

Health Care Reform Program to Reimburse Early Retiree Medical Claims: How It Works and Who Should Apply



The Patient Protection and Affordable Care Act required the Department of Health and Human Services (“HHS”) to establish a temporary \$5 billion reinsurance program to reimburse employment-based group health plans for certain claims incurred by early retirees. On May 4, HHS issued regulations providing initial guidance on the program, which will be established effective June 1, 2010. Note, however, that during the month of June, HHS expects to post additional guidance on the program on its website at www.hhs.gov/ociio and does not expect to make applications for the program available until the end of June.

This Early Retiree Reinsurance Program is meant to encourage employment-based group health plans to continue providing coverage to “early retirees” by reimbursing these plans for a portion of early retiree claims. In order to receive reimbursement, however, the group health plan and its sponsor must first be “certified” by HHS to participate in the program. The program will end, however, when the \$5 billion allotment has run out, so not all certified plans will necessarily receive any substantial reimbursements.

Who Is Considered to Be an “Early Retiree”? Under the statute, an “early retiree” is defined as an individual who is age 55 or older, not yet eligible for Medicare, and *not* an “active employee.” The regulations now clarify that individuals considered to be receiving plan coverage by reason of current employment status under the Medicare Secondary Payer rules are presumed to be “active employees” under the program, and therefore claims for these individuals would not be eligible for reimbursement. The regulations further clarify that the term “early retiree” also includes the enrolled spouse, surviving spouse, and dependents of the retiree.

What Costs Can Be Reimbursed? The program may reimburse costs a certified plan has incurred to provide an early retiree with “health benefits,” which the statute defines as including medical, surgical, hospital, prescription drug, and any other benefits the HHS Secretary determines are eligible. The program will only reimburse actual costs incurred and paid on the early retiree’s behalf (by the self-funded plan, the insurer, or the early retiree himself) and must take into account any negotiated price concessions obtained by the health plan or insurer. To be eligible for reimbursement under the program, a submitted claim must meet the \$15,000 cost threshold but cannot exceed the \$90,000 cost limit for a given plan year (both amounts will be indexed for inflation). If the HHS Secretary determines that the claim is valid, the plan will be reimbursed for 80 percent of the portion of the costs attributable to that claim between the cost threshold and the cost limit (e.g., a \$25,000 claim will receive a reimbursement of 80 percent of the \$10,000 amount exceeding the cost threshold, or \$8,000). The program provides an appeals process for the review of denied reimbursement requests.

Special Transition Rule: If a plan year began before June 1, 2010, claims incurred before June 1, 2010, will count toward the \$15,000 cost threshold, but only claims incurred on and after June 1, 2010, are actually eligible for reimbursement.

How Can the Reimbursement Be Used? A plan sponsor must use any reimbursements it receives to reduce premium contributions, co-payments, deductibles, coinsurance, or other out-of-pocket costs for plan participants or to reduce health benefit or premium costs for the sponsor. Although the plan will only receive reimbursement for the claims of early retirees, the funds received may be used to lower health benefit costs for all plan participants, including active employees if they are covered in the same plan as early retirees. A plan sponsor cannot use the reimbursement to offset its existing contributions to the plan (i.e., the proceeds cannot be used to free up the employer’s funds for other uses), but the regulations clarify that sponsors may use the reimbursement to pay for future increases in premiums or other health benefit costs.

Who Can Apply? Any sponsor of an “employment-based plan” that provides health benefits to early retirees (either in a stand-alone retiree medical plan or a plan that also covers active employees) may apply for plan certification. Both self-funded and insured plans are eligible, as well as plans sponsored by state or local

governments, employee organizations, VEBA's, and multi-employer plans. Furthermore, the regulations clarify that the plan and the plan sponsor must meet certain requirements to participate.

- *Plan Requirements.* The plan must include programs and procedures that generate cost savings with respect to participants with "chronic and high-cost conditions" (defined as a condition for which \$15,000 or more in health benefit claims are likely to be incurred during a plan year by one plan participant).
- *Plan Sponsor Requirements.* The plan sponsor must:
 - Make available to HHS information, data, documents, and records related to the program for 6 years following the end of the plan year in which the costs were incurred.
 - Have a written agreement with the plan (if self-funded) or insurer (if insured) authorizing the plan or insurer to disclose protected health information related to the program to HHS.
 - Have in place policies and procedures to protect against fraud, waste, and abuse.

How to Apply? Although HHS does not expect to make the application form itself available until the end of June, the regulations provide some details about the application process, including the following:

- Applications will be processed in the order in which they are received.
- If an application is denied as being incomplete, the applicant must submit a new application, which will be processed based on when the new application is received.
- A plan need not reapply for certification every year.
- If a plan sponsor has more than one eligible plan, it must submit an application for each plan for which it will submit a reimbursement request.

What Must Be Included in the Application? In addition to basic information about the plan (e.g., taxpayer identification number, contact information, etc.), the application must include the following:

- A plan sponsor agreement signed by an authorized representative which includes the plan sponsor's attestation that it has complied with the plan sponsor responsibilities listed above in "Who Can Apply?"
- A summary explaining how the plan sponsor will use any reimbursement it receives to meet the requirements of the program.
- Projected dollar amount of reimbursement to be received under the program for the first two plan year cycles with specific amounts for each of the two cycles.

Should an Employer Apply? In deciding whether to apply for HHS certification of its plans, an employer will want to consider the administrative burdens associated with applying for and participating in the program. To determine whether its plan would be a good candidate for certification, the employer will need to work closely with the claims administrator or insurer of its group health plans to collect and analyze the claims data for its early retirees (which may need to be aggregated if an employer has multiple plans) and review its policies and procedures to see whether they satisfy the required generation of cost savings for "chronic and high-cost conditions" and prevention of fraud, waste, and abuse.

Furthermore, it is important to note that the program is temporary and will end once the projected claims total the allotted \$5 billion amount. Since claims will be paid out on a first-in first-out basis, many people believe the program funding will be exhausted well before the statutorily prescribed expiration date of January 1, 2014. (It appears that this end date was chosen because the health insurance exchanges required to be established by that time are expected to provide early retirees with other coverage options.) Employers will want to factor this risk into their analysis of whether to pursue HHS certification of their plans.

If you have questions about the Early Retiree Reinsurance Program, including the application process, or any other questions about the recently passed health care reform legislation, please contact a member of Faegre & Benson's Benefits and Executive Compensation practice team.