

BENEFITS ALERT

Rose & Kiernan, Inc.

December, 2010

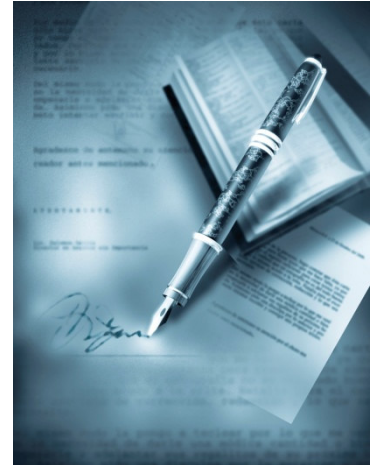


Updated Guidance: Non-Discrimination, Automatic Enrollment, 60 Day Notice, Discrimination in Wellness Plans & Use of Debit Cards for OTC Medications

1. Non-Discrimination Requirements

On Friday, December 23rd, the Treasury Department issued Notice 2011-1 which contained new guidance on the non-discrimination requirements for non-grandfathered insured plans.

Compliance with the non-discrimination rules required of insured, non-grandfathered plans **has been delayed pending further guidance**. The Department is responding to significant employer concern over the lack of specificity in the PPACA and subsequent guidance that was issued as well as the ambiguity on what is meant in the Act by “rules similar to the rules contained in paragraphs (3), (4), and (8) of such Code shall apply”. The December 23rd Notice asks for additional comments and specifies a response date of March 11, 2011. The Notice stated that compliance will not apply until plan years beginning a specified period after issuance of new rules. It is likely that the Department will not issue new rules until after the comment period ends so that puts off compliance for January 1st groups until probably January 1, 2012.



Also on December 23rd, the three Departments responsible for implementing the majority of the PPACA (HHS, Treasury and Labor) issued a new set of FAQ's on a range of topics. The key provisions but not all the provisions of the new FAQ's are outlined below.

2. Automatic Enrollment

- a. The automatic enrollment requirement for employers of over 200 full time employees, which did not have a specified effective date in the PPACA, has been **officially delayed until guidance is issued**. The PPACA only stated that this provision shall be carried out in “accordance with regulations promulgated by the Secretary” of Labor. The Departments have interpreted that as meaning that the effective date shall not be until guidance is issued. The Department of Labor intends to complete their rulemaking by 2014.

3. 60 Day Notice

- a. The PPACA required a notice of any material modification, as defined by ERISA, be sent to enrollees no later than 60 days prior to the date on which the modification will become effective. The Departments have stated that compliance will **not be required** until standards have been issued. No date was given for issuing the standards.

4. **Discrimination in Wellness Plans**

- a. The FAQ's also contain clarifications on the applicability of the PPACA to wellness plans and any incentives/penalties which may be used. Compliance with HIPAA non-discrimination provisions, the use of premium discounts for participation in certain types of wellness plans and providing multiple types of wellness plans, each with their own incentive are discussed.

5. **Use of Debit Cards for OTC Medications**

- a. The Treasury Department issued new guidance which will allow FSA and HRA participants to continue using their debit card to purchase prescribed over the counter medications as long as the purchase is done within defined guidelines. In short, a debit card may be used if:
 - i. Prior to purchase, the prescription is presented to the pharmacist;
 - ii. The OTC medication is dispensed in accordance with applicable laws and regulations pertaining to a pharmacy;
 - iii. An Rx number is assigned to the medication ;
 - iv. The pharmacy/vendor retains a record of the Rx number, name of purchaser, date and amount of the purchase;
 - v. The records in (iv) are available to the employer or the agent handling the FSA/HRA administration;
 - vi. The debit card system used cannot accept a charge for OTC without an Rx number;
 - vii. All other rules pertaining to debit card transactions are followed.

This is a link to the FAQ's... <http://www.dol.gov/ebsa/faqs/faq-aca5.html>

If you should have any questions, please contact your Client Manager or Sales Professional at R&K.

This Summary is provided to you for general information purposes only and does not include references to other legal resources (e.g., supporting regulations, or formal or informal opinions) unless specifically noted. Please seek qualified and appropriate counsel for further information and/or advice regarding the application of the topics discussed herein to your employee benefits plan.

Updated: December 29, 2010