this topic. These are not final regulations, and until final regulations are released from the Departments of Labor, HHS and Treasury, these proposals can only be used as temporary guidance

The 90-Day Waiting Period and Technical Amendment regulations are available at:
<http://webapps.dol.gov/FederalRegister/HtmlDisplay.aspx?DocId=26730&AgencyId=8&DocumentType=1>

Individuals may submit written comments on these regulations via mail or hand-delivery (Monday through Friday between the hours of 8 a.m. and 4 p.m.) to the office of Health Plan Standards and Compliance Assistance, Employee Benefits Security Administration, Room N-5653, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210. *Attention: Waiting Periods.* For further information, contact Amy Turner or Elizabeth Schumacher, Employee Benefits Security Administration, Department of Labor, at (202) 693-8335. Comments may be submitted electronically via the Federal eRulemaking Portal at <http://www.regulations.gov>.

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² With the exception of Variable Hour/Seasonal Employees who are found to have been full-time employees during a measurement period.