SUMMARY: S. 1955, "THE HEALTH INSURANCE MARKETPLACE MODERNIZATION AND AFFORDABILITY ACT"

(as approved by the Senate HELP Committee on March 15, 2006)

BACKGROUND

The House has passed an Association Health Plan (AHP) bill many times over the past ten years. However, the bill has not been enacted because the Senate has not passed a companion bill. The House bill would allow AHPs to form self-insured health plans, regulated by the Department of Labor with little or no state regulatory oversight. Under the House bill, self-funded AHPs would be allowed to offer coverage to small employers with no limits on the state mandated benefits they were required to offer and the premium rating methods they could use. Likewise, there would be no state oversight of solvency and financial capability for self-funded AHPs. This legislation also would authorize fully-insured AHPs that would be regulated by a single state (their primary domicile state) regardless of the number of states in which the AHP offers coverage. Non-AHP insurers in the traditional small group market would still follow state benefit and premium rating rules.

ENZI LEGISLATION

In November 2005, Senator Mike Enzi (R-WY), chairman of the Senate Health, Education, Labor, and Pensions (HELP) Committee, offered a new proposal to facilitate the development of AHPs. The legislation, S. 1955, entitled the "Health Insurance Marketplace Modernization and Affordability Act of 2005" would aid association-based coverage by standardizing and harmonizing certain rules and regulations across the states. Under S. 1955, associations and chambers of commerce could form Small Business Health Plans (SBHPs) that would offer fully insured coverage to their members. SBHPs could not offer self-insured coverage and would be required to purchase coverage through state-licensed health insurance plans. S. 1955 set out to provide a common set of rules for SBHP-based coverage and small group carriers in the general marketplace but the current language giving SBHPs a "head start" on specific rules conflicts with this objective. S. 1955 focuses on three major areas: 1) rating requirements for the small group market, 2) low cost plans/mandate relief for the group and individual markets, and 3) harmonization of process standards in the group and individual markets. In addition, under the current draft, large employers would be eligible to join SBHPs.

HIGHLIGHTS OF S. 1955

Small Business Health Plans

- ***Establishment of SBHPs:***
  S.1955 would amend the Employee Retirement Income Security Act of 1974 (ERISA) to provide for the establishment and governance of fully-insured small business health plans (SBHPs). SBHPs would include group health plans sponsored by trade, industry, professional, chamber of commerce or similar business associations that meet ERISA certification requirements.
  - ***Membership Criteria*** - SBHPs would be prohibited from conditioning membership on health-status related factors.
  - ***Certification*** - The Department of Labor (DOL) would certify SBHPs. If the DOL fails to act on an application within 90 days, the SBHP would be "deemed" certified. DOL may later revoke certification for cause and may impose civil penalties for willfully incomplete or inaccurate applications.
  - ***Formation Requirements*** - S. 1955 outlines formation and certification requirements for SBHPs.
    - ***Exception*****:** In the current draft, AHPs in existence prior to the Act and franchisers could bypass certain formation and certification requirements applicable to SBHPs.
- ***Self-Employed:***
  SBHPs may enroll self-employed individuals, provided the SBHPs use rating methods consistent with state rules for the self-employed. The rating rules in the state where the self-employed individual is located would apply. Accordingly, SBHPs would not be required to guarantee issue to the self-employed unless the state required it.
- ***Large Groups:***
  SBHPs may enroll large groups, provided the SBHPs use rating methods consistent with state rules for large groups. The rating rules (if any) in the state where the large employer is located would apply.
- ***Licensure of SBHP Insurers:***
  Insurers that provide coverage to SBHPs must be licensed in the SBHP's domicile state and must obtain licensure in every state in which participating employers in the SBHP are located.

Adopting/Non Adopting State Construct

- ***Adopting State:***
  A state can be an "adopting" state and enact state laws mirroring the standards set forth in three different portions of S. 1955 relating to (1) rating requirements; (2) the rules for affordable plans/benefit choice options; and (3) harmonized standards. Insurers would be required to satisfy state law in these states. A state may pick and choose which Titles to

adopt. For example, a state may elect not to adopt rate requirements but enact legislation to become an "adopting" state for mandate relief and/or harmonized standards.

- ***Non-Adopting State:***
  A state can be a non-adopting state and keep its state laws in place and an insurer can notify HHS and the state that it wishes to offer insurance in accordance with the standards in S. 1955. In this case, the standards in S. 1955 would preempt state law with respect to the insurance offered by these "eligible insurers." To the extent such actions are not preempted by ERISA, individuals or state officials could seek relief under state law to require an eligible insurer to comply with the standards in S. 1955.
- ***Civil Actions and Jurisdiction:***
  Federal district courts are granted exclusive jurisdiction over civil actions involving interpretation of the new law. Health insurance issuers may bring action in Federal district courts for injunctive or other equitable relief against a non-adopting state in connection with the application of a state law that violates the new law.

Rating Rules

- ***Model Small Group Rating Rules:***
  S. 1955 would allow either SBHPs or small group carriers to use a standard set of premium rating rules called the "Model Small Group Rating Rules". These Model Rules are drawn from the Adopted Small Employer Health Insurance Availability Model Act of 1993 of the National Association of Insurance Commissioners. The Model Rules allow rates to vary by +/- 25 percent on issuance for health status or claims experience of a group and cap the annual increase in rates based on health experience at 15 percent. There are limitations on the number of classes of business, and rates could not vary by class of business by more than 20%. In addition, industry may be utilized as a case characteristic as long the highest rate factor associated with any industry is no greater than 15% higher than the lowest rate factor for an industry.
- ***Special Transitional Model Small Group Rating Rules:***
  Special *Transitional* Model Small Group Rating Rules will precede Model Small Group Rating Rules in states that currently have highly restrictive rating rules or "community rating" laws. The transition rules would be in effect for a period of up to five years (from the date of promulgation of the Model Small Group Rating Rules) "to the extent necessary to provide for a graduated transition" to the Model Small Group Rating Rules. Both SBHP and other small group carriers would abide by the phased-in rules in those states.

Lower Cost Plans/Mandate Relief

- ***Relief from Benefit Mandates for SBHPs, Group, and Individual Carriers:***
  A health insurance carrier in a state would be able to offer coverage in the small group market, individual market, large group market or through an SBHP that does not comply with one or more mandates regarding benefits, services, or category of provider that are

in effect in the state with respect to those markets as long as the carrier also offers an "enhanced option". An enhanced option must at a minimum include those benefits, services, and categories of providers that are covered by a state employee coverage plan in one of the five most populous states (that are in effect in the applicable calendar year). The five most populous states are CA, TX, NY, FL, and IL. It is important to note that a carrier may opt to offer a plan covering all the applicable state mandates as its "enhanced option" rather than a state employee plan from one of the five states mentioned above.

- ***Time-frame for Mandate Relief:***
  SBHPs may begin to offer lower cost plans twelve months after the enactment of Title II of S. 1955. Carriers in the group and individual markets must wait until fifteen months after the enactment of Title II of S. 1955 before they can offer low cost plans. This results in SBHPs having a three month head start to offer low cost plans before other carriers.

"Harmonization" of Standards

- ***Establishment of Health Insurance Consensus Standards Board:***
  The current draft directs the Secretary to establish a "Health Insurance Consensus Standards Board" within 3 months of enactment. In addition, the Secretary will establish an "advisory panel" to provide advice to the Board.
- ***Harmonized Process Standards:***
  The Health Insurance Consensus Standards Board is directed to harmonize process standards in the areas of form filing, rate filing, market conduct, internal review, and prompt pay rules to apply to the insured large-group, the small-group and individual market. While criteria for external review are not included in this draft, it is the intention of Congressional staff to include such criteria in the final bill.
- ***Timeline for Enactment of Harmonized Process Standards:***
  The Board is charged with reporting its harmonized standards to the Secretary within 18 months. The Secretary is required to certify the recommended harmonized standards within 120 days of receipt. The standards certified by the Secretary would be effective 18 months after the date on which the Board adopts the harmonized standards.

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