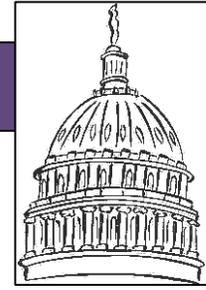




Health Care Reform Update



IMPORTANT NOTICE REGARDING HEALTHCARE REFORM Update #32 March, 2014

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

The DOL, IRS, and HHS have issued final regulations on health care reform's 90-day waiting period limit, along with proposed regulations expanding on the "orientation periods" permitted by the new guidance.

Below are the highlights:

Effective Dates: The 90-day waiting period rule is effective for plan years beginning on or after January 1, 2014. The final regulations, which largely track the proposed regulations issued in 2013, are generally effective for plan years beginning on or after January 1, 2015, although plans may comply with either the 2013 proposed or the new final regulations through the end of the 2014 plan year. The proposed orientation period regulations may be relied upon at least through the end of 2014.

Waiting Period Defined: The final regulations continue to define waiting period as the period that must pass before coverage can become effective for an individual who is otherwise eligible to enroll under the terms of a group health plan. All calendar days, including weekends and holidays, are counted toward the 90 days. As before, substantive eligibility conditions (those not based solely on the lapse of time) are generally permitted, and the 90-day clock does not start until substantive conditions are satisfied.

New Substantive Eligibility Condition Recognized: The 2013 proposed regulations provided two examples of permissible substantive eligibility conditions, i.e., holding a particular job classification or achieving job-related licensure requirements. The final regulations include a third example, a reasonable and bona fide employment-based orientation period. This is described as a period in which the employer and employee evaluate whether the employment situation is satisfactory and standard orientation and training processes begin. Under the new proposed regulations, the maximum length of such an orientation period would be one month. An example in the proposed regulations shows the orientation period beginning on the employee's start date, delaying the start of the 90-day waiting period for up to one month.

The orientation period would allow employers to offer coverage on the first day of the month following a 90-day waiting period (which commenters had specifically requested) and also allow coordination with the coverage start dates that would avoid penalties under the final employer shared responsibility regulations under Code § 4980H.

Rehired Employees: The final regulations also clarify that rehired employees can again be subject to the plan's eligibility conditions and waiting period, provided that the termination and rehire are not a subterfuge to avoid compliance with the 90-day waiting period limit.

Initial Measurement Periods: Like the 2013 proposed regulations, the final regulations allow use of an initial measurement period of up to 12 months to determine whether a new employee averages enough hours to be eligible for coverage. To use this rule, coverage must be available to an employee satisfying the eligibility condition no later than 13 months after the employee's start date plus the time, if any, remaining until the first day of the next calendar month. (These rules are intended to coordinate with the look-back measurement period for employer shared responsibility.)

Cumulative Hours: As under the 2013 proposed regulations, an eligibility condition requiring completion of a cumulative number of hours is permissible if the required hours do not exceed 1,200. However this rule is intended



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to be a one-time eligibility requirement and cannot be imposed on the same individual as an annual eligibility condition.

Not Applicable to Special or Late Enrollment: If an individual enrolls as a special or late enrollee under HIPAA's portability rules, any period before the late or special enrollment is not a waiting period. The effective date of coverage for special enrollees continues to be that set forth in the HIPAA special enrollment regulations.

HIPAA Certificates and Other Conforming Changes to HIPAA Portability Regulations: Like the 2013 proposed regulations, the final regulations confirm elimination of HIPAA certificates of creditable coverage, effective December 31, 2014, since proving creditable coverage will no longer be necessary once health care reform's prohibition on preexisting condition exclusions is fully implemented.

[Final Regulations](#)

[Proposed Regulations](#)

[News Release](#)

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