



Health Care Reform **Bulletin**

Final Regulations Released on the 90-day Waiting Period Limit

Provided by G&A Partners

Quick Facts

- On Feb. 20, 2014, the Departments issued two rules on the 90-day waiting period limit.
- The rules apply for plan years beginning on or after Jan. 1, 2015.
- A one-month orientation period is a permitted eligibility condition.
- Rehired employees may be required to satisfy the waiting period again.

Employers may require employees to successfully complete a reasonable and bona fide employment-based orientation period as a condition for eligibility for coverage under a plan.

For plan years beginning on or after Jan. 1, 2014, the Affordable Care Act (ACA) prohibits group health plans and group health insurance issuers from applying any waiting period that exceeds 90 days.

On Feb. 20, 2014, the Departments of Labor (DOL), Health and Human Services (HHS) and the Treasury (the Departments) released [final regulations](#) on the 90-day waiting period limit. These regulations generally finalize provisions in proposed regulations issued in March 2013, with minimal changes.

At the same time, the Departments released a separate [proposed rule](#) regarding a new provision permitting orientation periods under the 90-day waiting period limit.

The final regulations apply for plan years beginning on or after Jan. 1, 2015. For plan years beginning in 2014, the Departments will consider compliance with either the 2013 proposed regulations or the final regulations to constitute compliance with the 90-day waiting period limit requirement.

Overview of the 90-day Waiting Period Limit

A waiting period is the period of time that must pass before coverage becomes effective for an

employee or dependent who is otherwise eligible to enroll in the plan. Under the ACA, all calendar days are counted beginning on the enrollment date, including weekends and holidays. However, if an individual enrolls as a late enrollee or special enrollee, any period before the individual's late or special enrollment is not a waiting period.

The waiting period limit does not require an employer to offer coverage to any particular employee or class of employees, including part-time employees. The waiting period limit only prevents an otherwise eligible employee (or dependent) from having to wait more than 90 days before coverage under a group health plan becomes effective.

Permissible Eligibility Conditions—Reasonable and Bona Fide Orientation Periods

An employee or dependent is otherwise eligible to enroll in a plan when he or she has met the plan's eligibility conditions. The proposed regulations included the following examples of permissible eligibility conditions:

- Being in an eligible job classification; or
- Achieving job-related licensure requirements specified in the plan's terms.

The final rules add a third example, permitting the satisfaction of a **reasonable and bona fide employment-based orientation period**.

Under the final regulations, a requirement to successfully complete a **reasonable and bona fide employment-based orientation period** may be imposed as a condition for eligibility for coverage under a plan. During an orientation period, the Departments envision that:

- An employer and employee could evaluate whether the employment situation was satisfactory for each party; and
- Standard orientation and training processes would begin.

The final regulations do not specify the circumstances under which the duration of an orientation period would not be considered “reasonable or bona fide.” However, separate proposed regulations published at the same time as the final regulations propose **one month** as the maximum length of any orientation period.

This one-month maximum is generally a period that begins on any day of a calendar month, and is determined by adding one calendar month and then subtracting one calendar day. If there is not a corresponding date in the next calendar month upon adding a calendar month, the last permitted day of the orientation period is the last day of the next calendar month.

If a group health plan conditions eligibility on completing a reasonable and bona fide employment-based orientation period, the eligibility condition would comply with the 90-day waiting period limitation if the orientation period did not exceed one month and the maximum 90-day waiting period would begin on the first day after the orientation period.

The Departments will consider compliance with the separate 2014 proposed regulations to constitute a reasonable and bona fide employment-based orientation period at least

through the end of 2014. To the extent final regulations or other guidance is more restrictive on plans and issuers, the final regulations or other guidance will not be effective prior to Jan. 1, 2015, and plans and issuers will be given a reasonable time period to comply.

Rehired Employees and Employees Changing Job Classifications

The final regulations provide that a former employee who is rehired may be treated as newly eligible for coverage upon rehire. Therefore, a plan or issuer may require that individual to meet the plan’s eligibility criteria and to satisfy the plan’s waiting period again, if reasonable under the circumstances. The requirement would not be reasonable if the termination and rehire is a subterfuge to avoid compliance with the 90-day waiting period limitation.

The same analysis would apply to an individual who moves to a job classification that is ineligible for coverage under the plan but then later moves back to an eligible job classification.

Health Insurance Issuer Compliance

The 90-day waiting period limit applies to both the plan and issuer offering coverage in connection with the plan. However, to the extent coverage under a group health plan is insured by a health insurance issuer, the final regulations provide that the issuer can rely on the eligibility information reported to it by an employer (or other plan sponsor). The issuer will not violate the 90-day waiting period limit requirements if it:

- Requires the plan sponsor to make a representation regarding the terms of any eligibility conditions or waiting periods imposed by the plan sponsor (and update this representation with any applicable changes); and
- Has no specific knowledge of the imposition of a waiting period that would exceed the permitted 90-day period.



Effective Date

Under the 2013 proposed regulations, the Departments proposed that the 90-day waiting period limit would apply for plan years beginning on or after Jan. 1, 2014, for both grandfathered and non-grandfathered group health plans and health insurance issuers offering group health insurance coverage.

The Departments stated that that group health plans and health insurance issuers may rely on the compliance guidance through at least the end of 2014. Thus, the Departments would consider compliance with the proposed regulations to constitute compliance with the 90-day waiting period limit at least through the end of 2014.

The final regulations apply to group health plans and group health insurance issuers for plan years beginning on or after Jan. 1, 2015. For plan years beginning in 2014, the Departments will consider compliance with either the 2013 proposed regulations or the final regulations to constitute compliance with the ACA's 90-day waiting period limit.

More Information

Please contact G&A Partners for more information on the ACA's 90-day waiting period limit.

Source: Departments of Labor, Health and Human Services and the Treasury

