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HEALTHCARE REFORM

EMPLOYER REIMBURSEMENTS FOR EARLY RETIREE MEDICAL CLAIMS

Application Now Available – First-Come, First-Served!

The Healthcare Reform Act includes temporary reimbursements to sponsors of employment-based health plans for early retiree medical claims. This early retiree reinsurance program is effective for claims incurred beginning June 1, 2010 and ends no later than January 1, 2014 (or sooner if the \$5 billion in federal funding runs out). Reimbursements are available on a first-come, first-served basis.

The program was designed to increase access to health benefits for early retirees by making the cost more affordable to plan sponsors and participants. Employment-based health care coverage for early retirees (age 55 and older and not yet eligible for Medicare) has declined in recent years. To avoid a gap in health insurance coverage from the end of employment to Medicare eligibility, an early retiree may be required to purchase individual health insurance. Due to the early retiree's age or chronic medical condition (e.g., diabetes or heart disease), individual health insurance coverage is often unaffordable or inaccessible.

Application Now Available

The application to participate in the reinsurance program and FAQs about the program are now available at: <http://www.hhs.gov/ociio/regulations/index.html>.

Background and Guidance

We refer to the Patient Protection and Affordable Care Act (enacted March 23, 2010) and the Health Care Reconciliation Act (enacted on March 30, 2010) together as the "Healthcare Reform Act." A number of provisions included in the Healthcare Reform Act impact employers and employer-sponsored benefits. Watch for our additional alerts as new developments occur or guidance affecting employers is issued.

On May 5, 2010, the Department of Health and Human Services (HHS) issued an interim final rule that interprets and provides guidance regarding the early retiree reinsurance program. This alert includes a brief summary of the program.

Requirements for Participation

The reinsurance program provides reimbursements to plan sponsors of eligible "employment-based plans" who submit an application and whose application is approved by the Secretary of HHS.

Employment-Based Plan. The program applies to health benefits (including prescription drugs) provided by self-funded plans or through the purchase of insurance. The plan must be a group health plan maintained by one or more employers that provides health benefits to early retirees. The plan may be maintained by private employers, state or local governments, employee organizations, voluntary employees' beneficiary association, a committee appointed to administer such plan or a multiemployer plan. The plan must have programs and procedures in place to generate cost savings for participants with chronic and high-cost conditions.

Application Process. The sponsor must submit an application for the plan and the application must be approved before the sponsor may submit claims for reimbursement. Applications must be complete and are processed in the order in which they are received.

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An incomplete application will be denied and the employer will be required to submit a new application, which will move to the "bottom of the list" for consideration. Funding for the temporary program is limited and is expected to run out before all applications are considered. The application is 10 pages and includes information about the plan sponsor, the plan (e.g., how the reimbursements will be used, the projected amount of reimbursements for the first two plan years, early retiree benefit options, and what procedures the sponsor has in place to generate cost savings related to chronic and high-cost conditions), a plan sponsor agreement and electronic funds transfer information.

Reimbursement Rules. Claims may only be submitted for health benefits for eligible individuals that have been *incurred and paid* during the plan year and that exceed the threshold amount. Reimbursement requests must include a list of early retirees for whom claims are being submitted, and documentation of the actual costs of the items and services.

Payments to Employers

Payments under the program are made to sponsors of employment-based plans. Payments are calculated based on "actual amounts" for claims incurred and paid in excess of \$15,000 (threshold amount) and less than \$90,000 (maximum amount) per eligible individual in a plan year. Eligible individuals include early retirees and their enrolled spouse, surviving spouse and dependents.

The reimbursement rate is 80 percent of eligible claims for the individual for the plan year between the threshold (\$15,000) and maximum (\$90,000) amounts. The actual amount of claims incurred and paid is determined net of all discounts, subsidies, coupons, rebates and other negotiated price concessions. For 2010, the reinsurance amount is based only on claims incurred on and after June 1, 2010 that fall between the threshold and maximum amounts.

Use of Reimbursements

The sponsor must continue to maintain its level of contributions to the plan. The application must include a summary of how the sponsor will use the reimbursements. The reimbursements may be used to:

- reduce premium contributions, co-payments, deductibles, coinsurance, or other out-of-pocket costs for plan participants;
- reduce health benefit or health benefit premium costs for the sponsor; or
- any combination of these costs.

Change in Ownership

A plan sponsor is required to notify HHS at least 60 days in advance of a change in ownership of the plan sponsor. When there is a change in ownership that results in a transfer of the liability for health benefits, then the existing plan sponsor agreement is automatically assigned to the new owner.

Appeals and Recordkeeping

If a plan sponsor's reimbursement request is denied, in whole or in part, an appeal of the adverse determination must be submitted to the Secretary of HHS within 15 calendar days. No appeal is available if the denial is based on the lack of funds. Records to support the reimbursement and use of funds must be maintained for at least six years after the plan year in which the costs were incurred.

If you have any questions about this HRO Alert, please feel free to contact the attorneys listed on the first page or the HRO attorney with whom you regularly work.

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