

Legislative Brief

IRS Delays Nondiscrimination Rules for Fully Insured Health Plans



Nondiscrimination Rules Delayed

Under the health care reform law, non-grandfathered, fully insured group health plans were set to be subject to federal nondiscrimination rules for the first time. These rules, which have historically applied only to self-insured health plans, prohibit discrimination in favor of highly compensated individuals (HCIs). They are found in Section 105(h) of the Internal Revenue Code (the Code).

The application of these rules to fully insured plans is a significant change for those plans. The ambiguity of the health care reform law related to these new requirements had many employers scrambling in advance of the January 1, 2011 effective date that applied to many plans.

Recognizing the uncertainty surrounding these rules, the IRS has issued **Notice 2011-1** (the Notice), which first became available on December 22, 2010. Notice 2011-1 delays the application of the nondiscrimination rules to insured group health plans until after regulations are issued. The regulations will specify the new effective date.

Regulations to be Issued

In the Notice, the IRS acknowledged that employers would have difficulty complying with the new nondiscrimination rules without regulatory guidance. In particular, one provision of the health care reform law states that insured plans must follow rules “similar to the rules” found in Code section 105(h)(3), (4) and (8). This reference means that guidance must specify how insured plans should follow those rules, since the law itself is unclear on this point.

Compliance with the nondiscrimination rules will not be required until after regulations (or other administrative guidance) is issued. In order to give employers time to implement any required changes, the guidance is expected to apply to plan years beginning a certain amount of time after the guidance is issued.

The IRS plans to include the effects of later health care reform changes in any guidance. Specifically, the IRS will take into account the operation of state health insurance exchanges and the individual and plan sponsor requirements that go into effect in 2014.

Additional Comments Requested

Notice 2011-1 requests public comments on issues that should be addressed in the planned guidance, including such important topics as whether employer contributions or the duration of a waiting period are considered benefits and whether there are any safe harbor plan designs that can be used to comply with the rules.

Comments are due by March 11, 2011.

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