



Health Care Reform Update



IMPORTANT NOTICE REGARDING HEALTHCARE REFORM **Update #11** **March, 2013**

Proposed Regulations on 90-Day Waiting Period Limit and Elimination of HIPAA Certificates

The Department of Labor (DOL), Health and Human Services (HHS), and the Internal Revenue Service (IRS) have jointly issued proposed regulations regarding the prohibition on excessive waiting periods. For plan years beginning on or after January 1, 2014, group health plans and insurers, regardless of grandfathered status, may not make eligible participants and beneficiaries wait more than 90 days before coverage is effective. The proposed regulations are very similar to the August 2012 temporary guidance. Some clarifications and additional examples have been added. The proposed regulations state that all calendar days must be counted, and coverage must be available no later than the 91st day. If the 91st day falls on a weekend, an employer can elect to make coverage effective earlier, but not later than the 91st day.

The 90-day limit applies to eligibility provisions that are based solely on the lapse of time. Other eligibility provisions will generally be permissible as long as they are not designed to avoid compliance with the 90-day limit. Such as eligibility conditions that require the following;

- A job classification or a licensure requirement.
- A minimum number of hours of service such as working full-time (as long as the plan uses a measurement period of up to 12 months to determine whether a new employee meets the condition. This period will not be considered to be designed to avoid compliance if coverage is available no later than 13 months from the employee's start date.
- A cumulative number of hours to become eligible, if the required hours do not exceed 1,200.
- And, as long as employees can elect coverage that begins on or before the 91st day, allowing employees additional time to make enrollment elections will not be a violation.

The proposed effective date of the waiting period rules will be January 1, 2014. If final regulations are more restrictive, they will not be effective before January 1, 2015.

The proposed regulations also include changes, such as eliminating the requirement to provide HIPAA certificates effective December 31, 2014. The prohibition on preexisting condition exclusions starting on January 1, 2014, will make HIPAA certificates unnecessary. The proposed effective date recognizes that participants still may need certificates during 2014 to avoid PCEs under non-calendar-year plans.

The proposed regulations are available at: <http://www.gpo.gov/fdsys/pkg/FR-2013-03-21/pdf/2013-06454.pdf>

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