

The Hilltop Institute



analysis to advance the health of vulnerable populations

Overview of the February 24, 2014 Final Rule on the 90-Day Waiting Period Limitation

June 4, 2014

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Introduction

On February 24, 2014, the Internal Revenue Service (IRS), Department of Labor (DOL), and Department of Health and Human Services (HHS) issued a final rule on the *Ninety-Day Waiting Period Limitation and Technical Amendments to Certain Health Coverage Requirements under the Affordable Care Act*, <http://www.gpo.gov/fdsys/pkg/FR-2014-02-24/pdf/2014-03809.pdf>. This document provides a high-level summary of this rule and highlights key changes to the regulation since the issuance of the proposed rule.

Prohibition on Waiting Periods that Exceed 90 Days

The final rule provides that a group health plan and a health insurance issuer offering a group health plan may not apply a waiting period that exceeds 90 days. A waiting period is defined as the time that must pass before an individual otherwise eligible for a group health plan gains coverage. Under this final rule, all calendar days including weekends and holidays are counted in the 90-day waiting period. An individual is considered to be otherwise eligible for a group plan if that individual has met the plan's substantive conditions, such as being in an eligible job classification, achieving job-related licensing requirements, or satisfying a reasonable and bona fide employment period.

Under these final regulations, eligibility conditions that are not based solely on the lapse of a time period are generally permissible unless the condition is designed to avoid compliance with the 90-day waiting period limitation. Permissible eligibility requirements are discussed below.

- For variable-hour employees who must complete a specified number of hours per period in order to be eligible for the group plan, a plan may implement a measurement period to determine whether the employee satisfies this requirement. A measurement period will not be considered to be a violation of the 90-day waiting period if coverage is made effective no later than 13 months from the employee's start date. However, if a waiting period that exceeds 90 days is imposed in addition to a measurement period, then the condition will be considered to be a violation.
- Cumulative hours-of-service requirements are permissible if the requirement does not exceed 1,200 hours. A plan's waiting period must begin the first day after the employee satisfies the cumulative hours-of-service requirement and may not exceed 90 days. This requirement cannot be reapplied to the same individual each year.
- A reasonable and *bona fide* employment-based orientation period may be imposed as a condition for eligibility for coverage. The final rules do not specify when an orientation period would be considered "reasonable or *bona fide*." However, other proposed rules recommend one month as the maximum length of any orientation period. Compliance



with this one-month limitation will be considered a reasonable and *bona fide* employment-based orientation period at least through the end of 2014.

- A former employee who is rehired may be treated as newly eligible for coverage and therefore may again be obliged to satisfy the plan's eligibility requirements and waiting period, if reasonable under the circumstances. The same analysis applies to an individual who moves to a job classification that is ineligible for coverage but then later moves back to an eligible job classification.
- A multi-employer plan will not be considered in violation of the 90-day waiting period prohibition if the plans and issuers impose substantive eligibility requirements not based solely on the lapse of time.

The final rule provides that the issuer can rely on the eligibility information reported to it by an employer or plan sponsor and will not be considered to violate the 90-day waiting period prohibition if (1) the issuer requires the plan sponsor to make a representation regarding the terms of any eligibility conditions or waiting periods, and (2) the issuer has no specific knowledge of the imposition of a waiting period that would exceed the permitted 90 days.

The provisions of these final regulations apply to group health plans and group health insurance issuers for plan years beginning on or after January 1, 2015.





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