

Nondiscrimination and Health Care Reform

The Internal Revenue Service (IRS) issued [Notice 2011-1](#), which **delays** the requirement under the Affordable Care Act (ACA) that non-grandfathered fully insured group health plans comply with Internal Revenue Code Section 105(h)(2)—currently applicable to self-insured plans—prohibiting discrimination in favor of highly compensated individuals.

According to the notice, compliance with the nondiscrimination provisions will not be required (and thus, any sanctions for failure to comply do not apply) until after regulations or other administrative guidance has been issued. In order to provide insured group health plan sponsors time to implement any changes required as a result of the regulations or other guidance, it is anticipated that the guidance will not apply until plan years beginning a specified period after it is issued.

For the latest information regarding the timing of these requirements, employers are encouraged to contact the U.S. Department of Labor's [Employee Benefits Security Administration](#) (866-444-3272) or the [IRS](#) (800-829-4933).

Note: Although fully insured plans are not currently subject to the ACA's nondiscrimination requirements, health benefits offered as part of a cafeteria plan generally will be subject to the nondiscrimination requirements of Internal Revenue Code Section 125. [Click here](#) for more information on these requirements.