

RE: The Early Retiree Reinsurance Program
FROM: Brian Morris, John Mallows, and John Goodner*
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The "Patient Protection and Affordable Care Act of 2010" (P.L. 111-148) includes an Early Retiree Reinsurance Program to encourage and assist employers and other plan sponsors to continue providing health insurance to early retirees (i.e., those not yet eligible for Medicare). The program is intended to offer plan sponsors incentives to maintain early retiree benefits until the health insurance Exchanges become operational in 2014. On May 5, 2010, the Secretary of Health and Human Services (HHS) issued an interim final rule that implements the Program and specifies the qualifications for eligibility, steps plan sponsors must take to apply for reinsurance, and requirements for reimbursement. On June 2, 2010, HHS released a draft version of the application and instructions.

Definition of Early Retiree

Under the Program, an "early retiree" is a plan participant who is age 55 or older, enrolled in health benefits under an employer-sponsored plan, not an active employee of the plan sponsor, and not eligible for coverage under Medicare. "Early retiree" also includes the enrolled spouse, surviving spouse, and dependents of such individuals.

Effective Dates

The Program begins on June 1, 2010, and ends on January 1, 2014. However, program funding is currently limited to \$5 billion, which will be exhausted well before 2014.

Eligibility

A plan sponsor is eligible to participate in the Program if the plan sponsor submits a timely application containing the required information to the Secretary of HHS and the application is approved. The plan must be a group health plan based on employment, but can be sponsored by employers (including governmental employers), trade associations, unions, or VEBAs.

Since applications will be reviewed on a first-come/first-served basis and Program funding is limited, it is important that plan sponsors become certified as quickly as possible. The application process is anticipated to be similar to the process under the Medicare retiree drug subsidy program. A plan sponsor's application for certification must be signed by an authorized representative, and the following information must be submitted with the application:

- The plan sponsor's Tax Identification Number,
- The plan sponsor's name and address, and
- Contact name, telephone number and e-mail address.

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In addition, the application must include an agreement between the plan sponsor and HHS that is signed by the plan sponsor's authorized representative and includes:

- An assurance that the plan sponsor has a written agreement with a health insurance issuer or group health plan regarding the disclosure of information as required for participation in the Program;
- An acknowledgement that the information in the application is being provided to obtain federal funds, and all subcontractors acknowledge that information provided in connection with any subcontract is used for purposes of obtaining federal funds;
- An attestation that policies and procedures are in place to protect against fraud, waste, and abuse, and to timely comply with requests from the Secretary to produce information about such policies and procedures and their effectiveness; and
- Any other terms as required by the Secretary.

The application must also include a description of how the plan sponsor will use reimbursements received under the Program in accordance with the Program's requirements, including:

- How reimbursements will be used to: (1) reduce premium contributions, co-payments, deductibles, co-insurance or other out-of-pocket costs for plan participants (including participants who are not early retirees); (2) reduce health benefit premium costs for the sponsor; or (3) reduce any combination of such costs;
- What procedures or programs the plan sponsor has in place that have generated (or have the potential to generate) cost savings with respect to plan participants (including participants who are not early retirees) with chronic and high cost conditions;¹ and
- How reimbursements will be used to maintain the plan sponsor's level of contributions to the plan.

Other required application items include:

- The projected amount of reimbursements to be received from the Program for the first two plan-year cycles, with specific amounts for each of the two cycles;
- A list of all benefit options under the plan that may include early retirees for whom the plan sponsor will be seeking reimbursement; and
- Any other information required by the Secretary.

Once received, the Secretary will review the application and determine whether the plan and plan sponsor are eligible for the Program. This certification must be obtained before the plan sponsor can request reimbursements. Applications will be processed in the order received and incomplete applications will be rejected. Revised applications will be processed based on the date the revised submission is received, not based on the date of the original, rejected submission.

A separate application is not required for each plan year, but the application must identify the plan year start and end date cycle (i.e., the starting month and day, and ending month and day), for which the plan sponsor is applying.

¹ High cost conditions generally are those conditions for which \$15,000 or more in health benefit claims are likely to be incurred in a plan year by a participant.

Reimbursement

On or after June 1, 2010, certified plan sponsors are eligible for reimbursement of 80% of the claims incurred by an early retiree between \$15,000 and \$90,000 per plan year.² As previously noted, "early retiree" includes spouse, surviving spouse and dependents. The claims must be for health benefits under the health plan, such as medical, surgical, hospital and prescription drug benefits, but not ancillary benefits such as dental or vision.

Claims submitted under the Program must be for claims incurred during the applicable plan year for which reimbursement is requested. Claims for an early retiree cannot be submitted for reimbursement until the total health care claims paid for that early retiree (incurred during that plan year) exceed the cost threshold (\$15,000 for plan years beginning prior to October 11, 2011).

In addition to the claims submitted for reimbursement which are in excess of the cost threshold, the submission must also include claims incurred by that early retiree which are below the cost threshold. This is to demonstrate that the cost threshold is met for that early retiree. Once the reimbursement is received by the plan sponsor, it must be used to reduce premiums, contributions, deductibles or similar items of the plan. It cannot be used as revenue for the employer.

Claims include the amounts paid by both the plan sponsor and the early retiree. In order to receive reimbursement for the portion of the claim paid by an early retiree, the plan sponsor must submit evidence that the early retiree actually paid his or her portion of the claim. Plan sponsors may find that collecting evidence for the portion paid by early retirees is burdensome and decide to submit only the portion paid by the plan sponsor.

Action Items for Plans with Early Retirees

As mentioned above, plan sponsors intending to apply to this program should act as quickly as possible. The following steps may be helpful in preparing the application:

Action Item 1: Collect Basic Information. In addition to identifying the plan sponsor's name, contact information, and Tax Identification Number, Program applicants must also provide the following basic agreements:

- **An assurance that the plan sponsor has a written agreement with a health insurance issuer or a group health plan regarding the disclosure of information required for participation in the Program.** The draft application requires acknowledgement of this through the Plan Sponsor Agreement. No additional documentation is required as part of the application. The interim rules state that the burden is on the plan sponsor to "develop, sign and maintain" such agreements.
- **An acknowledgement that the information in the application is being provided in order to obtain federal funds, and all subcontractors acknowledge that information provided in connection with any subcontract is used for the purposes of obtaining federal funds.** With regard to the written agreement between the plan sponsor and the group health plan for the applicant, this agreement is necessary because of HIPAA protections of certain health information. This information technically belongs to the plan

² Beginning October 2011, the \$15,000 to \$90,000 dollar range will be adjusted for increases in the Medical Cost Consumer Price Index for urban consumers.

itself (not the plan sponsor), so the regulations require that the plan sponsor have an agreement in place with the group health plan directing the plan to disclose this information to HHS. The preamble to the regulations says that this type of disclosure would fall under the "required by law" exception in the privacy rules. This agreement could be a side agreement between the parties or a modification to an existing agreement.

- **An attestation that policies and procedures are in place to protect against fraud, waste, and abuse, and to timely comply with requests from the Secretary to produce information about such policies and procedures and their effectiveness.** The applicant should collect and review existing fraud, waste and abuse policies and procedures as well as any reports detailing the effectiveness of these programs. The applicant's medical and prescription drug plan vendor(s) will likely have their own such program(s).

Comment: Detailed descriptions of each will not be required at the time of application. However, this information should be readily available in order to comply with requests for such detail from HHS, as may be required.

Action Item 2: Identify How the Funds Will Be Used. The application for certification must also include a description of how the plan sponsor will use the reimbursements received under the Program. As noted above, reimbursements may not be used as revenue for the employer. To prepare this description, the plan sponsor should:

- Decide how the funds will be used to: (1) reduce premium contributions, co-payments, deductibles, co-insurance or other out-of-pocket costs for plan participants; (2) reduce health benefit premium costs for the sponsor, or (3) reduce any combination of such costs;
- Identify how the funds will lower costs for participants, the plan sponsor, or both;
- Identify how the funds will be used to maintain the plan sponsor's level of contribution to the plan; and
- Identify procedures or programs that the plan sponsor has in place to generate cost savings with respect to plan participants with chronic and high-cost conditions.

The applicant will need to outline the programs contained within the existing medical and prescription drug plans that contribute toward cost savings (or potential cost savings) with regard to early retirees with chronic or high-cost conditions. The applicant should also perform an internal review (as well as a review with its plan vendors) of any programs that are in place that may satisfy this requirement. For example, disease management and large-case management functions performed by the vendors on behalf of the applicant would likely meet the requirements.

Action Item 3: Project Potential Reimbursement. Applicants should work with vendors, benefit consultants, or internal staff to develop projections of the potential reimbursement from this program for the first two plan cycles. The first plan cycle will normally start on June 1, 2010 and conclude on the last day of the plan year. The second plan cycle would be the full plan year following the first cycle. During the first plan cycle, claims incurred during the plan year, but prior to June 1, 2010, can be used to satisfy the threshold claim amount, but are not eligible for reimbursement.

Action Item 4: Prepare to Submit Claims. Applicants should discuss data submission services with their plan vendors, data vendors, or benefit consultants to determine who is best equipped to provide the applicant with the necessary data for transmission to HHS. However, data requirements have not yet been identified.

Conclusion

The Early Retiree Reinsurance Program can assist employers to continue providing health insurance to early retirees, at least while the funds are available. However, because funding is limited, it is important that plan sponsors become certified as quickly as possible. Preparing the information required for certification will play a key role in this process.

The marked-up draft of the Early Retiree Reinsurance Program application is available at the link below. The application has yet to be approved, but we expect this to be done soon.

http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201005-0938-012