



Employee Benefits **ALERT** OCTOBER 27, 2010

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Important information for employers with fully insured medical plans

New Nondiscrimination Rule Under Health Care Reform

As you are no doubt aware, the determination as to whether a medical plan is “grandfathered” for purposes of the Patient Protection and Affordable Care Act has many important implications. One very important consequence is that an insured group medical plan that is not grandfathered must comply with the nondiscrimination rules that previously applied only to self-insured medical plans. Generally, the nondiscrimination rules prohibit providing more favorable coverage or benefits to even one highly compensated individual (anyone in the top 25% of the workforce by compensation).

The following are some common arrangements that may result in prohibited discrimination:

- Salaried employees become eligible under the terms of the plan earlier than hourly employees.
- Executive premiums are less than premiums charged to non-executives.
- An employment or severance agreement with an executive provides that the employer will provide medical coverage to the executive after retirement until the executive attains age 65 where other retirees are not eligible for this benefit.
- A severance agreement with a highly compensated employee provides that the employer will pay the terminated employee’s COBRA premiums when other terminated employees are not eligible for a similar benefit.

In any such situation, numerical nondiscrimination tests must be applied in order to determine if the arrangement is discriminatory. If the plan is discriminatory, the Internal Revenue Service has clarified that there are two significant consequences:

- The plan is subject to a civil action to compel it to provide nondiscriminatory benefits.
- The plan or plan sponsor is subject to an excise tax of **\$100 per day per individual discriminated against**.

The Internal Revenue Service has not postponed the application of these rules.

Check with Your Insurance Company!

We have become aware that some insurance companies are unilaterally converting all of their group medical policies to policies that provide non-grandfathered benefits, even if the employer does not want to lose grandfathered status and has done nothing to cause its medical plan to lose grandfathered status. Apparently, these insurers are trying to avoid the inconvenience of maintaining both grandfathered and non-grandfathered platforms.

Furthermore, Principal Financial Group recently announced that it is exiting the medical insurance business altogether and has entered into an agreement to transfer its medical insurance business to United Healthcare over the next 36 months. **This could cause employers with Principal policies to have to immediately confront both insurer transition issues and possibly grandfathered plan issues.**

Immediate Steps Required

If your company has a fully insured medical plan, you should immediately take the following steps:

- If your policy is with Principal Financial Group, you should contact Principal to check on the status of your policy.
- You should check with your insurer to determine whether they are converting your policy to non-grandfathered status.
- If the insurer is changing the policy to non-grandfathered status, or if your company is making changes that would otherwise cause the medical plan to lose grandfathered status, determine if the plan would pass the applicable nondiscrimination rules. Special attention should be given to executive employment agreements and severance agreements that provide discriminatory medical benefits.

For additional information, please contact any member of **McAfee & Taft's Employee Benefits Practice Group**.



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