

Nondiscrimination Provision Update

Effective **NOW** (for March 1, 2011, renewals), Health Net is accepting management carveouts for Small Business Group clients.

This could all change in the future, however. The timing of any change will depend on when the government issues regulations clarifying enforcement of the Affordable Care Act's (ACA's) non-discrimination provision regarding non-grandfathered insured group health plans.

We expect that some employers will welcome the opportunity to have management carveouts, despite the loss of grandfathered status accompanying the purchase of a new insured group health plan. Until enforcement of the provision, here's the "fine print" for you and your clients:

Treasury Department Notice 2011-1 addresses the timing of the application of the ACA provisions prohibiting non-grandfathered insured group health plans from discriminating in favor of highly compensated individuals. Notice 2011-1 states that the Treasury Department and the IRS, as well as the Departments of Labor and Health and Human Services, have determined that compliance with these requirements 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. According to Treasury Department Notice 2011-1, sanctions for failure to comply with the nondiscrimination requirements will not be imposed upon insured group health plans immediately, however, the rules currently are under development by the government, and employers should carefully track this issue.

Health Net recommends that employers consult with a tax advisor and/or legal counsel for advice regarding discrimination determinations as well as the timing of any plan changes that may be required to satisfy the new provisions.

Employers will have to determine whether they have a discriminatory plan or not and evaluate any necessary changes that may be required in order to assure compliance. Note that Health Net does not perform discrimination testing.

Information about the non-discrimination provision will be in employers' renewal notices beginning immediately, and in our underwriting guidelines for new quotes. The below attachment contains more of the specifics.

When the government issues regulations or other administrative guidance that changes its approach, we will let you know.

For questions, please contact your Health Net Account Executive or Broker Services at (800) 448-4411, option 4.

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