

# compliance update

## 90 Day Waiting Period- Final Regulations

On February 20, 2014, the final regulations regarding the 90 day waiting period limitation imposed on health plans under the Affordable Care Act (ACA) were released. The final regulations will apply to health plans with plan years starting on or after January 1, 2015.

The final regulations make it clear that the 90 day waiting period is applicable as of the date the employee becomes eligible for benefits. They do verify that the 90 days mentioned is, as proposed, 90 calendar days. This means that the 90 days begins when an employee completes the plan's eligibility requirements or after satisfying a "reasonable and bona fide employment-based orientation period." The final regulations do not provide a specific example as to what would be considered a "reasonable or bona fide" orientation period, however, it is suggested that one month be considered the maximum length of any orientation period.

One example of an acceptable eligibility requirement would be if a job requires a specific licensure requirement, an employee could be considered as not being eligible for benefits until they obtain the required license. In that scenario, the 90 day waiting period would begin on the day the employee obtains the required license. The final regulations allow for other such eligibility conditions to be put in place, however, such conditions cannot be based solely on the lapse of a time period or designed in such a way as to try to avoid compliance with the 90 day waiting period limitation.

Another eligibility requirement that plans can impose on an employee, both part time or full time, is a cumulative hour of service requirement. This requirement is permissible as long as the cumulative hours-of-service required does not exceed 1,200 hours. This requirement is a one-time use requirement only – an employer cannot require an employee to complete 1,200 hours of service each benefit year, for instance.

Clarification for variable hour eligibility and the frame associated was also included. An employer must offer coverage within 13 months from the employee's start date. If an employee does not start on the first day of a calendar month, an employer can also add the remaining days of the first calendar month in which the employee starts to the allotted 13 months.

The final regulations also allow for a former employee who is rehired to be treated as newly eligible upon rehire. This allows employers to impose the plan's eligibility criteria on a rehired employee. An employee who moves to a benefit ineligible position and then back to a benefit eligible position (i.e. part-time to full-time position) can also be treated in this manner under these regulations.

# compliance update

Multi-employer plans operating under a collective bargaining agreement can have an eligibility provision that deems an employee eligible for coverage if they work an aggregate specified number of hours for multiple contributing employers. If enough hours are earned within the calendar quarter, then coverage for that employee would begin the first day of the next calendar quarter.

The final regulations on the 90 day waiting period are clear to explain that compliance with the aforementioned guidelines does not ensure compliance with other provisions of State or Federal law. In other words, just because an employer has set up their waiting period rules to be in compliance with the final regulations on 90 day waiting periods does not mean that it will necessarily be in compliance with other provisions of the ACA. One scenario in which this may occur is if an employer opts to treat all rehires as new hires. While this would be in compliance with the 90 day waiting period rules, it would violate the break in service rules set by the Employer Mandate.

## Health Insurance Carriers

Health insurance carriers are now able to rely solely on the eligibility information provided to them by an employer or plan sponsor. Under this provision, carriers will not be considered to be in violation of its administration of any waiting period so long as two conditions are met:

1. The carrier requires the employer or plan sponsor to provide them with their eligibility conditions or waiting periods that they impose on their employees
2. The carrier does not have any reason to believe that the guidelines imposed by the employer or plan sponsor exceed the 90-day limit.

## Certificates of Creditable Coverage

The final regulations confirmed that, after December 31, 2014, certificates of creditable coverage will no longer be necessary.

## State Laws

The final regulations provided reaffirm that states may apply their own requirements on carriers. States have the ability to impose requirements that are more restrictive than Federal law; however, they cannot go against those imposed by the ACA.

# compliance update

## **Conclusion**

The 90 Day Waiting Period Final Regulations provide many clarifications on how the 90 day waiting period is meant to be applied. They also provide a bit more wiggle room than the proposed regulations, in that they allow employers to also implement an orientation period of no more than one month before the 90 day waiting period has to begin. Additionally, they provide some relief for carriers, putting the majority of compliance with the waiting period on employers and plan sponsors. The final regulations are to be applied to the first plan year beginning on or after January 1, 2015. For 2014 plan years, groups will be considered as being in compliance with the law so long as they are complying with either the proposed regulations or the final regulations.