

## Health Care Reform's New 90 Day Eligibility Period

The federal agencies responsible for guidance on PPACA published [proposed regulations](#) in the March 21, 2013 *Federal Register* on a requirement under PPACA that prohibits group health plans and health insurance companies from utilizing any waiting period that exceeds 90 days. This largely mirrors and expands the August 30, 2012 IRS and DOL temporary guidance issued in [IRS Notice 2012-59](#).

Both notices are a substantial change to a fairly common eligibility practice for many employers of a new employee entering the group health plan on the first of the month coincident with or next following 90 days of employment.

Some of the highlights and details of this guidance include:

- All calendar days are included in the 90-day period, including weekends and holidays.
- Both grandfathered and non-grandfathered group health plans are required to follow the new guidance. The rules take effect for plan years beginning on or after January 1, 2014.

- A waiting period does not include the time before an employee or dependent enrolls as a late enrollee or special enrollee. Existing HIPAA regulations govern the effective dates of coverage for special enrollment.
- For employers with variable-hour employees where benefit eligibility is based on a specified number of hours worked per week or per month, an employer may use the Measurement Period, Administrative Period, and Stability Period to determine whether the employee meets the plan's eligibility condition.

Upon reaching the eligibility requirement, the employee would then be subject to the waiting period for coverage.

- Cumulative hours of service eligibility requires that if a group health plan or health insurance issuer conditions eligibility on any employee (part-time or full-time) having completed a number of cumulative hours of service, the eligibility condition is not considered to be designed to avoid compliance with the 90-day waiting period limitation if the cumulative hours-of-service requirement does not exceed 1,200 hours.

The waiting period must start once the new employee satisfies the plan's cumulative hours-of-service requirement and may not exceed 90 days (one time only eligibility requirement).

As a result of these changes, many employers will be required to make changes to their

eligibility periods. This will require updating employee communication materials, handbooks, and benefit plan documents and Summary Plan Descriptions (SPDs).

While there is a concerted effort on a number of fronts to modify this ruling to recognize the common past practice of many employers, employers should prepare for implementation of this waiting period change.

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