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HEALTHCARE BULLETIN

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IRS ISSUES NOTICE 2011-1, DELAYING THE EFFECTIVE DATE OF NONDISCRIMINATION RULES FOR INSURED GROUP HEALTH PLANS

On December 22, 2010, the Internal Revenue Service announced (in Notice 2011-1) that insured group health plans will not be required to comply with the nondiscrimination requirements under the Patient Protection and Affordable Care Act (the “Act”) until some time after the IRS issues regulatory guidance on those requirements. Notice 2011-1 is available at <http://www.irs.gov/pub/irs-drop/n-11-01.pdf>.

By way of background, Section 10101(d) of the Act added Section 2716 to the Public Health Service Act (“PSA Act”). Section 2716 of the PSA Act requires insured group health plans to comply with the nondiscrimination requirements of Section 105(h) of the Internal Revenue Code. Previously, only self-insured plans were subject to these rules. If an insured group health plan fails to comply with Section 105(h), the plan maybe subject to a civil action to compel it to provide nondiscriminatory benefits, and the plan (or plan sponsor) is subject to an excise tax or civil money penalty of \$100 per day, per individual discriminated against.

These new requirements were to apply to non-grandfathered insured plans for plan years beginning on or after September 23, 2010. Thus, absent relief, these new rules would have applied to calendar-year insured plans beginning on January 1, 2011.



Notice 2011-1 addresses the timing of the application of the Act's provisions prohibiting insured group health plans from discriminating in favor of highly compensated individuals. The notice states that the Treasury Department and IRS—as well as the Departments of Labor and Health and Human Services—have determined that compliance with these requirements are not to be required until after regulations or other administrative guidance of general applicability has been issued.

The Notice notes in part that “because regulatory guidance is essential to the operation of the statutory provisions . . . compliance with Section 2716 should not be required (and thus, any sanctions for failure to comply do not apply) until after regulations or other administrative guidance of general applicability has been issued under Section 2716.”

This means that that insured plans will not be subject to the new rules and will not be subject to the \$100 per day penalty for violation of the rules until plan years that begin after the IRS issues guidance on the application of these rules.

H E A L T H C A R E C O N T A C T S

BIRMINGHAM, AL

Carey B. McRae
205.226.8705

cmcrae@balch.com

Colin H. Luke
205.226.8729

cluke@balch.com

Jack B. Levy
205.226.8750

jlevy@balch.com

MONTGOMERY, AL

Dorman Walker
334.269.3138

dwalker@balch.com

Jo Moore
334.269.3148

jmoore@balch.com

ATLANTA, GA

Philip M. Sprinkle, II
404.261.6020

psprinkle@balch.com

Adrienne E. Marting
404.962.3580

amarting@balch.com

GULFPORT, MS

H. Rodger Wilder
228.214.0412

rwilder@balch.com

JACKSON, MS

Dinetia Newman
601.965.8169

dnewman@balch.com

Genie Stark Thomas
601.965.8177

gstarkthomas@balch.com



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