

# **INTERNAL REVENUE SERVICE HEALTH COVERAGE TAX CREDIT**

HCTC Program HIPAA Statement and Disclaimer

**Version 7.0**  
August 4, 2003

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### *The Purpose of the Health Coverage Tax Credit (HCTC)*

The HCTC program is an administrative component of the IRS established pursuant to the authority granted to the Secretary of Treasury under I.R.C. §§ 35 & 7527. The primary function of the HCTC program is to assist eligible individuals in paying for their health care insurance costs. The HCTC is an advance as well as year-end tax credit covering 65% of the eligible premium for eligible individuals to obtain qualified health insurance coverage. The individual is responsible for 35% of the premium. Eligible individuals are comprised of two main groups: (1) displaced workers receiving Trade Adjustment Assistance (TAA) benefits, and (2) Pension Benefit Guaranty Corporation (PBGC) pension recipients aged 55 and over.

The HCTC program involves a considerable number of federal agencies, state workforce agencies, state insurance agencies, employers and third party administrators, health plan administrators, and contractors. Federal agency participants include the Financial Management Service (FMS), Department of Health and Human Services, Department of Labor, and PBGC. Several private contractors including Accenture, U.S. Bank, and others have been retained by the IRS and FMS to assist the federal government in its implementation of the HCTC program. Each entity is involved in providing others with information concerning HCTC, such as individuals' eligibility, premium amount, plan, and payment certification.

### *How HCTC Obtains and Uses Data*

In order to operate, the HCTC program receives data on a routine basis from state workforce agencies (SWA) containing lists of Trade Adjustment Assistance (TAA) and Alternative TAA (ATAA) eligible individuals. It also receives similar data from the Pension Benefit Guaranty Corporation (PBGC) for HCTC eligible participants. Additional information is collected by the HCTC program from eligible individuals and health plan administrators. The information requested and collected is the minimum necessary required to administer the HCTC program. Administering the program includes, but is not limited to, processing and sending premium payments to health plan administrators on behalf of registered individuals in the HCTC program. Generally, the HCTC program gathers name, address, date of birth, tax ID number, insurance company name and policy number, member ID, type of insurance, premiums paid, and other information contained in the payment voucher or COBRA election letter submitted by the eligible individual.

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### *HCTC's HIPAA Covered Entity Status*

Members of the HCTC program team met separately with Department of Health and Human Services representatives at both the Office of Civil Rights (OCR) and the Centers for Medicare and Medicaid Services (CMS) to discuss the role that the HCTC has in complying with the new Health Insurance Portability and Accountability Act (HIPAA) Administrative Simplification rules. OCR is responsible for implementing and enforcing the HIPAA privacy rule. CMS is responsible for implementing and enforcing the security standards, transactions standards, and other HIPAA administrative simplification provisions, except for the privacy standards.

After careful consultation with both offices early in 2003, it was determined that the HCTC program is not a "covered entity" under the Administrative Simplification rules of HIPAA. Therefore, HCTC is not bound by the HIPAA rules regarding Privacy, Security, Transactions and Code Sets, and Individual Identifiers.

Specifically, the HCTC program does not meet the HIPAA definition of a covered entity: health plan, health care clearinghouse, and/or health care provider that transmits any health information in electronic form concerning a standard "transaction." HCTC is not considered a business associate to health plan administrators participating in the program, nor are health plan administrators acting as business associates to HCTC. By definition, the HCTC program is acting on its own behalf and currently does not act as an entity performing a function for or assisting health plans with a function or activity involving the use or disclosure of individually identifiable health information.

### *Transactions and Communications with the HCTC Program*

HIPAA permits health plan administrators to communicate eligibility and payment information as part of its treatment, payment, and health care operations<sup>1</sup>. The disclosures of this information to the HCTC program are necessary for payment purposes. As such, they do not require an authorization from the individual, nor do they require health plan administrators to maintain an accounting of these disclosures<sup>2</sup>. This statement does not preclude the reciprocal communication between health plan administrators and the HCTC program regarding eligibility status (active and terminated) and processing of premium payments. For instance, the HCTC program needs data from health plan administrators that indicates which individuals are no longer enrolled with them so that the office can update its systems and withhold payments for that individual. If the HCTC program requires protected information from a covered entity as those terms are defined under HIPAA Privacy Rules, the program

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<sup>1</sup> The information in this section is referenced from the HIPAA Privacy Rule. Refer to section 164.501 for the definition of health care operations and payment, and section 164.506 for information regarding uses and disclosures to carry out treatment, payment or health care operations.

<sup>2</sup> See sections 164.506 and 164.528 (a) of the HIPAA Privacy Rule.

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office will work directly with the covered entity to assure that any information released satisfies the minimum necessary standard under HIPAA.<sup>3</sup>

Health plan administrators should be assured that although the HCTC program is not technically a covered entity, it has agreed to treat all information exchanges between its program office and health plan administrators or other coverage providers regarding individual information in a manner that complies with applicable federal privacy and security standards. The HCTC program office is required by I.R.C. § 6103 to ensure that all taxpayer information is kept private and secure. Information pertaining to participants that is received by the HCTC program office from coverage providers is not disclosed to any outside party nor used for any purpose inconsistent with I.R.C. § 6103.

When the advance tax credit program is implemented on August 1, 2003, the HCTC program office will not be able to support HIPAA EDI transactions. This includes Premium Payment (820), Benefit Enrollment and Maintenance (834) and Eligibility Inquiry and Response (270/271) transactions. The decision not to support these transaction types was made due to the unlikely early adoption by stakeholders of the HIPAA transaction formats by August 1, 2003. (The compliance date for HIPAA Transactions and Code Sets is October 16, 2003.) Our current approach is to eventually interact with our stakeholders in a HIPAA compliant fashion. Health plan administrators should be assured that HCTC is implementing processes and transactions that are standard in the industry.

As the program evolves, we will continue to monitor and evaluate the HCTC program HIPAA status. We will update this statement should our status regarding HIPAA change.

Officials from IRS have reviewed and approved this statement. IRS officials have also consulted with HHS regarding this statement. All parties have agreed that these assurances are consistent with HCTC program objectives.

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<sup>3</sup> See sections 164.502(b) and 164.514(d) of the HIPAA Privacy Rule.