

## IRS: Nondiscrimination Rules Won't Apply to Non-grandfathered plans

12/23/2010

The IRS has indefinitely delayed the application of the nondiscrimination rules to non-grandfathered insured group health plans. IRS Notice 2011-1 was issued Wednesday, Dec. 22.

As a result of the Health Care Reform Act, non-grandfathered insured group health plans were subject for the first time to nondiscrimination rules "similar to" rules contained in Internal Revenue Code Section 105(h), which says a group health plan cannot discriminate in favor of a "highly compensated individual."

We have been eagerly awaiting guidance from the IRS and other federal agencies explaining what "similar to" Code Section 105(h) meant and how to implement those changes. As these requirements took effect as early as Sept. 23, 2010 for some plans, employers and practitioners were left trying to guess. Given the stiff penalties for failure to comply -- a \$100 per day per participant excise tax -- noncompliance was not an option.

Because these nondiscrimination requirements have never before applied to insured group health plans, many plan sponsors were concerned about their ability to comply with the law without sufficient regulatory guidance. The IRS has agreed that such regulatory guidance is essential. That's why federal agencies have decided to delay application of these rules until regulations or other administrative guidance has been issued. While it is clearly speculation at this point, we do not expect that plan sponsors will be required to comply with the requirements before 2012, if not later.

Non-grandfathered insured group health plans do not need to make modifications to discriminatory plan designs for 2011. Discriminatory insured plans will not be subject to a penalty or any additional reporting requirement for this next plan year.

As grandfathered insured group health plans are exempt from these requirements, plan sponsors may wish to consider preserving grandfathered status. Furthermore, plan sponsors that are concerned about potential problems passing the nondiscrimination rules may wish to consider alternative eligibility or plan design options during 2011.

If you have questions regarding the delay or other health care reform issues, please contact April Goff (616.752.2154 or [agoff@wnj.com](mailto:agoff@wnj.com)) or any member of the Warner Norcross & Judd LLP Health Care Reform Task Force.