

March 31, 2014

Health Care Reform: Waiting Periods and Certificates of Creditable Coverage

On February 24, 2014, the Departments of Labor, Treasury, and Health and Human Services (collectively, the “Departments”) published a **final rule** (Final Rule) to implement a provision of the Patient Protection and Affordable Care Act (ACA) prohibiting self-insured and fully-insured group health plans from requiring employees to wait more than 90 days before health insurance becomes effective. This prohibition on waiting periods applies to the health plans maintained by most annual conferences and other United Methodist Church (UMC) employers.

The Final Rule also contains amendments to certain regulations under the Health Insurance Affordability and Accountability Act (HIPAA) to bring these HIPAA regulations into ACA compliance. Notably, this includes an end to the requirement that plans provide certificates of creditable coverage to former participants.

The Departments simultaneously published a **proposed rule** (Proposed Rule) addressing the relationship between orientation programs and the 90-day waiting period limitation (Orientation Rule).

Details of these three provisions are discussed below.

Elimination of Extended Waiting Periods for Health Plans

Waiting periods before employer-provided health insurance becomes effective are quite common. The prohibition against waiting periods in excess of 90 days in this Final Rule applies to all health plans (grandfathered and non-grandfathered health plans) beginning in **January 2014**.

The 90-day rule is straightforward. Employers are not required to offer health insurance, although large employers might owe a tax penalty if they fail to offer coverage to full-time employees or if one of their employees receives premium tax credits through an ACA Marketplace (“exchange”) plan because, for example, employer-provided health coverage fails ACA’s “affordability” test. However, if an employer offers coverage, it is not allowed to require an employee to wait more than 90 days before that coverage begins. Under the Final Rule, 90 days is **90 days**—not three months. Coverage must become effective no later than the 90th day, even if that day falls on a weekend or holiday. Employees may be allowed to wait more than 90 days before *electing* coverage, but they cannot be required to wait longer than 90 days *to be eligible* for coverage.

Nuances to the Final Rule

Non-Time-Based Requirements

The Final Rule does not prohibit employers from imposing other requirements that must be met before coverage begins, such as being in a particular job classification, achieving a job-related licensure status, or completing a bona fide orientation program. The Final Rule prohibits only time-based eligibility requirements that exceed 90 days.

Variable-Hour Employees

The Final Rule addresses the situation of “variable-hour employees” (i.e., employees who are not hired as full-time employees but may become full-time in the future). As under the Employer Mandate rules, an employer can wait for the length of a “measurement period” of up to one year before a determination needs to be made if the employee is full-time (or meets some lesser hours-of-service requirement that would qualify the employee for health insurance coverage).

Under the Final Rule, the employer cannot simply tack a 90-day waiting period to the end of the measurement period. If an employer uses a measurement period, coverage must be made effective no later than **13 months** after the variable-hour employee’s start date. If the start date does not begin on the first day of a calendar month, the employer can add the number of days between the start date and the first day of the next calendar month to the 13-month period.

Hours of Service Requirements

Employers may also impose *cumulative hours of service* requirements before the 90-day waiting period begins, as long as the cumulative hours of service required do not exceed 1,200 hours. This requirement can only be applied once on a new hire, and cannot be reapplied on an annual basis.

UMC Impact

Annual conference health plans and the plans of other UMC employers—such as local churches (for employees not covered in an annual conference plan) and general agencies—should already have limited waiting periods to 90 days or less as of January 1, 2014. If any such plans retain a waiting period in excess of 90 days, the plan should be amended *immediately* to reduce the waiting period to comply with this Final Rule. Violations of the waiting period rule can result in penalties under the ACA of **\$100 per day per affected individual**.

HIPAA Updates

Unrelated to waiting periods, the Final Rule updates a number of HIPAA coverage rules to accommodate changes made by the ACA. Most significantly, the Final Rule recognizes that certificates of creditable coverage are no longer necessary because pre-existing condition exclusions have been abolished by the ACA.

Background

Under the HIPAA rules, group health plans like HealthFlex and most annual conference plans were obligated to provide a certificate of creditable coverage to employees and dependents who were losing their coverage under the plan due to termination, retirement, aging out of active coverage and into Medicare, and other reasons. Individuals sometimes needed to provide the certificates to their new health plan to prove prior coverage and thereby have pre-existing conditions exclusions waived or reduced. Under the Final Rule, **employer group health plans including HealthFlex and the other health plans maintained by annual conferences will no longer need to provide certificates of creditable coverage to terminated or retired participants and beneficiaries after December 31, 2014.**

Proposed Rule on Waiting Periods and “Orientation Programs”

The new Orientation Rule allows employers to require the completion of bona fide orientation periods prior to the beginning of the Final Rule’s 90-day waiting period, explained above. The orientation period could be used for orientation and training and also for a trial period to determine whether an employee is suitable for a job. *An orientation period may not last more than one month.* The one-month orientation period is determined by adding one calendar month and subtracting one calendar day, measured from an employee’s start date. For example, if an employee’s start date is February 21, the last permitted day of an orientation period is March 20. If there is not a corresponding day in the next calendar month, the last permitted day for an

orientation period is the last day of the month. For example, if an employee begins work on January 31, the last day of an orientation period would be February 28. If an employee begins work on the first day of a calendar month, the orientation period cannot last beyond the final day of that month.

UMC Impact

Elimination of the requirement to provide certificates of creditable coverage to former covered participants and beneficiaries after December 31, 2014 will alleviate a small administrative burden for annual conferences and other UMC employers that administer self-insured health plans (though even today it may be a task that third-party administrators perform).

The new Orientation Rule gives employers participating in UMC health plans a bit of added flexibility around waiting periods.

More About ACA Requirements

Wespath continues to monitor federal health care reform and provide applicable information for annual conferences, local churches and other UMC employers, as well as information for individuals. We encourage you to check Wespath's [health care reform web page](#) frequently for updates.

Questions and Information

If you have questions or would like additional information, please send your inquiries to healthcarereform@gbophb.org. General information about health care reform is available from the federal government at www.healthcare.gov.

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