

**America's Health
Insurance Plans**

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June 6, 2011

Office of Regulations and Interpretations
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Ave., NW
Washington, DC 20210
Attention: E-Disclosure RFI

Submitted Electronically: www.regulations.gov

Dear Sir or Madam:

America's Health Insurance Plans (AHIP) is writing in response to the Request for Information (RFI) published in the *Federal Register* on April 7, 2011 seeking comments regarding the use of electronic media to provide information to participants and beneficiaries of employee benefit plans.

America's Health Insurance Plans (AHIP) is the national trade association representing the health insurance industry. AHIP's members provide health and supplemental benefits to more than 200 million Americans through employer-sponsored coverage, the individual insurance market, and public programs such as Medicare and Medicaid. AHIP advocates for public policies that expand access to affordable health care coverage to all Americans through a competitive marketplace that fosters choice, quality, and innovation.

AHIP strongly support efforts to improve communications with group health plan participants and beneficiaries, including the use of electronic media such as e-mail and dedicated web sites maintained on behalf of plan sponsors. As noted in the RFI, a significant majority of Americans, including most private sector employees, have access to the Internet.¹ According to a recent survey by the Nielsen Company, 80.6 percent of Americans have a home computer, and over 90 percent of these households have access to the Internet in their home.²

Electronic media provides a cost-effective and efficient pathway to inform individuals about their group health plan and to provide notices required by the Employee Retirement Income Security Act, Health Information Portability and Accountability Act, Affordable Care Act, and

¹ According to the U.S. Census Bureau, 76.7 percent of households have access to the Internet from some location. 76 Fed. Reg. 19285.

² "An Overview of Home Internet Access in the U.S.," The Nielsen Company, December, 2008 accessed at: <http://blog.nielsen.com/nielsenwire/wp-content/uploads/2009/03/overview-of-home-internet-access-in-the-us-jan-6.pdf>.

June 6, 2011

Page 2

other federal laws with disclosure mandates. Allowing the use of e-mail, websites, and other electronic media to inform plan participants and beneficiaries also supports President Obama's recent Executive Order directing federal agencies to consider "regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public."³

Modifying the Current Electronic Disclosure "Safe Harbor"

The Department of Labor (DOL) allows the use of electronic media to provide information to group health plan enrollees in limited situations where the individual "has the ability to effectively access documents furnished in electronic form at any location where the participant is reasonably expected to perform his or her duties as an employee . . ." (29 C.F.R. §2520.104b-1(c)(2)). The rule *excludes* a significant majority of workers who have access to the Internet outside of the workplace. As a result, many plan participants and beneficiaries are unable to use computers or other electronic devices to receive information about their group health plan.

We believe a more effective approach is set out in the Treasury Department regulations addressing the use of electronic disclosures. The rule permits notices to be provided electronically if the recipient "has the effective ability to access" the electronic medium used to provide the notice. (26 C.F.R. §1.401(a)-21(c)(2)). The DOL has authorized this alternative to the Department's safe harbor in the case of electronic disclosures of periodic pension benefit statements.⁴ Adopting the Treasury Department's requirements for electronic disclosures will also provide uniformity across federal regulatory agencies responsible for oversight of disclosures made to plan participants and beneficiaries.

The Treasury Department rule and the DOL's Field Assistance Bulletin establish consumer protections to ensure that individuals are able to receive information in a meaningful manner. Individuals must be notified, in writing and in a manner calculated to be understood by the average plan participant, about the availability of disclosures through electronic media. They must also be told that they have the right to receive a paper version of the disclosure free of charge.

Recommendation:

AHIP recommends that the DOL revise its current safe harbor and permit group health plans to make electronic disclosures of summary plan descriptions and other required notices, provided the participant or beneficiary has the effective ability to access the information electronically. Individuals should be given notice that they can access the information electronically or obtain a paper copy of the disclosure without charge.

³ Executive Order 13563, January 18, 2011, 75 Fed. Reg. 3821.

⁴ See: DOL Field Assistance Bulletin 2006-03, December 20, 2006.

June 6, 2011

Page 3

Allowing Flexibility in the Use of E-Disclosures

Americans are increasingly accessing information in a wide variety of media, such as cell phones, desktop and laptop computers, e-Book readers, and tablet computers.⁵ Electronic delivery methods include e-mail, dedicated websites, “YouTube” style videos, and other downloadable formats.

As a result of the expanding electronic media and formats, we suggest the DOL provide group health plans sponsors the maximum flexibility with respect to how information is provided to participants and beneficiaries. While e-mail and websites are the primary method for electronically informing consumers today, it is likely other approaches will prove useful for the delivery of notices and other information about group health plans.

In particular, the DOL should permit plan sponsors to provide notices and other disclosures through a dedicated website. As discussed above, the DOL has permitted the disclosure of periodic pension benefit statements pursuant to rules established by the Treasury Department for electronic disclosures. The Field Assistance Bulletin recognizes the use of websites for such disclosures:

With regard to pension plans that provide participants continued access to benefit statement information through one or more secure websites, the Department will view the availability of pension benefit statement information through such media as good faith compliance with the requirement to furnish benefit statement information, provided that participants and beneficiaries have been furnished notification that explains the availability of the required pension benefit statement information and how such information can be accessed by the participants and beneficiaries.⁶

We believe the use of a dedicated website to provide information to health plan participants and beneficiaries is appropriate and should be recognized by the DOL.

Recommendation:

AHIP strongly recommends that the DOL not restrict the types of electronic media that may be used to provide notices and other information to group health plan participants and beneficiaries, including the use of dedicated websites, as long as the plan sponsor ensures that the individual is likely to receive the information in a meaningful manner.

⁵ “Americans and Their Gadgets,” Aaron Smith, Pew Internet and American Life Project, October 14, 2010, accessed at: <http://pewinternet.org/~media/Files/Reports/2010/PIP-Americans%20and%20their%20Gadgets.pdf>.

⁶ Field Assistance Bulletin 2006-03.

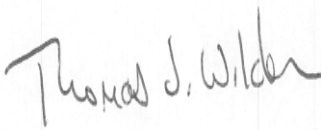
June 6, 2011

Page 4

Electronic disclosures provide the opportunity to better inform group health plan participants and beneficiaries about their health coverage and how they can exercise their rights under the plan. We support changes to the current regulatory safe harbor for the use of electronic media and recommend the DOL proceed with rulemaking to expand the use of electronic media.

We appreciate the opportunity to provide comments on this important initiative. Please feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Thomas J. Wilder". The signature is written in a cursive style with a large initial 'T'.

Thomas J. Wilder
Senior Counsel