



Health Care Reform

★★★ INFORMATION UPDATE

October 2010

For Employer Groups

Non-Discrimination Testing (Section 105(h))

The Affordable Care Act (ACA) mandates that all group health plans satisfy specific non-discrimination rules that prohibit discrimination in favor of highly compensated individuals. Below are some frequently asked questions and answers regarding non-discrimination testing.

Frequently Asked Questions

Q1. What is non-discrimination testing?

A1. The ACA under Section 105(h) prohibits all group health plans from discriminating in favor of “highly compensated individuals,” effective for plan years beginning on or after September 23, 2010. A plan must prove that they satisfy this requirement based on non-discrimination testing.

Q2. What plans are subject to non-discrimination testing?

Plan Type	Subject to non-discrimination testing	Not subject to non-discrimination testing
Fully insured, grandfathered		✓
Fully insured, non-grandfathered	✓	
Self insured – both grandfathered and non-grandfathered	✓ subject to non-discrimination rules as they existed prior to health care reform	
Individual under 65		✓

Q3. What happens if fully insured plans do not pass non-discrimination testing?

- A3.**
- **Employers maintaining fully insured plans with more than 50 employees** that discriminate in favor of highly compensated individuals are subject to pay an excise tax penalty in the amount of \$100 per day for each individual with respect to whom the failure relates. Employers subject to the penalty are required to self-report and pay the excise tax using IRS Form 8928.*
 - **Employers maintaining fully insured small business plans with 50 or fewer employees** are subject to nondiscrimination testing on their insured group health plans. However, small employers with 2 to 50 employees will not be required to pay the excise tax penalty.



Q4. Who is responsible for performing the non-discrimination testing?

A4. Because the penalty is assessed against the employer/plan sponsor, not the health plan, the responsibility for performing testing rests with the employer/plan sponsor of the group health plan. **Wellmark will not be facilitating or administering non-discrimination testing on health plans.** Wellmark will continue to provide non-discrimination testing for group health plans relative to flexible benefit plans for ancillary products.

Q5. What information is required for the non-discrimination testing?

A5. To test a group, information such as the following needs to be compiled on employees:

- Employee Identifier
- Employee Years of Service
- Employee Salary
- Age of Employee
- Part Time/Seasonal Employee Status
- Highly Compensated Employee Status

Q6. Who should an employer group contact for more information on non-discrimination testing?

A6. Employer groups should contact their legal counsel, tax consultant, or financial consultant to provide information relating to requirements around non-discrimination testing.

** The above description about tax rules is general in nature. Please consult your tax advisor about how these rules impact you. This information is not intended to be used for the purpose of avoiding penalties that may be imposed by federal or state taxing authorities.*

Wellmark is not providing any legal advice with regard to compliance with the requirements of the Affordable Care Act ("ACA") and Mental Health Parity and Addiction Equity Act ("MHPAEA"). Regulations and guidance on specific provisions of the ACA and MHPAEA have been and will continue to be provided by the U.S. Department of Health and Human Services ("HHS") and/or other agencies. The information provided reflects Wellmark's understanding of the most current information and is subject to change without further notice. Please note that plan benefits, rates, renewal rate adjustments, and rating impact calculations are subject to change and may be revised during a plan's rating period based on guidance and regulations issued by HHS or other agencies. Wellmark makes no representation as to the impact of plan changes on a plan's grandfathered status or interpretation or implementation of any other provisions of ACA or MHPAEA. Any questions about Wellmark's approach to the ACA or MHPAEA may be referred to your Wellmark account representative.