Health Insurance Non-Discrimination Rules Overview

Although the Patient Protection and Affordable Care Act (ACA) does not mandate a business with fewer than 50 full-time employees to provide health insurance coverage to employees, the ACA does prohibit health insurance discrimination as to eligibility and benefits. The application of these non-discrimination rules has been delayed until the Internal Revenue Service issues final regulations covering these provisions. Many of the provisions of the ACA do not apply to existing health insurance plans as long as they retain their “grandfathered” status. However, once a plan loses its “grandfathered” status, it becomes subject to all of the ACA non-discrimination provisions.

Non-Discrimination Rules
A company’s health insurance plan cannot discriminate as to eligibility. If a plan provides health insurance to the owner, it must provide the same coverage to the employees, unless excluded due to age (under age 25), length of employment (less than 3 years), or part-time status (less than 25 hours per week). It is undetermined how employees will be treated who waive coverage because of spousal plan coverage.

A company’s health insurance plan cannot discriminate as to benefits. The plan cannot provide a higher level of benefits to the owner than to employees including deductibles and co-insurance. Nor can the owner have family coverage while providing “employee only” coverage to employees. Nor can the company pay a higher percentage of the premium for the owner than for the employees.

Penalties for Non-Compliance
The ACA levies an excise tax of $100 per day per employee discriminated against, and civil penalties of $100 per day per employee may also apply.

How to Prepare
The first step is to determine if your health insurance plan retains its “grandfathered” status by contacting your health insurance representative. To maintain this status, the plan materials must contain a statement that the plan is a “grandfathered health plan” and records must be maintained documenting the terms of the plan in effect on March 23, 2010. Be sure to verify that any contemplated changes to your health plan will not eliminate its “grandfathered” status.

Option 1: Maintain your current plan status quo. However, if your plan is not “grandfathered” or discriminates (i.e. “dual option” plans), this option will not be economically viable. Caution: Many major insurance carriers are not maintaining “grandfathered” plans.

Option 2: Provide a health insurance plan that meets the non-discrimination rules of the ACA. This option will result in a company tax deduction for health insurance premiums paid for the owner and employees. Contact your health insurance representative to determine plan alternatives, additional cost to the company and the economic feasibility. Consider the applicability of the Small Employer Health Insurance Tax Credit which provides a sliding scale tax credit for a company with no more than 25 “full-time equivalent” employees that purchases coverage through a SHOP Exchange beginning in 2014.

Option 3: Eliminate company provided health insurance altogether. The owner and employees will then be required to obtain their own individual health care coverage as mandated by the ACA, and business tax deduction will be lost. Certain premium tax credits may be available to income eligible individuals.

Plan Ahead
While the application of the ACA non-discrimination rules has been delayed until the Internal Revenue Service issues final regulations, it is indeed prudent to plan ahead and consider your options now to avoid a “fire drill” later. Upon issuance of the final IRS regulations, an appropriate choice can be implemented timely and efficiently to avoid the onerous and expensive non-compliance penalties of the ACA.