

# Health Care Reform Early Retiree Reinsurance Program

The Patient Protection and Affordable Care Act (PPACA) directs the Secretary of Health and Human Services (HHS) to establish a temporary early retiree reinsurance program no later than 90 days after the enactment of PPACA, i.e., by June 21, 2010. On May 5, 2010, HHS issued interim final regulations to implement the early retiree reinsurance program. The following summarizes the regulations, identifies remaining questions regarding the program and provides initial action items for plan sponsors.

Plan sponsors should act now to be ready to file an application for the program opening on June 1. The program ends at the earlier of the exhaustion of the \$5 billion appropriated or December 31, 2013.

## What Does the Early Retiree Reinsurance Program Do?

- The program reimburses plan sponsors for part of the health coverage costs incurred by early retirees age 55 and older who are not Medicare-eligible, as well as their spouses, surviving spouses and dependents.
- The amount reimbursed is 80% of claims costs for health benefits between \$15,000 and \$90,000 per early retiree. Claims incurred between the start of the plan year and June 1, 2010 are credited toward the \$15,000 threshold for reimbursement. However, only medical expenses incurred after June 1, 2010 are eligible for reimbursement.

## Which Plans and Sponsors Are Eligible to Participate in the Program?

- The program applies to "employment-based plans," which includes both private and non-federal public sector plans. An eligible plan can be insured or self-funded.
- Reimbursements are made to the plan "sponsor," which is generally defined as the employer maintaining the plan or the Board of Trustees of a multiemployer plan.
- Eligible plans must include programs and procedures that have generated or

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have the potential to generate cost savings with respect to "chronic and high cost conditions" for which \$15,000 or more in health benefit claims are likely to be incurred by any one participant during a plan year. Plans are not expected or required to implement programs and procedures for all such conditions.

- Plan sponsors must have policies and procedures in place to detect and reduce fraud, waste and abuse, and they must make them available upon request by HHS.

## Which Claims Qualify for Reimbursement?

- The cumulative health benefits claims incurred in a given plan year and paid for each early retiree must fall between the applicable threshold and limit amounts in order to receive reimbursement. An enrolled spouse, surviving spouse and dependents of the early retiree also count as separate "early retirees" for this program.
- Claims do not need to be for only a discrete item or service or related services to qualify for reimbursement.
- Claim costs also include deductibles, co-payments or co-insurance paid by the early retiree, but the plan must submit proof of payment by the early retiree in order to claim reimbursement of those amounts.
- Claim costs must reflect any negotiated or discounted price concessions.
- Sponsors must disclose the amount of "post-point-of-sale" price concessions received by the sponsor but not accounted for in submitting claims. Prescription drug rebates received at a later date are an example of post-point-of-sale negotiated price concessions. HHS will specify how and when sponsors will need to disclose this information.
- For an insured plan, costs for benefits are calculated by taking the costs that the insurer and the early retiree pay for health benefits, net of any negotiated discounts or price concessions that the insurer receives. The premium amount that the sponsor and early retiree pays is irrelevant for purposes of calculating the reimbursement amount under the program.

## How Can Sponsors Use the Reimbursement Provided by the Program?

- Sponsors must use reimbursements to reduce the sponsor's health benefit premiums or health benefit costs and/or reduce plan participant premium contributions, co-payments, deductibles, co-insurance or other out-of-pocket costs.

- Reimbursements may be used for the benefit of all plan participants, not just early retirees.
- Reimbursements must not be used for the general revenue of the sponsor. HHS expects sponsors to continue to provide at least the same level of contribution to support the plan as before the program. Thus, it appears that sponsors may not use reimbursements simply to reduce current sponsor premium obligations or for general funding of the reserves of a self-funded plan. Reimbursements could be used to pay a sponsor's share of a premium increase from year to year, which reduces the sponsor's overall premium cost, but preserves the same level of contribution as the prior year.

## How Does a Sponsor File for Reimbursement?

- Sponsors cannot file claims until HHS approves an application that references that plan year cycle and HHS certifies the plan and the sponsor as qualifying for reimbursement.
- Claims for an early retiree for a plan year cannot be submitted until the total paid claims for that early retiree for that plan year exceed the applicable cost threshold.
- Sponsors must document actual claim costs in their submissions and must also document all claims below the cost threshold for the year to verify that the cost threshold has been satisfied.
- The regulations do not describe how often claims can be submitted. Claims submissions will be processed and reimbursed on a "first in, first out" basis until program funding is expended.
- For insured plans, the insurer may submit claims and data directly to HHS on behalf of the sponsor. If the normal course of business does not produce a "claim," such as in the case of a staff-model HMO, the sponsor must ensure that the insurer/HMO provides the necessary information to submit a claim.

## How Does an Eligible Plan Sponsor Participate in the Program?

- The sponsor must submit one application per plan. Applications will be processed by HHS in the order received. If an application is incomplete, it will be denied, and the sponsor must reapply. The subsequent application will be placed at the end of the queue as a new application.
- The regulations do not specify when a sponsor may first submit an application. Because HHS intends to open the program on June 1, sponsors should expect



to be able to submit applications on or shortly after that date. HHS must approve a sponsor's application before the sponsor can submit claims for reimbursement.

- In addition to providing general information regarding the plan, the application must also:
  - Summarize the proposed use of reimbursements received, consistent with program requirements.
  - Explain the programs and procedures in place to generate savings for participants with chronic and high cost conditions.
  - Project specific reimbursement amounts for the first and second plan year cycles.
  - Identify all benefit options covering early retirees for which reimbursement may be claimed under plan.
  - Include a plan sponsor agreement that: (a) covers the ability to and requirement to disclose information to HHS; (b) acknowledges information is provided in the application to obtain federal funds; and (c) attests that fraud, waste and abuse policies exist.

## Action Items

With the program opening June 1, plan sponsors must act quickly to prepare to file the application to participate in the program and begin preparing to file claim reimbursements. At this point, it is uncertain how quickly the \$5 billion appropriation will be exhausted. Most commentators do not expect the program to remain open for the entirety of its expected lifespan (i.e., through December 31, 2013).

Filing an application and subsequent claims reimbursements will require a number of immediate sponsor actions including reviewing plan benefits to identify programs that address chronic and high cost conditions, determining how to use reimbursements received from the program and preparing claims projections, among other things.

Reinhart anticipates conducting a complimentary webinar and/or providing further communications with more detailed information about the early retiree reinsurance program. Individuals [subscribed](#) to our Employee Benefits e-alert should stay tuned for the latest developments.

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