

Proposed Regulations Implementing 90-Day Waiting Period Limitation under PPACA

March 28, 2013

The federal Departments of Health and Human Services, Treasury, and Labor (collectively, the “Departments”) recently issued proposed regulations (the “Proposed Regulations”) implementing the 90-day waiting period limitation (the “90-Day Limit”) under the Patient Protection and Affordable Care Act (“PPACA”) and also proposing amendments to existing portability regulations under the Health Insurance Portability and Accountability Act of 1996 (the “HIPAA Regulations”) to conform those regulations to PPACA’s requirements. PPACA provides that, effective for plan years beginning on or after January 1, 2014, grandfathered and non-grandfathered group health plans (both insured and self-funded) and health insurance issuers are prohibited from applying a waiting period for coverage that exceeds the 90-Day Limit. The definition of “waiting period,” as currently in effect under the HIPAA Regulations and adopted by the Proposed Regulations, is the timeframe imposed by a plan or insurance policy that must pass before coverage for an eligible employee or dependent becomes effective. The Proposed Regulations set out rules regarding the relationship between a plan’s or a policy’s eligibility criteria and the 90-Day Limit, which address various situations that implicate the 90-Day Limit to confirm whether they would be treated by the Departments as designed to avoid compliance. Among other items, the Proposed Regulations (i) propose an approach for applying waiting periods to variable-hour employees in cases where a minimum work-hours-per-week condition (e.g., 30 hours per week) drives eligibility; (ii) provide guidance regarding the interaction of a cumulative hours-of-service eligibility condition (e.g., 1,200 hours worked) and the 90-Day Limit; and (iii) clarify the method for counting and administering the 90-Day Limit when, for example, an individual’s 90-day waiting period ends mid-month and the plan’s or the insurer’s administrative processes are established based on first-of-the-month coverage start dates. The Proposed Regulations also propose conforming amendments to the HIPAA Regulations to reflect PPACA’s requirements, including the prohibition on preexisting condition limitations and on lifetime and annual maximum benefit limitations. Prior guidance issued in 2012 regarding the 90-Day Limit had provided that the guidance could be relied upon at least through the end of 2014. According to the Departments, however, the provisions of the Proposed Regulations related to the 90-Day Limit are substantially consistent with the 2012 prior guidance; therefore, the Departments will consider compliance with the Proposed Regulations as compliance with the related PPACA requirements, at least through the end of 2014. With respect to the proposed conforming amendments to the HIPAA Regulations, the Departments stated that the HIPAA Regulations will continue to apply until they are amended pursuant to final regulations. A copy of the Proposed Regulations is available [here](#).