

Physical “Education”



Are executive physical programs affected by the PPACA's new nondiscrimination rules?

A READER ASKS, do the new nondiscrimination rules apply to an executive physical program?

Background

Prior to health-care reform, Internal Revenue Code section 105(h) prohibited self-funded health plans from discriminating in favor of highly compensated individuals and offering more generous benefits to this group, but the prohibition did not apply to insured benefits, so some employers bought insurance policies for executives, which generally was permissible. However, section 2716 of the Patient Protection and Affordable

Care Act (PPACA) extended the prohibition to insured plans as well, beginning for plan years starting on or after September 23, 2010 (January 1, 2011, for calendar-year plans).

Exception for Certain Executive Physical Programs

Existing regulations under Code section 105(h) contain an exception that allows benefits for “medical diagnostic procedures” to be paid to highly compensated individuals without providing the same benefits to non-highly compensated individuals, Treas. Reg. § 1.105-11(g). This section provides that reimbursements paid under a plan for medical diagnostic procedures for an employee are not considered to be part of a plan for purposes of the Code section 105(h) nondiscrimination rules, if the following conditions are satisfied:

The procedures are performed at a facility that only provides medical or ancillary services;

The procedures are for routine medical examinations, blood tests, and X-rays, or similar tests; and

The procedures do not include expenses incurred for the treatment, cure, or testing of a known illness or disability, or treatment or testing for a physical injury, complaint, or specific symptom of a bodily malfunction.

This means that an executive physical program featuring routine medical examinations, blood tests, and X-rays may not be subject to the nondiscrimination rules under Code section 105(h). However, if the services extend to treatment, cure, or testing of a known illness or disability, the nondiscrimination rules likely will apply. The regulations provide an example where a routine dental examination with X-rays is considered a medical

diagnostic procedure (so excepted from the nondiscrimination rules), but X-ray and treatment for a specific complaint are not simply diagnostic procedures, so would fall outside the exception.

Late Breaking News on Section 105(h)

Right before Christmas, the IRS issued Notice 2011-1, which explains that the agencies are still working on regulations and guidance on how the new section 2716 requirement under PPACA should be implemented. The notice states that compliance with the new rule will not be required, and sanctions for failure to comply will not apply until after regulations or other administrative guidance has been issued. Further, the agencies anticipate that the guidance will not apply until plan years beginning a specified period after issuance.

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