



Health Care Reform Management Alert Series

Issue 16

Delayed Effective Date for Nondiscrimination Rules in Fully-Insured Group Health Plans

This is the sixteenth issue in our series of alerts for employers on selected topics in health care reform. (Click [here](#) to access our general summary of health care reform and other issues in this series) This series of Health Care Reform Management Alerts is designed to provide an in-depth analysis of certain aspects of health care reform and how it will impact your employer-sponsored plans.

This supplements [Issue 14](#) of our Health Care Reform Management Alert Series, which addressed the new nondiscrimination requirements under the Patient Protection and Affordable Care Act (PPACA). As stated in Issue 14, PPACA prohibits fully-insured plans that have lost grandfathered status from discriminating in favor of highly compensated individuals (HCIs) in benefits or eligibility. This provision was to become effective for non-grandfathered plans for plan years beginning on or after September 23, 2010. On December 22, the Internal Revenue Service released Notice 2011-1, which delayed the effective date for the new nondiscrimination requirement.

Applies to grandfathered plans

Applies to new health plans and plans that lose grandfathered status

Background

For many years, Internal Revenue Code Section 105(h) has limited the tax exemption for benefits payable by self-funded health plans that discriminate in favor of HCIs with respect to either eligibility or benefits. PPACA contains a provision that extends nondiscrimination rules “similar to the rules” contained in IRS Code Section 105(h) to fully insured plans. Prior to December 22, however, the only guidance issued regarding these rules related to the penalties for noncompliance. As a result, many employers were struggling to determine whether their plans were considered discriminatory under the new rules, and if so, how they should correct.

Effective Date Delayed Until Guidance Issued

Notice 2011-1 delays the implementation of these rules and the related sanctions until after the agencies issue guidance. Further, the Notice suggests that compliance will not be required until “plan years beginning a specified period after issuance” of the guidance, to give plan sponsors time to implement any changes required for compliance. The Notice also requested comments on how the agencies should resolve several specific outstanding questions relating to implementation.

As a result, sponsors of non-grandfathered plans may delay changes intended to bring fully-insured plans into compliance with the new nondiscrimination requirements until the agencies release further guidance.

If you have any questions regarding the fully-insured plan nondiscrimination requirements, contact your Seyfarth Shaw LLP attorney or any Employee Benefit attorney listed on the website at www.seyfarth.com/employeebenefits, or send your questions to HealthReform@seyfarth.com.