



Compliance Alert

Final Rule Released on ACA Waiting and Orientation Periods

July 31, 2014

Quick Facts:

- The ACA limits waiting periods for enrollment in group health plans to 90 days for plan years starting in 2014.
- Eligibility conditions, including employment-based “orientation periods,” can still be used.
- In June 2014, final rules were released on these orientation periods which are effective starting in 2015.
- The final rules confirm that the maximum length of an orientation period is one month.

The Affordable Care Act (ACA) provides that group plans or health insurance issuers offering group health insurance coverage may not apply any waiting period that exceeds 90 days.

On June 23, 2014, the Departments of the Treasury, Labor and Health and Human Services (the Departments) released final regulations clarifying the maximum allowed length of any “reasonable and bona fide employment-based orientation period” as it relates to the waiting period limit.

The final regulations apply to group health plans and group health insurance issuers for plan years beginning on or after January 1, 2015. Until then, employers can comply with the proposed regulations issued earlier this year.

Waiting period limitation

A waiting period is the period of time that must pass before coverage can become effective for an employee or dependent who is otherwise eligible to enroll under the terms of a group health plan. The ACA prohibits excessive waiting periods — those that exceed 90 days in length.

Under the final waiting period regulations issued on February 24, 2014, being “otherwise eligible to enroll” in a plan means having met the plan’s substantive eligibility conditions. These conditions include being in an eligible job classification, achieving job-related licensure requirements specified in the plan’s terms or satisfying a “reasonable and bona fide employment-based orientation period.”



The ACA's limitation on waiting periods applies to both grandfathered and non-grandfathered plans. The limitation is effective for plan years beginning on or after January 1, 2014.

Orientation periods

The final waiting period regulations issued on February 24, 2014, provided that a reasonable and bona fide employment-based orientation period was a permissible eligibility condition.

During an orientation period, an employer and employee could evaluate whether the employment situation was satisfactory for each party, and standard orientation and training processes would begin. Proposed regulations issued at the same time as the final rule provided that one month would be the maximum allowed length of any such orientation period. The final regulations issued on June 23 confirm this one-month limit.

One-month maximum time period

The Departments stated that orientation periods are commonplace and they do not intend to call into the question the reasonableness of short, bona fide orientation periods.

However, to ensure that an orientation period is not used as a "subterfuge" for the passage of time, or designed to avoid compliance with the 90-day waiting period limitation, an orientation period is permitted only if it does not exceed one month. The one-month limit is intended to avoid abuse and facilitate compliance with the waiting period restrictions.

For any period longer than one month that precedes a waiting period, the Departments refer back to the general rule, which provides that the 90-day period begins after an individual is otherwise eligible to enroll under the terms of a group health plan.

While a plan may impose substantive eligibility criteria, such as requiring the worker to fit within an eligible job classification or to achieve job-related licensure requirements, it may not impose conditions that are mere subterfuges for the passage of time.

Measuring the one-month orientation period

Under the final regulations, the one-month orientation period would be determined by adding one calendar month and subtracting one calendar day, measured from an employee's start date in a position that is otherwise eligible for coverage.



Example 1

If an employee's start date in an otherwise eligible position is May 3, the last permitted day of the orientation period is June 2. Also, if an employee's start date in an otherwise eligible position is October 1, the last permitted day of the orientation period is October 31.

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.

Example 2

If the employee's start date is January 30, the last permitted day of the orientation period is February 28 (or February 29 in a leap year). Similarly, if the employee's start date is August 31, the last permitted day of the orientation period is September 30.

If a group health plan conditions eligibility on an employee's having completed a reasonable and bona fide employment-based orientation period, the eligibility condition is not considered to be designed to avoid compliance with the 90-day waiting period limitation if the orientation period does not exceed one month and the maximum 90-day waiting period begins on the first day after the orientation period.

Example 3

The Departments provided the following example as part of the regulations employee H begins working full time for Employer Z on October 16. Z sponsors a group health plan, under which full-time employees are eligible for coverage after they have successfully completed a bona fide one-month orientation period. H completes the orientation period on November 15.

In this example, the orientation period is not considered a subterfuge for the passage of time and is not considered to be designed to avoid compliance with the 90-day waiting period limitation. Accordingly, plan coverage for H must begin no later than February 14, which is the 91st day after H completes the orientation period.

If the orientation period was longer than one month, it would be considered to be a subterfuge for the passage of time and designed to avoid compliance with the 90-day waiting period limitation. Accordingly, it would violate the waiting period regulations.

Employer shared responsibility rules

Employers should note that compliance with the final orientation period regulations does not constitute compliance with the ACA's employer shared responsibility provisions (Code Section 4980H).

Under the employer shared responsibility rules, an applicable large employer (ALE) may be subject to penalties if it fails to offer affordable minimum-value coverage to certain newly hired full-time employees by the first day of the fourth full calendar month of employment.



An ALE that has a one-month orientation period may comply with the waiting period limits and avoid section 4980H penalties by offering coverage no later than the first day of the fourth full calendar month of employment. However, an applicable large employer plan may not be able to impose the full one-month orientation period and the full 90-day waiting period without potentially becoming subject to a Code Section 4980H penalty.

For example, if an employee is hired as a full-time employee on January 6, a plan may offer coverage May 1 and comply with both provisions. However, if the employer is an ALE and starts coverage May 6, which is one month plus 90 days after date of hire, the employer may be subject to penalty under Code Section 4980H.

Kristina Beale, Senior Compliance Consultant, EPIC Employee Benefits.

For further information on this or any other topics, please contact your EPIC benefits consulting team.

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