

VEHI Memo

Waiting Periods under the Affordable Care Act

July, 2016

IMPORTANT

This memo is for general guidance purposes only—it is NOT legal advice.

The Affordable Care Act (ACA) prohibits the use of excessive waiting periods before access to health insurance is provided. This memorandum is intended to provide general information to satisfy the limitations under the Affordable Care Act and limitations under the VEHI BCBSVT plans.

Other applications of the law not addressed in this memorandum may still satisfy the ACA's waiting period requirements. The law must also be considered in conjunction with the requirements of the enrollment rules applicable to Blue Cross Blue Shield of Vermont and any applicable collective bargaining agreements. ***For ease in administration and to comply with the enrollment limitations of Blue Cross Blue Shield of Vermont, school districts should offer coverage effective dates to coincide with the first day of a calendar month. Further, the maximum employment waiting period prior to the date coverage is effective, coupled with a first of the following month effective date, generally cannot exceed 60 days to conform to the 90 day maximum waiting period permitted under ACA.***

The end of this memo also includes issues to keep in mind before incorporating a waiting period.

Guidance relating to waiting periods can be found at the following sites.

Ninety-Day Waiting Period Limitation and Technical Amendments to Certain Health Coverage Requirements under the Affordable Care Act (Final Joint Guidance – IRS, DOL, HHS) 2/24/2014 - [Link](https://federalregister.gov/a/2014-03809)
<https://federalregister.gov/a/2014-03809>

Ninety-Day Waiting Period Limitation (Proposed Joint Guidance - IRS, DOL, HHS) 2/24/2014 - [Link](https://federalregister.gov/a/2014-03811)
<https://federalregister.gov/a/2014-03811>

Shared Responsibility for Employers Regarding Health Coverage (Final IRS Guidance) 2/12/2014 - [Link](https://federalregister.gov/a/2014-03082)
<https://federalregister.gov/a/2014-03082>

FAQs about the Affordable Care Act Implementation – Part XVI – [Link](http://www.dol.gov/ebsa/faqs/faq-aca16.html)
<http://www.dol.gov/ebsa/faqs/faq-aca16.html>

The ACA limits the length of a waiting period an employer can require an employee to wait for group health plan coverage to become effective. A group health plan **cannot** apply an employment waiting period that exceeds 90 calendar days. “Days” means calendar days, including weekends and holidays. This requirement became effective to Section 125 plan years beginning on or after January 1, 2014.

'Waiting period' is defined as the period that must pass before coverage for an individual who is eligible to enroll under the terms of the plan can become effective. In other words, individuals who have satisfied any applicable *eligibility requirements* under a group health plan cannot be required to wait more than 90 calendar days before coverage is effective. Common examples of eligibility requirements include eligibility based upon job classification, meeting licensing requirements, or satisfying a reasonable orientation period.

The limitation on appropriate waiting periods applies to full-time and part-time employees and to the group health plans of employers of all sizes. Notably, if an individual enrolls as a late enrollee or special enrollee (as governed by HIPAA rules), any period before the late or special enrollment is not a waiting period. It is not considered a violation of the rules if an individual takes more time than 90 calendar days to elect coverage, provided they have the opportunity to enroll with a coverage effective date within the 90-day limit.

It is important to note that the waiting period limitation is generally incorporated in the guidance relating to permissible measurement periods and stability periods for variable-hour employees.

Permissible Eligibility Criteria:

For Section 125 plan years beginning on or after January 1, 2015, a waiting period may be based upon certain substantive eligibility conditions. For instance, there is nothing in the final rules that prohibits different waiting period being applied to different groups of employees (such as union employees versus nonunion employees). Further, the change to or addition of a waiting period to a Section 125 plan will not cause a grandfathered health plan to lose its grandfathered status. However, under no circumstances can a school district impose eligibility criteria to avoid compliance with the 90-day waiting period rule.

The following examples illustrate these rules:

Example 1 (Licensure or Certification Requirements):

The waiting period rules allow permissible eligibility criteria such as certification requirements.

School sponsors a group health plan for its employees. The Section 125 plan eligibility terms offer health coverage to all employees who have met certain state certification requirements. Jill, a new employee, starts work with School on January 1, 2015. Jill does not meet the state certification requirements until June 1, 2015. If School offers Jill the opportunity to be covered by August 30, 2015, the School will satisfy the 90-day waiting period limitation.

Example 2 (Cumulative Hours of Service Requirement):

The waiting period rules allow an employer to require an employee to accumulate a certain number of hours before becoming eligible to participate. Under the rules, the plan will comply with the 90-day waiting period limitation so long as the plan terms do not require an employee to accumulate more than 1,200 hours of service

School sponsors a group health plan for its employees. The Section 125 plan terms offer health coverage to all employees once an employee accumulates 1,000 hours of service. John, a new employee, starts working at School on January 1, 2015 and accumulates 1,000 hours of service on July 15, 2015. John's 90-day waiting limitation begins on July 15, 2015. Therefore, if School offers John the opportunity to participate in the group health plan by October 13, 2015, School will have complied with the 90-day waiting period limitation.

Example 3 (An employee's attainment of an eligible job classification (for example, full-time status)):

Under School's Section 125 plan, only employees who are full-time (defined under the plan as regularly averaging 30 hours of service per week) are eligible for coverage.

Jack begins employment for School on November 26, 2015 of Year 1. Jack's hours are reasonably expected to vary, with an opportunity to work between 20 and 45 hours per week, depending on School's needs. Therefore, it cannot be determined at Jack's start date that Jack is reasonably expected to work full-time. Variable-hour employees, such as Jack, are eligible to enroll in the plan if they are determined to be a full-time employee after a measurement period of 12 months that begins on the employee's start date. Jack's 12-month measurement period ends November 25, 2016. Jack is determined to be a full-time employee and is notified of his plan eligibility. If Jack then elects coverage, Jack's first day of coverage will be January 1, 2017.

The measurement period is permissible because it is not considered to be designed to avoid compliance with the 90-day waiting period limitation. It is also permissible under the employer shared responsibility rules. By offering coverage to Jack effective January 1, 2017, the School will also comply with the enrollment requirements under the Blue Cross and Blue Shield of Vermont rules.

Actions Steps

- If a School's Section 125 plan document does not currently include a waiting period, a prospective amendment to the Section 125 plan must be adopted that states that the eligibility and entry dates into the Section 125 plan are consistent with the underlying VEHI group health plan and any associated collective bargaining agreement.
- If the School has a Health FSA, the School must assure that the waiting period is no less than that of the underlying health plan coverage.
- In order to comply with the requirements of the Blue Cross Blue Shield of Vermont, it is recommended that any waiting period be no longer than: *the first day of the month after 60 days*.
- The waiting period is not part of the material found in the SBC (Summary of Benefits and Coverage). Even though it is not necessary to include the waiting period in the annual SBC or in any SBC provided to new hires, it is still advisable to properly communicate any waiting period in all employee communications and materials and new hire packets.