

BREAKING NEWS



BARNEY&BARNEY™
Legislative Compliance

www.barneyandbarney.com

For Immediate Release:

August 2014
Compliance Breaking News
Employee Benefits
Volume 2014 Issue 2



CALIFORNIA PASSES LEGISLATION AFFECTING 60-DAY WAITING PERIOD

Executive Summary

- Employers who were previously subject to the California 60-day waiting period rule under AB 1083 may now follow the Federal rule, which allows employers to impose no more than a 90-day waiting period
- Insurance carriers shall not impose their own waiting periods

Recently, California Governor Jerry Brown signed SB 1034, which primarily affects small group compliance with the Affordable Care Act (ACA), but also revokes the previously-instituted California 60-day waiting period for all plan sponsors of fully-insured plans written in the State. The intention of SB 1034 was to have California State law mirror Federal law with regard to waiting periods; a Federal law that limits waiting periods to no more than 90-days for plan years beginning on or after January 1, 2014.

Background

Under the ACA, all group health plans were required, as of their 2014 renewal date, to limit waiting periods to no more than 90-days. California passed its own legislation ([AB 1083](#)) creating a more restrictive waiting period of no more than 60-days for group health plans written in California¹. In effect, the conflict between State and Federal law created different rules for self-funded plans operating in the State who comply with Federal law, and fully-insured plans in the State. The latest change to the law will provide administrative relief to multi-state employers as well as to most employers/plan sponsors in California.

¹ AB 1083 (chaptered Sept. 30, 2013) amended CA Insurance Code section 10198.7(c) and Health & Safety Code section 1357.506(b) to provide for a "waiting period of up to 60-days as a condition of employment if applied equally to all eligible employees and dependents and if consistent with PPACA."

California 60-Day Waiting Period Repealed

On August 15, 2014, SB 1034 was signed into law, and in addition to including many provisions related to small group market ACA compliance, it effectively repealed the more restrictive 60-day waiting period limitation imposed by previous State law, AB 1083.

Although the most critical part of the new law was its effect on the 60-day waiting period rules in California, there was no clear effective date in the bill in relation to the repeal of the 60-day waiting period. Absent an effective date and clarification from the State, it may be safe to assume its effective date is the date it was signed into law: August 15, 2014. The new law applies to fully-insured plans written in California. Thus far in 2014, employer/plan sponsors and insurance carriers were modifying their waiting periods to the first of the month following 30-days in order to comply with AB 1083. With the passage of SB 1034, California employer/plan sponsors may defer to Federal ACA rules when imposing a waiting period. Highlights of SB 1034 include:

- The prohibition on insurance carriers to impose any waiting period of their own (deferring to any waiting period imposed by the employer/plan sponsor pursuant to the employer's plan terms)
- Applies to both small and large group employer/plan sponsors, regardless of grandfathered status

The majority of SB 1034 was dedicated to requiring health insurance carriers to provide certain specified notices and rights to policyholders in the small group market:

In connection with the renewal of a grandfathered small employer health care service plan contract, each plan shall make a reasonable disclosure, as part of its solicitation and sales materials, of the following (this list is non-exhaustive):

- (a) The extent to which premium rates for a specified small employer are established or adjusted in part based upon the actual or expected variation in service costs of the employees and dependents of the small employer
- (b) The provisions concerning the plan's right to change premium rates and the factors other than provision of services experience that affect changes in premium rates
- (c) Provisions relating to the guaranteed issue and renewal of contracts
- (d) Provisions relating to the effect of any waiting or affiliation provision
- (e) Provisions relating to the small employer's right to apply for any nongrandfathered small employer health care service plan contract written, issued, or administered by the plan at the time of application for a new health care service plan contract, or at the time of renewal of a health care service plan contract, consistent with the requirements of PPACA
- (f) The availability, upon request, of a listing of all the plan's nongrandfathered small employer health care service plan contracts and benefit plan designs offered, both inside and outside the California Health Benefit Exchange, including the rates for each contract
- (g) At the time it renews a grandfathered small employer health care service plan contract, each plan shall provide the small employer with a statement of all of its nongrandfathered small employer health care service plan contracts, including the rates for each plan contract, in the service area in which the employer's employees and eligible dependents who are to be covered by the plan contract work or reside. For purposes of this subdivision, plans that are affiliated plans or that are eligible to file a consolidated income tax return shall be treated as one health plan
- (h) Each plan shall do all of the following:
 - (1) Prepare a brochure that summarizes all of its small employer health care service plan contracts and to make this summary available to any small employer and to solicitors upon request. The summary shall include for each contract information on benefits provided, a generic description of the manner in which services are provided, such as how access to providers is limited, benefit limitations, required copayments and deductibles, standard employee risk rates, and a telephone number that can be called for more detailed benefit information. Plans are required to keep the information contained in the brochure accurate and up to date and, upon updating the brochure, send copies to solicitors and solicitor firms with which the plan contracts to solicit enrollments or subscriptions

(2) For each contract, prepare a more detailed evidence of coverage and make it available to small employers, solicitors, and solicitor firms upon request. The evidence of coverage shall contain all information that a prudent buyer would need to be aware of in making contract selections

(3) Provide to small employers and solicitors, upon request, for any given small employer the sum of the standard employee risk rates and the sum of the risk adjusted employee risk rates. When requesting this information, small employers, solicitors, and solicitor firms shall provide the plan with the information the plan needs to determine the small employer's risk adjusted employee risk rate

(4) Provide copies of the current summary brochure to all solicitors and solicitor firms contracting with the plan to solicit enrollments or subscriptions from small employers

ADDITIONAL INFORMATION

SB 1034 allows employer/plan sponsors to govern the waiting period, rather than the carrier/insurer. Therefore, the provision providing for no waiting periods prior to eligibility seems to ONLY affect carriers/insurers, and not plan sponsors. Plan sponsors of fully-insured plans written in California are permitted to impose a waiting period of up to 90-days beginning now. If the plan was already modified and the plan seeks to amend the plan to include a longer waiting period, the plan may do so but must create a summary of material modification or plan amendment in order to effectuate the prospective change to the plan terms.

Additional guidance from the State is needed due to the legislation including technical errors (e.g., the definition of a waiting period is defined as the time prior to becoming eligible for benefits which contradicts Federal law which describes a waiting period as the period after eligibility but before enrollment). Based on the legislative intent, SB 1034 seems to mirror the Federal 90-day waiting period limitation. Absent any clarification from the State, it is unclear whether a period prior to eligibility would be permitted (e.g., an orientation or probationary period).

For further review of CA SB 1034, go to:

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB1034

Contacts



Lisa R. Nelson, Esq.
Director
Compliance & Regulatory Affairs
(858) 875-3017
lisan@barneyandbarney.com



Christopher K. Bao, Esq.
Compliance Manager, Orange County
Compliance & Regulatory Affairs
(949) 540-6924
chris.bao@barneyandbarney.com