



legislativeUPDATE

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Delayed Implementation of Insured Plan Nondiscrimination Rules

IRS has issued [Notice 2011-1](#) to announce that compliance with the insured plan nondiscrimination rule will not be required until years after March 11, 2011 (the earliest effective date would be January 1, 2012 for calendar year plans, but in any event not until after regulations or other administrative guidance has been issued). Until that time, sanctions for failure to comply with the rules will not apply. Also, the agencies expect that when guidance is issued, its effective date will be delayed in order to allow for time to implement any changes that are required as a result of the guidance. Plan sponsors will not be required to file IRS Form 8928 with respect to excise taxes resulting from failure to comply with the nondiscrimination rules for insured plans until the effective date of the guidance.

A comment period on the new nondiscrimination rule is open until March 11, 2011, after which time the anticipated regulatory guidance will be issued. The agencies have asked the public to provide suggestions on the resolution of thirteen specific issues, such as whether to provide for an alternative method of compliance that would involve only an "availability of coverage" test; safe harbor plan designs; aggregation of substantially similar coverage options; and transition rules following mergers and acquisitions. The notice also indicates that when guidance is issued, it will take into account the health care reform provisions that go into effect after 2013, including state exchanges.

By way of background, health reform extended the IRS Code Section 105(h) nondiscrimination rules to insured health plans, prohibiting fully-insured group health plans from discriminating in favor of highly-compensated individuals with respect to eligibility and benefits. These requirements apply to non-grandfathered plans and are effective for plan years beginning on or after September 23, 2010.

The reprieve under Notice 2011-1 appears to mean that until plan years beginning sometime after March 11, 2011, management carve-outs and similar designs that would likely fail the new nondiscrimination rule can be continued without resulting in exposure to the excise tax that would otherwise apply to discrimination violations. In effect, this will allow more time for those plan sponsors to evaluate what types of design and/or eligibility changes may be needed in the future as a result of the nondiscrimination rule. Although this is welcome news for non-grandfathered plans, it appears to only delay the inevitable application of the nondiscrimination rule to group insured health arrangements that are not grandfathered.

Note that the Code's nondiscrimination rules will continue to apply to self-insured plans, including those that are grandfathered.

Employers are advised to continue to monitor health reform developments. Should you have questions about this or any aspect of federal health insurance reform, contact your Conner Strong account representative toll free at 1-877-861-3220. For a complete list of Legislative Updates issued by Conner Strong, visit our online [Resource Center](#).

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