



For your information®

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## California's 60-day eligibility waiting period applicable to all group health plans

While the Affordable Care Act prohibits group health plans from imposing a waiting period that exceeds 90 days, a California law prohibits waiting periods of more than 60 days. This requirement applies to small and large group plans alike, regardless of grandfathered status. Plan sponsors should work with their California group policy issuers to ensure compliance for policies beginning on or after January 1, 2014.

### Background

The Affordable Care Act (ACA) prohibits group health plans and group health insurance issuers from imposing eligibility waiting periods of more than 90 days after hire for plan years beginning on or after January 1, 2014. (See our [April 9, 2013 For Your Information](#).) On September 30, 2012, California Governor Jerry Brown signed into law [AB 1083](#), which conforms California law governing group health insurance products to ACA insurance market reforms. The provisions of AB 1083 generally mirror those of the ACA. A significant difference, however, is that AB 1083 imposes a shorter, 60-day maximum waiting period on group health insurance policies and HMO contract years.

Because AB 1083 primarily amends the "small group" insurance-related provisions of the California Insurance Code and the California Health and Safety Code, some experts thought that the 60-day waiting period applied only to group health insurance coverage for small employers — those with between one and 50 eligible employees. However, in recent weeks it has become clear that the 60-day waiting period applies to all group policies, large and small. Specifically, the portions of AB 1083 that limit a waiting period to 60 days amend the California Insurance Code (section 10198.7(c)) and the Health and Safety Code (section 1357.51(c)), both of which govern large and small group insurance policies. The California Department of Managed Health Care (DMHC) appears to have confirmed this understanding by stating on its [website](#) that a waiting period before coverage starts "cannot be longer than 60 days."

**Buck Comment.** While neither DMHC nor the California Department of Insurance has explicitly acknowledged through formal guidance that the 60-day limit applies to large group plans, the insurance industry and other stakeholders appear to accept this position. Given the upcoming January 1, 2014 deadline, employers wishing to impose a waiting period of longer than 60 days for group health insurance plans that provide benefits to residents of California should confer with counsel. As noted below, this law does not apply to self-funded plans.

## California's 60-day waiting period

### ***Application to all group health insurance plans***

The 60-day waiting period limitation applies to all group insurance plans that provide benefits to residents of California, including grandfathered plans. It also applies to HMOs. The 60-day limit does not apply to self-funded plans, though, which may impose the ACA's 90-day waiting period limitation.

**Buck Comment.** Although the 60-day limit applies to insurers and not employers, insurers must credit any employer-imposed waiting periods toward this limit. Accordingly, employers that impose waiting periods for their new hires should reach out to their group policy issuers to confirm that any employer-imposed waiting periods are factored into the 60-day limit.

It also does not apply to vision or dental plans provided under a separate insurance contract.

**Buck Comment.** Nevertheless, aligning the waiting period for vision and dental plans with the 60-day limit applicable to group health insurance coverage may be desirable from an administrative standpoint.

### ***Counting days***

Like the ACA's 90-day waiting period, California's 60-day limitation provides a "maximum consecutive days" limit that starts the clock the day an individual becomes otherwise eligible for coverage, and runs for 60 calendar — not business — days. Therefore, a plan that provides coverage on the first of the month following 60 days from eligibility will not be in compliance with this 60-day limitation. In order to ensure that their group policies do not exceed the permitted 60-day waiting period, insurers wishing to allow enrollment only at the beginning of a calendar month may start coverage on the (1) first day of the month following the date of eligibility, or (2) first day of the month following a 30-day waiting period.

As under ACA's 90-day waiting period requirement, California's 60-day requirement excludes periods of time during which an eligible individual could have enrolled but did not take appropriate action to do so. Thus, a group health plan is compliant if it allows an individual to enroll by the 60th day following the date of hire, even if that individual fails to complete an enrollment form until a later date.

### ***Penalties for noncompliance***

Under the California Insurance Code (section 10753.18), penalties for insurance carriers that fail to comply with the 60-day waiting period limitation range from \$2,500 to \$100,000 per violation, depending on frequency and whether or not the violation was knowingly committed. Additionally, other entities engaged in the business of insurance may incur fines of \$250 for an initial violation up to \$1,000-\$2,000 for each subsequent violation or knowing violation.

## In closing

Sponsors of health plans that provide benefits to residents of California need to coordinate with their group policy issuers to ensure that any waiting periods comply with the state's 60-day limit. Plans that have a waiting period of fewer than 60 days but delay the effective date of coverage until the first day of the following month may also need to revise their waiting period requirements.

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