

New Nondiscrimination Rules for Health Plans Delayed

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We recently advised that federal Health Care Reform imposed new nondiscrimination rules on health plans that would require a major overhaul of many management and executive plans. [[Link to previous article](#)] Health Care Reform requires compliance with these new rules beginning the first day of the first plan year on or after 9/23/2010.

Last week, the IRS issued Notice 2011-1, delaying the implementation of enforcement of the nondiscrimination provisions of the Act until guidance on how to implement the new law is issued. The IRS, Department of Labor, and Department of Health and Human Services (the 3 regulators that enforce Health Care Reform) all agreed to the delay.

Please note that the regulators cannot alter the provisions of Health Care Reform, but only can indicate that they will not penalize noncompliance. Moreover, the notice states that “the Departments anticipate that the guidance will not apply until plan years beginning a specified period after issuance”, but there is no guarantee that the guidance will not be retroactive, or that penalties will not be imposed for failure to comply from the effective date on.

Since comments on the guidance are being accepted through March 11, 2011, implementation should be delayed until the second quarter of 2011, at the earliest. Since one of the subjects on which the IRS is seeking commentary is the possibility of delaying implementation until 2014, the delay may be even more significant. New information should become available in the next few months.