



## For Your Benefit.

### **IRS Delays Nongrandfathered Insured Health Plan Nondiscrimination Rules**

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On December 22, 2010, the IRS issued [Notice 2011-1](#) delaying the effective date of the new Health Care Reform's requirements that nongrandfathered insured health plans meet the same nondiscrimination rules applicable to all self-funded health plans.

Under the Patient Protection and Affordable Care Act, the provisions of new Section 2716 of the Public Health Services Act were incorporated into the Tax Code and ERISA as well. These new provisions required that beginning for plan years starting on or after September 23, 2010, all nongrandfathered insured plans were required to meet "similar" nondiscrimination rules that apply to self-funded plans under IRC Section 105(h). Since the IRS hasn't had time to provide guidance yet to specify what the word "similar" meant in the PPACA, they have suspended the start date of the new nondiscrimination rules until guidance has been issued and employers have sufficient time to incorporate that guidance into their benefit planning. Further, employers are not required to self-report the failure to satisfy these

nondiscrimination rules on IRS Form 8928 (relating to paying a substantial excise tax for having a discriminatory nongrandfathered insured health plan) until the guidance has been provided.

So, we can presumably wait until sometime in mid-2011 to see what the new rules will actually look like, and then very likely have until 2012 to get any discriminatory nongrandfathered insured health plans in order.

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