

Compliance Alert

FEDERAL AND STATE REGULATORY GUIDANCE FOR HEALTH & WELFARE PLANS



May 11, 2010

CONGRESS IMPLEMENTS EARLY RETIREE REINSURANCE PROGRAM AS PART OF THE PATIENT PROTECTION AND AFFORDABLE CARE ACT



Federal & State Advisors

MICHAEL BEST
& FRIEDRICH LLP
LEGAL ADVISOR

Strategic HR

Overview

The recent health care reform law enacted in March 2010 included a subsidy for employers to encourage them to provide, or continue providing, early retiree health plan coverage. The Early Retiree Reinsurance Program ("Early Retiree Program") will pay reimbursements to employers to help them maintain coverage for early retirees age 55 and older who are not yet eligible for Medicare. The Early Retiree Program will be implemented and administered by the Department of Health and Human Services ("DHHS").

The amount of the reimbursements available to a major medical plan is up to 80% of claims costs for early retiree health benefits between \$15,000 and \$90,000. These limits apply and claims are filed per individual. A cap of \$5 Billion is available to group health plan sponsors for reimbursements through the Early Retiree Program.

A plan sponsor may not use reimbursements as general revenue, but must use them to reduce plan sponsor and/or plan participant costs related to the plan, such as paying for increases in the sponsor's premium or increases in other health benefit costs, or reducing participants' premium contributions, co-payments, deductibles, co-insurance, or other out-of-pocket costs.

Who may benefit from the Early Retiree Program?

Sponsors of employment-based group health plans that provide health care benefits to early retirees (e.g., those retirees age 55 or over who are not eligible for Medicare) are eligible to apply to participate in the program. Such plans may also cover active employees, as well as early retirees. Employment-based group health plans include plans that are insured, self-insured, or sponsored by state or local governments (but not the federal government), non-profits, religious entities or unions.

When is the Early Retiree Program effective?

Reimbursements may be made for certain claims incurred after June 1, 2010. The Early Retiree Program ends when the \$5 Billion cap is exhausted or on January 1, 2014, whichever is later.

How does a plan sponsor participate?

A plan sponsor must submit an application for certification to the Secretary for DHHS ("Secretary"). One application must be filed for each plan, but a new application is not required to be filed for each plan year. Applications are evaluated on a first-come, first-served basis. Incomplete applications may be rejected. The application form is not yet available.

It is expected that the application form will be available by the end of June, 2010. DHHS expects demand for reimbursements to exceed the amount of available funding. This fact, combined with the first-come, first-served requirement, makes it important to diligently file an application.

In addition to submitting an application, plan sponsors must:

- Have in place programs and procedures that have generated or have the potential to generate cost savings with respect to participants with chronic and high-cost conditions.
- Have a written agreement with either its health insurance issuer or the plan, if self-funded, to disclose certain personal health information ("PHI") in the forms of reimbursement claims on their behalf to the Secretary.
- Certify that either their health insurance issuer or the plan have policies and procedures in place to detect and reduce fraud, waste and abuse.
- Identify all benefit options that may be claimed by an early retiree.
- Project the amount of reimbursements the sponsor is likely to seek in the next two years.

Although the formal application is not yet available, a plan sponsor who is interested in obtaining this reimbursement should consider implementing the above points quickly.

How does a plan sponsor submit claims?

Once a plan has applied for and received a certification from the Secretary, it may begin submitting claims. Claims may only be submitted for reimbursement after the plan or insurer has paid the claim. For an insured plan, the claims costs are those that are paid by the insurer, not the premium paid by the plan sponsor to the insurer. An insurer can submit claims on behalf of the plan.

Claims incurred between the start of the plan year (often January 1) 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. Claims may not be submitted until the early retiree's total paid claims costs for health care benefits for the plan year exceed \$15,000. After the claims costs exceed \$90,000 for an early retiree during a plan year, no additional claims may be submitted for that early retiree.

Reimbursements may be made for an early retiree's spouse and dependents of any age, if they are covered under the plan. Claims are aggregated, which means that all claims incurred by the early retiree and his or her spouse and dependents are aggregated during the plan year.

Reimbursable claims include all types of medical claims, including mental health and prescription drugs, but does not include HIPAA "excepted benefits" (e.g., stand-alone dental or vision plan) or long-term care benefits.

The participant's deductibles, co-payments and/or co-insurance amounts may be included in the calculation of the claims costs. However, the plan sponsor must submit evidence that the early retiree actually paid his or her portion of the claim which may be difficult to obtain, so plan sponsors may choose to request reimbursement only for the portion of the claim paid by the health insurance issuer or the plan.

Additional Resources

A Fact Sheet can be found here: <http://www.healthreform.gov/affordablecareact.html>

Regulations interpreting the law can be found here: <http://www.hhs.gov/ociio/regulations/gate.pdf>