

# bailey benefit *news*

This update is sent periodically to keep you informed of employee benefit plan issues that may impact your organization.



## February 25, 2014

On February 20, the Departments of Labor, Treasury, and Health and Human Services announced the release of both final and proposed regulations implementing a 90-day limit on waiting periods for health coverage. The following is highlight of these final regulations:

- The term "waiting period" is still defined as the period that must pass before coverage for an individual who is otherwise eligible to enroll under the terms of a group health plan can become effective.
- Being eligible to enroll in a plan means having met the plan's substantive eligibility conditions (such as, 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). Eligibility based solely on a time period are permissible for no more than 90 days.
- If a group health plan conditions eligibility on the completion of 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 plan's waiting period must begin on the first day after the employee satisfies the plan's cumulative hours-of-service requirement and may not exceed 90 days. Furthermore, this provision continues to be designed to be a one-time eligibility requirement only.
- Days Counted in the Waiting Period: After an individual is determined to be otherwise eligible for coverage, any waiting period may not extend beyond 90 days, and all calendar days are counted beginning on the enrollment date, including weekends and holidays. A plan that imposes a 90-day waiting period may, for administrative

convenience, choose to permit coverage to become effective earlier than the 91st day if the 91st day is a weekend or holiday.

- A former employee who is rehired may be treated as newly eligible for coverage upon rehire and, therefore, a plan may require that individual to meet the plan's eligibility criteria and to satisfy the plan's waiting period anew, if reasonable under the circumstances.
- If a multiemployer plan operating pursuant to an arms-length collective bargaining agreement has an eligibility provision that allows employees to become eligible for coverage by working hours of covered employment across multiple contributing employers (which often aggregates hours by calendar quarter and then permits coverage to extend for the next full calendar quarter, regardless of whether an employee has terminated employment), such provisions will be treated as designed to accommodate a unique operating structure, (and, therefore, not designed to avoid compliance with the 90-day waiting period limitation).

Within the final regulations were also proposed regulations that would ensure that orientation periods, which could be used to evaluate the employment situation, are not used to avoid compliance with the 90 day waiting period. The proposed regulations define the maximum length of any orientation period to one month.

The final regulations also addressed that all plans must continue to send out HIPAA Certificates of Credible Coverage until December 31, 2014. At that point, HIPAA Certificates will no longer be needed as all plans will have removed any pre-existing condition limitations.

Should you have any questions, please do not hesitate to contact your Account Management Team.

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513-579-9800

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