



Health Care Reform News

Expansion of Nondiscrimination Rules

Among the many health insurance and benefits law changes made by the Patient Protection and Affordable Care Act (PPACA, P.L. 111-148) is a new requirement for fully insured health/medical plans to comply with nondiscrimination benefit rules that previously only applied to self-funded employer plans.

Effective for plan years beginning on or after September 23, 2010, fully-insured group health plans now must comply with the nondiscrimination requirements for self-funded plans, including rules that the plan does not discriminate in favor of highly compensated individuals as to eligibility to participate. In addition, the benefits provided under the plan may not discriminate in favor of participants who are highly compensated individuals (*Sec. 1001 of the PPACA as amended by sec. 10101; new Sec. 2716 of the Public Health Service Act*). This does NOT apply to “grandfathered” health plans.

This weeks health care reform newsletter touches on the rules for nondiscrimination as they apply to both fully-insured and self-funded health plans. This article was recently published by Spencer’s Benefits Reports on the CCH Law website.¹ If you have any questions about how these rules apply to your specific health plan, please contact your Unison Employee Benefit Consultant.

May 7, 2010



Rules for Nondiscrimination

Rules similar to those for self-funded plans are to be applied to insured group health plans, including rules for eligibility, benefits, and controlled groups.

A plan satisfies the eligibility requirements if the plan benefits

- (1) 70% or more of all employees, or
- (2) 80% or more of all the employees who are eligible to benefit under the plan if 70% or more of all employees are eligible to benefit under the plan.

Alternatively, a plan meets the eligibility requirements if it covers a classification of employees that does not discriminate in favor of highly compensated individuals.

The second percentage test requires a minimum of 56% of employees (80% multiplied by 70%). The nondiscriminatory classifications test follows the rules of pension plans, which notes that reasonable

Expansion of Nondiscrimination Rules

Rules for Nondiscrimination continued.

classifications generally include specified job categories, compensation categories such as hourly or salaried, and geographic location, and similar bona fide business criteria. Identifying employees by name is not a reasonable classification.

Certain employees may be excluded from the eligibility tests, including:

- (1) employees who have not completed three years of service
- (2) employees younger than age 25
- (3) part-time or seasonal employees
- (4) union employees
- (5) employees who are nonresident aliens and who receive no earned income

In addition to the eligibility rules, all benefits provided to highly compensated employees must be provided to all other participants.

The controlled group rules for pension plans apply. These rules specify that employees of controlled groups of corporations and partnerships and employees of affiliated service groups are to be treated as employees of a single employer.

Highly Compensated Individuals

Using the same definition as for self-funded plans, a highly compensated individual is defined as

- (1) one of the five highest paid officers;
- (2) a shareholder who owns more than 10% in value of the stock of the employer; or
- (3) among the highest paid 25% of all employees.

Implications

Since the discrimination rules for self-funded plans were issued in 1980, employers have adopted fully-insured plans to provide executives and key employees with tax-free reimbursements for out-of-pocket medical, dental, and vision expenses. These new prohibitions against discrimination in fully-insured plans will compel employers to use other methods to reward executives.