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Jan. 21, 2014

[This is the first in a series of articles on new developments relating to the Patient Protection and Affordable Care Act of 2010 (aka "Obamacare"). [See Part II.](#)]

Unless you've been living under a rock the last few years, you're well-aware that the massive health care legislation known informally as "Obamacare" by both its detractors and proponents remains the law of the land. It's being phased in over several years, but several key elements, including the requirement for signing up for individual health insurance coverage, kick off in 2014. Yet other aspects have been plagued by fits and stops. For instance, the government recently postponed to 2015 the mandate for large employers to offer minimal coverage to full-time workers.

Now, according to the New York Times, the Obama administration is delaying the rules that apply to employers providing better health insurance benefits to company officials than those available to the rank-and-file. Enforcement of these rules is being put on hold until the government can issue the appropriate regulations and other guidance.

"Under the Affordable Care Act, for the first time, all group health plans will be prohibited from offering coverage only to their highest-paid employees," Erin Donar, a Treasury spokeswoman, told the Times. "The Departments of Health and Human Services, Labor and the Treasury are working on rules that will implement this requirement."

Prior to enactment of Obamacare, an insured group health plan could provide non-taxable benefits to highly compensated individuals (HCEs), even if the plan

discriminated in favor of those individuals. However, if self-funded group health

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the daily penalty would be \$4,500 a day (45 employees x \$100) – a hefty sum by any imagine.

The law doesn't define an HCE for this purpose. However, under the sections of the tax code applying to self-insured plans, an HCE is generally defined as:

- One of the five highest paid officers;
- A shareholder who owns more than 10 percent of the stock of the employer; or
- An employee who is among the highest paid 25 percent of all employees.

It's not clear if the same definition will be adopted for the imposition of the Obamacare penalty on discriminatory group health plans. In addition, the Treasury Department must resolve other issues such as how to measure the value of employee health benefits, what exactly constitutes discrimination against non-HCEs, and what happens if non-HCEs turn down better coverage and obtain health insurance from another source like a state-run exchange.

Certain executive medical plans that are "grandfathered" are not subject to this new provision. Nevertheless, these plans must be updated to comply with other provisions. Also, plans that are completely exempt from Obamacare, such as retiree-only plans, are exempt from the non-discrimination rule.

At least employers won't have to worry about paying penalties until the government gets its act together. "As we continue this work, employers still have the same incentives they always have had to offer coverage to their employees as part of a competitive compensation package, and will have additional incentives under the Affordable Care Act starting this year and next," said Donar. We will continue to monitor the proceedings.

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