Kilpatrick

SEPTEMBER 13, 2010

Nondiscrimination for Insured Plans

New PHSA Section 2716 adopts new nondiscrimination rules on insured health plans beginning with the first plan year after September 23, 2010 (or January 1, 2011 for calendar year plans). The statute provides that rules similar to the Code Section 105(h) rules for self-insured plans shall apply for this purpose. We thought that the regulations implementing this new requirement were to be released soon. However, last week we heard, unofficially, that the regulations have been delayed, meaning that employers with insured plans have no idea whether their health plans will satisfy the new regulations when annual enrollment season begins next month. What may be holding up the process is the complicated aggregation and disaggregation portion of the rules. Many employers have both self-insured and insured medical options, and how employers can integrate those two types of options to satisfy both requirements will certainly be tricky.