



## AMERICAN BENEFITS COUNCIL

October 17, 2007

### ISSUES AND RECOMMENDATIONS H.R. 976, CHIP PREMIUM ASSISTANCE PROVISIONS EMPLOYER ENROLLMENT, NOTICE AND DISCLOSURE REQUIREMENTS

The premium assistance provisions of the Children's Health Insurance Program (CHIP) Reauthorization Act of 2007, H.R. 976, vetoed by President Bush on October 3, 2007, include new enrollment, notice and disclosure requirements that directly impact employers who sponsor health benefits coverage. The requirements are administratively burdensome. Administrative cost increases translate into higher health care coverage costs for employers and employees. Recommendations for modifying these provisions so as to minimize the administrative burden for employers are discussed below.

#### **Background**

Title III of H.R. 976 is intended to reduce barriers for states that elect to provide premium assistance subsidies for qualified employer coverage for children who are eligible for child health assistance. These provisions allow states an option for providing premium assistance where the employer contributes at least 40% towards the cost of coverage. States would be required to provide certain outreach, education and enrollment assistance for families of children likely to be eligible for premium assistance programs.

Section 311 of Title III seeks to coordinate premium assistance with private coverage by amending special enrollment rules under ERISA, the Internal Revenue Code and the Public Health Service Act to require group health plans and insurers to permit children to enroll in private coverage outside open enrollment periods if they lose Medicaid or CHIP coverage, or become newly eligible for premium assistance. The provision also requires employers who sponsor group health plans to provide employees with notice regarding potential opportunities for premium assistance under state programs.

Administrators of group health plans would be required to disclose certain information about their benefits coverage to states, upon their request, so that states could determine whether to provide premium assistance.

### **Special Enrollment Requirements**

**Timeframes for requesting special enrollment are inconsistent with those under other federal laws.** H.R. 976 provides a 60 day period for individuals who lose or become eligible for Medicaid or CHIP programs to request enrollment in an employer group health plan. In contrast, the timeframe for requesting special enrollment under HIPAA is 30 days. By establishing a different special enrollment timeframe for premium assistance eligible enrollees, H.R. 976 increases administrative complexity for employers and risks creating confusion for employers and employees.

#### **Recommendations:**

1. Change the 60 day requirement to 30 days to conform to similar special enrollment periods applicable to employer group health plans under HIPAA.
2. Alternative: Modify to require that the employer plan provide the special enrollment period for a period not less than 30 days and (at the option of the employer) up to 60 days after the date on which the individual is notified by the state that he/she is eligible for premium assistance.

### **Notice and Disclosure Requirements**

**A single, federal mechanism for complying with the notice and disclosure provisions is needed to minimize administrative complexity and costs for employer group health plans.** H.R. 976 requires employers to provide notices to employees with state-specific information regarding premium assistance opportunities. Employers will also have to respond to state requests for group health plan eligibility and coverage information for employees who may be eligible for premium assistance under the state's program. For employers, particularly those who operate in multiple or all 50 states, this compliance burden is substantial and will increase health care coverage costs to employers and employees. Permitting employers to provide a single, uniform notice to their workforce and to report requested group health plan information to a central, federal database or other repository in a standard format will minimize administrative costs and facilitate compliance.

#### **Recommendations:**

1. Revise the model notice provision to include a federal agency (HHS or DOL) website and 1-800 number that employers can include in the notice as the way of informing employees how they may obtain information on how to contact states that offer premium assistance programs and apply for such assistance.
2. Revise the disclosure requirement to add a safe harbor that permits an employer to satisfy the disclosure requirements by sending its group health plan information to an appropriately secured database established by HHS. States would be required to query the database for purposes of obtaining group health information subject to the disclosure provisions of H.R. 976.

Alternative: Require each state offering premium assistance to create a secure website to which the employer's health plan could electronically transmit the required information about the individual's group health plan coverage. The format of the required electronic data transmission would be common across all 50 states.

3. Streamline processes for federal group health plan data collection by directing the Secretary of HHS and Secretary of Labor and the Employer-Sponsored Coverage Coordination Working Group (as established under H.R. 976) to consider how implementation of the notice and disclosure requirements of H.R. 976 can be coordinated with other existing federal notice and data collections processes applicable to group health plans (including for example, the Deficit Reduction Act and the Child Support Performance and Incentives Act of 1998).
4. Revise Section 311 to require that both the model notice and the model coverage coordination disclosure form be developed by the "Medicaid, CHIP, and Employer-Sponsored Coverage Coordination Working Group" which includes employer and health insurer representation. As drafted, the model notice is to be developed jointly by Secretaries of HHS and DOL in consultation with Directors of state Medicaid agencies.

**States should request an employer's group health plan information only when the state has received an application for premium assistance from an employee of the employer.** H.R. 976, Section 311 includes a broad requirement that plan administrators of a group health plan disclose certain benefits information "upon request" of a state.

#### **Recommendations:**

1. Clarify that a state may request a disclosure from an employer only when it has received an application for premium assistance from an employee of the employer.

2. Clarify that any disclosures made consistent with H.R. 976 are to be used by the state solely for the purpose of making premium assistance determinations and are not for public access.

### **Payment of Premium Assistance Subsidy**

**States should provide premium assistance payments directly to the eligible employee unless the employer elects to accept the payment directly.** If a state pays the premium assistance directly to the individual and then the state subsequently deems an enrolled employee ineligible for premium assistance due to error, fraud or other reasons, the state would be responsible for reconciling the payments made to the individual with the amount of premium assistance he or she was truly eligible to receive.

#### **Recommendations:**

1. Revise Section 301 to require states to provide premium assistance payments as a reimbursement to an employee for an out-of-pocket expenditure and to permit an employer to notify a state if it elects to accept direct payment of a premium assistance subsidy on behalf of an employee.

### **Effective Date**

**Effective dates for the notice and disclosure requirements may provide insufficient time for employer implementation.** As drafted, employers must comply with the notice and disclosure provisions beginning with the first plan year that begins after the date on which such initial model documents are first issued by HHS and DOL. If the agencies issue the model notice and disclosure forms late in a year, for example, in October, November or December, employers with calendar year health plans will have too little time to adopt them for use by January 1.

#### **Recommendations:**

1. Revise the effective dates for notice and disclosure requirements to make clear that in no event shall an employer or plan administrator be required to comply in less than **12 months** after model notice and disclosure forms are issued by the federal agencies.