



# Section 105(h) Nondiscrimination Testing Consulting Report

Performed for: [Company Name]

Plan Year [Year]

In partnership with



**Assurex**<sup>®</sup>  
**GLOBAL**

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## About Medcom Benefit Solutions

Medcom Benefit Solutions is a leading employee benefits administrator and ERISA Compliance Specialist, well known for offering various products and services designed to help employers meet the challenges of a rapidly changing workforce. With a staff of seasoned professionals, Medcom Benefit Solutions offers consulting services relating to ERISA compliance, COBRA administration, Flexible Spending Account administration, Health Reimbursement Arrangement administration, and Health Savings Account administration.

Founded in 1983, Medcom Benefit Solutions has grown and changed with the economy and the workforce. Medcom Benefit Solutions administers a variety of tax-advantaged benefit plans using sophisticated debit card technology to meet the convenience needs of Plan participants and the administrative goals of the employer.

Medcom Benefit Solutions is a leader and innovator among Third Party Administrators. Our business continues to grow, resulting from superior personal service from our customer service staff and other benefits professionals.

As regulatory compliance continues to increase in complexity, Medcom Benefit Solutions has expanded our scope of regulatory compliance services, including seminars, technical writing, 5500 Reporting, Nondiscrimination Testing, Comprehensive ERISA Plan Reviews, and other employee communications.

Medcom Benefit Solutions provides a full "turnkey solution" for employers electing to partner with us for their tax-advantaged benefit plans, ERISA Compliance, and COBRA administration needs.

## OUR APPROACH



## SECTION 105(h) NONDISCRIMINATION TESTING – BRIEF EXPLANATION

There are two distinct components of the nondiscrimination testing for self-insured plans as follows:

### Eligibility Test

This test analyzes who is covered to participate in the self-insured health plan. You must have enough Non-Highly Compensated Individuals covered under the plan.

### Benefits Test

This test analyzes whether or not all covered employees have access to the same benefits and the same contribution levels provided by the employer.

### A. The Eligibility Test (Test 1 of 2 for Self-Insured Medical Plan)

The Eligibility Test is one of the two nondiscrimination tests for self-insured medical plans. Eligibility testing answers this one basic question: are enough non-HCIs covered under the plan?

#### What Are the Mechanics of the Eligibility Test?

The medical plan must pass at least **one** of these tests:

- **70% Test:** The plan benefits 70% or more of all non-excludable employees.
- **70%/80% Test:** The plan benefits 80% or more of all non-excludable employees who are eligible to benefit if 70% or more of all non-excludable employees are eligible to benefit under the plan.
- **Nondiscriminatory Classification Test:** The plan benefits a nondiscriminatory classification of employees. This requires (1) a bona fide business classification for any exclusion and (2) a sufficient ratio of benefiting non-HCIs to benefiting HCIs

## I. ELIGIBILITY TEST RESULTS (70% TEST & 70% / 80% TEST)

Sample Employer Medical Plan		
<b>70% TEST - PASS</b> <small>(If this test fails, we run the 70/80 Test. In order to pass the eligibility test, one of the three subtests has to pass.)</small>	<b>70%/80% TEST - PASS</b> <small>(If this test fails, we run the nondiscriminatory classification test. In order to pass the eligibility test, one of the three subtests has to pass.)</small>	
<b>SCORE: 93% - PASS</b>	<b>70% TEST</b>	<b>80% TEST</b>
	<b>SCORE: 100% - PASS</b>	<b>SCORE: 93% - PASS</b>

## II. ELIGIBILITY TEST RESULTS (NONDISCRIMINATORY CLASSIFICATION TEST)

Sample Employer Medical Plan	
<b>Ratio Percentage = 94%</b>	<b>Safe Harbor Percentage = 39.50%</b>
<b>Non-HCI Concentration Percentage = 74%</b>	<b>Unsafe Harbor Percentage = 29.50%</b>
<b>Safe Harbor Percentage Results 1</b> Ratio Percentage > 50% - <b>PASS</b>	
<b>Safe Harbor Percentage Results 2</b> Ratio Percentage > Safe Harbor Percentage - <b>PASS</b>	
<b>Unsafe Harbor Percentage Results</b> Ratio Percentage > Unsafe Harbor Percentage - <b>PASS</b>	

## III. ELIGIBILITY TEST SUMMARY

✓ **Sample Employer – PASS**

**Sample Employer has successfully passed the Eligibility Test.**

Under Section 105(h), the Eligibility Test only requires the employer to pass one of the specified tests. Sample Employer (successfully passed the three tests) (successfully passed the nondiscriminatory classification test under the Eligibility Tests of Section 105(h) for their self-insured plan).

## B. The Benefits Test (Test 2 of 2 for Self-Insured Medical Plan)

The Benefits Test is the second of two nondiscrimination tests for self-insured group medical plans. The Benefits Test focuses on one central question: are all participants eligible for the same benefits?

### Scope of Benefits Testing

Similar to the Eligibility Tests, Medcom Benefit Solutions conducted the Benefits Test on the medical plan individually for each benefit requirement.

### What Are the Mechanics of the Benefits Test?

In order for a plan to satisfy the Benefits Test, all benefits provided to the HCIs who are participating in the plan must be provided to all other participants. Where optional (elective) benefits are made available, the test will be satisfied if (1) all participants are eligible for the optional benefits; and (2) there is either no required contribution for the benefit or the contribution is identical for all participants.

## I. BENEFITS TEST

Sample Employer Medical Plan	
1. Are all participants eligible for the same benefit under the plan?	YES
2. Are all benefits offered under the same conditions to all participants?	YES
3. Are disparate waiting periods being used?	NO
4. Do benefits vary based on age, years of service, or compensation?	NO
5. Is this plan discriminatory in operation?	NO

RESULTS: **PASS**

## II. BENEFITS TEST SUMMARY

- ✓ **Sample Employer Medical Plan**
- ✓ **Sample Employer - PASS**

**Sample Employer has passed the Benefits Test.**

### C. Section 105(H) Report Card – Sample Employer

**Testing Conducted: 2016**

Plan	Test	Results
<b>SECTION 105(H) SELF-INSURED</b>	Eligibility Test	PASS
	Benefits Test	PASS
	<b>OVERALL</b>	<b>PASS</b>

The IRS and Department of Labor require that certain employee benefit plans must not discriminate in favor of Highly Compensated Employees (HCEs). Medcom Benefit Solutions has conducted the nondiscrimination tests as prescribed by law, has produced findings as described in this report, and believes that the findings are accurate. However, the tests were performed using data provided by the employer, the plan sponsor, and Medcom Benefit Solutions has no means of determining whether the original data is accurate; thus, we cannot indemnify the plan sponsor against any subsequent finding of discrimination by a governmental agency. Medcom Benefit Solutions offers professional plan administration under the plan sponsor's direction and does not offer legal advice regarding the plan's compliance with any applicable law.

## D. CONCLUSION

Sample Employer has successfully passed each of the Eligibility and Benefits tests conducted by Medcom Benefit Solutions for their 2016 plan year based on the data provided to Medcom Benefit Solutions on 5/23/2017.

### The Eligibility Test

Code §105(h)(2)(A) establishes the Eligibility Test:

A self-insured medical reimbursement plan satisfies the requirements of [the discrimination rules] only if...the plan does not discriminate in favor of highly compensated individuals as to eligibility to participate.

Code §105(h)(3)(A) provides three alternative ways of passing the Eligibility Test:

A self-insured medical reimbursement plan does not satisfy [the Eligibility Test] unless such plan benefits:

- (i) 70% or more of all employees [the 70% Test], or 80% or more of all employees who are eligible to benefit under the plan if 70% or more of all employees are eligible to benefit under the plan [the 70%/80% Test]; or
- (ii) Such employees qualify under a classification set up by the employer and found by the [IRS] not to be discriminatory in favor of highly compensated individuals [the Nondiscriminatory Classification test].

### The Benefits Test

Code §105(h)(2)(B) establishes the Benefits Test: "A self-insured medical reimbursement plan satisfies the requirements of [the nondiscrimination rules] only if...the benefits provided under the plan do not discriminate in favor of participants who are highly compensated individuals."

Code §105(h)(4) further provides as follows: "A self-insured medical reimbursement plan does not meet the [Benefits Test] unless all benefits provided for participants who are highly compensated individuals are provided for all other participants."