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Legislative Brief

January 2011



Hello,

I wanted to share the most recent legislative updates with you in regard to the healthcare reform.

In a recent notice issued by the IRS, the Treasury Department, IRS, DOL, and HHS, have determined that compliance with Non-discrimination Testing requirements for all fully insured employee health plans should not be required. Any sanctions for failure to comply are not applicable until after additional administrative guidance has been issued. The notice states that the regulations are expected to apply to plan years beginning after issuance. This means that for calendar year plans, the earliest the non-discrimination rules would apply is January 1, 2012. The January date could be delayed depending on when the IRS issues the non-discrimination regulations.

The full legislative brief is included as a PDF to help you to gain a better understanding of the current status of the reform.

If you have any questions, please contact me.

My best,

Greg

IRS Delays Nondiscrimination Rules for Fully Insured Health Plans

The attached legislative brief contains information on the following items:

- Nondiscrimination Rules Delayed
- Regulations to be issued
- Additional Comments Requested

To read the full legislative brief [click here](#)

About Suhr Risk Services

Suhr Risk Services has been a presence in the Bay Area for over a century and has expertise in Property & Casualty, Workers' Compensation, Employee Benefits, Life & Estate and Personal Insurance. The primary niches for Suhr Risk Services include: Non-Profits, Specialty Construction, Grocers/Food Processing, Wholesale Suppliers, Equipment Rental Firms and Workers' Compensation.

We are trusted advisors to both local and national clients, as well as numerous trade associations, and advocates for policyholder rights before California insurance regulators. Suhr Risk Services has been featured in the Insurance Journal's Top Property and Casualty Agencies in the United States and has twice been voted one of the Bay Area's best places to work. Suhr Risk Services has been recently named a Best Practices agency by the Independent Insurance Agents and Brokers of America.

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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.

This Suhr Risk Services of California Insurance Brokers Legislative Brief is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice.

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