



IRS Delays Enforcement of Nondiscrimination Rules

The following information, provided by the Internal Revenue Service, is being sent as a courtesy to keep you informed on the status of the Health Care initiatives taking place in our government.

Notice 2011-1 Affordable Care Act Nondiscrimination Provisions Applicable to Insured Group Health Plans addresses the timing of the application of the Affordable Care Act provisions prohibiting insured group health plans from discriminating in favor of highly compensated individuals.

Interim guidance on changes to the nondiscrimination requirements for group health plans provides that employers **will not** be subject to penalties until after additional guidance is issued.

IRS Notice 2010-63 requested public comments on guidance needed regarding § 2716 (of Section 10101(d) of the Affordable Care Act). Comments received raised concerns about the ability of plan sponsors to comply with § 2716 without regulatory guidance, including, in particular, guidance regarding the meaning of § 2716(b)(1), which provides that “rules *similar* to the rules contained in paragraphs (3) [nondiscriminatory eligibility classification], (4) [nondiscriminatory benefits], and (8) [certain controlled groups] of § 105(h) of such Code shall apply” to insured plans. The reference to rules “similar to” means that guidance must specify in what respects insured plans are subject to the same statutory provisions that apply to self-insured plans under those paragraphs and in what respects insured plans are subject to rules reflecting a different (although “similar”) application of those statutory provisions. Because regulatory guidance is essential to the operation of the statutory provisions, the Treasury Department and the IRS, as well as the Departments of Labor and Health and Human Services, determined that compliance with § 2716 should not be required (and thus, any sanctions for failure to comply to do not apply) until after regulations or other administrative guidance of general applicability has been issued under § 2716.

In order to provide insured group health plan sponsors time to implement any changes required as a result of the regulations or other guidance, the Departments anticipate that the guidance will not apply until plan years beginning a specified period after issuance. Before the beginning of those plan years, an insured group health plan sponsor will not be required to file IRS Form 8928 with respect to excise taxes resulting from the incorporation of PHS Act § 2716 into § 9815 of the Code.

If you have any questions, please contact your HARDEN Employee Benefits Account Manager.

Sources:

Internal Revenue Service. Affordable Care Act Tax Provisions. Group Health Plan Requirements. Notice 2011-1. Available at <http://www.irs.gov/pub/irs.drop/n-11-01.pdf>.

United States Department of Labor. Affordable Care Act Regulations and Guidance. IRS Notice 2011-1. Affordable Care Act Nondiscrimination Provisions Applicable to Insured Group Health Plans.