

HHS Issues Early Retiree Reinsurance Program Regulations Under Health Care Reform Law

The recently enacted Patient Protection and Affordable Care Act establishes the Early Retiree Reinsurance Program ("ERRP") to provide federally funded reimbursements, beginning June 21, 2010, to insured and self-insured health care plans that cover retirees who are at least age 55 but not yet eligible for Medicare, and their spouses, surviving spouses and dependents. The ERRP will reimburse 80% of the costs incurred during a plan year, in excess of \$15,000 but not in excess of \$90,000, to provide health benefits for any of these eligible individuals. Five billion dollars has been made available for reimbursements, to be allocated among health care plans on a first come, first served basis.

The Department of Health and Human Services has responded to the ERRP's early effective date with interim final regulations establishing the parameters for reimbursements and the procedure to apply for them. Here are some of the highlights.

- The regulations make clear that early retirees must be at least age 55 but not yet eligible for Medicare in order for their health care benefits to qualify for reimbursement, but their spouses, surviving spouses and dependents need not be either age 55 or ineligible for Medicare. The regulations refer to these classes of participants and beneficiaries collectively as "early retirees."
- In calculating the \$15,000 threshold, the \$90,000 limit and the amount of the reimbursement to the health care plan, costs incurred for health benefits include net amounts paid both by the health care plan and by early retirees (e.g., deductibles, co-payments, co-insurance, or other out-of-pocket costs).
- In the case of an insured health care plan, costs incurred for health benefits are the net amounts paid to health care providers by the insurance carrier and the early retirees - not the premiums paid by the employer or health care plan.
- Reimbursements to an insured single employer health care plan, however, are paid to the employer, not to the insurance carrier.
- Employers sponsoring an insured health care plan may arrange for claims data to be submitted directly to HHS by the insurance carrier.
- Eligible health care plans must have programs and procedures in place to generate (or have the potential to generate) cost savings for participants with chronic and high cost conditions, i.e., conditions for which \$15,000 or more in health benefit claims are likely to be incurred during a plan year by any one participant, such as diabetes or cancer. These programs and procedures need not address all chronic and high cost conditions covered by the plan. Plan sponsors are expected to take a reasonable approach (i) to identify the conditions to be addressed by these programs and procedures, and (ii) to select the programs and procedures intended to lower the cost of care. Sponsors must be able to demonstrate on audit that their programs and procedures have generated or have had the potential to generate cost savings.
- Plan sponsors applying for reimbursements must also have in place policies and procedures to detect and reduce fraud, waste and abuse.
- Reimbursements must be used to lower participant costs or to offset increases in participant or employer costs for health care benefits. Employers cannot use reimbursements to lower their own pre-ERRP costs. Reimbursements may be used, however, to lower costs for all plan participants, including active employees and their dependents.

- A plan sponsor must have a written agreement in effect with its health insurance carrier or health care plan, requiring disclosure of information on behalf of the plan sponsor to HHS.
- Reimbursements will not be paid until HHS has approved a plan sponsor's application for participation in the program and has certified the health care plan. A separate application must be filed for each health care plan, but the sponsor need not file separate applications for each plan year to qualify for reimbursements for multiple years.
- The regulations specify the information that must be included with an application to participate in the ERRP. This includes (i) an explanation of how the plan sponsor will use reimbursements to reduce participant or employer costs; (ii) an explanation of how the reimbursement will be applied to maintain the sponsor's level of effort in contributing to support the health care plan; (iii) the sponsor's plans to implement programs and procedures to generate savings for participants with chronic and high costs conditions; and (iv) a projection of the reimbursement amounts for the first two plan year cycles covered by the application. This last requirement is intended to help HHS with its funding projections, so that it can determine when to stop accepting applications.
- Under a transition rule, claims incurred before June 1, 2010, during a plan year beginning before and ending after that date, count against the \$15,000 threshold but, to the extent they exceed \$15,000, do not count against the \$90,000 limit for the plan that includes June 1, 2010. Pre-June 1, 2010 claims are not eligible for reimbursement.

If you have questions or would like additional information about the Early Retiree Reinsurance Program, please feel free to contact Brian Dougherty at (215) 587-5919 or bdougherty@postschell.com.

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