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DHHS Announces Details of Early Retiree Reinsurance Program

The recently enacted Affordable Care Act (ACA) (combining the Senate passed Patient Protection and Affordable Care Act and the House passed Health and Education Reconciliation Act) mandates that the Department of Health and Human Services (DHHS) establish a temporary Early Retiree Reinsurance Program (ERRP) that will reimburse plan sponsors who provide health benefits to early retirees. The ERRP reimbursement is 80% of the cost of claims incurred by early retirees in a plan year that exceed a \$15,000 claim threshold up to a \$90,000 claim limit (to be indexed for the medical care component of the Consumers Price Index for plan years on or after October 1, 2011).

DHHS issued regulations detailing the rules and procedures for the ERRP on May 5, 2010. The ERRP begins on June 1, 2010, and will expire on the earlier of: (a) January 1, 2014, or (b) when the \$5 billion appropriated for the ERRP is exhausted. Applications will be accepted, and funds distributed, on a first-come-first-served basis. Therefore, employers who wish to take advantage of the ERRP should submit applications as soon as they are available, likely in mid-June.

Who Is Eligible To Be Reimbursed?

- Sponsors of an “employment-based plan” that provide health benefits (i.e., medical, surgical, hospital, prescription drug, and such other benefits as the Secretary of HHS may prescribe) to “early retirees”
- “Employment-based plans” include self-funded and insured group health plans (except federal government plans); state and local government plans; collectively bargained multi-employer plans; and VEBAs
- “Early retirees” are plan participants age 55 and older, who are not eligible for Medicare, not active employees of the employer maintaining or contributing to the plan, and the participant’s spouse, surviving spouse, and dependents who are enrolled in the plan

How To Apply For the ERRP

To apply, an application must be certified by DHHS and must include all of the following

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information. Incomplete applications will be returned and will only be placed in line on the date the completed application is received.

- Sponsor's tax identification number;
- Sponsor's name and address;
- Contact person's name, phone number and e-mail address;
- An agreement between the sponsor and DHHS, signed by the sponsor's authorized representative, attesting that: (i) the sponsor has a written agreement in place with a health insurer or its group health plan allowing disclosure of health information that must be disclosed to meet ERRP requirements, (ii) the sponsor acknowledges that the application is being submitted to obtain federal funds, (iii) policies and procedures are in place to detect and reduce fraud and abuse, and information, records and data will be provided to substantiate the existence and effectiveness of such policies, and (iv) any other terms required by the DHHS;
- A summary of how the reimbursement will be used to reduce the cost of coverage to plan participants and/or maintain the sponsor's level of contributions;
- A description of procedures and policies in place to generate cost savings for participants with chronic and high-cost conditions;
- Projected amount of reimbursement to be received for the first two plan year cycles; and
- A list of all benefit options under the plan for which an ERRP reimbursement may be claimed.

Once the application has been certified, the sponsor need not reapply each year, but will be obligated to provide updates as to any changes in the information submitted or to correct any inaccuracies. If there is a change in the ownership of the sponsor, the Secretary must be notified 60 days before the effective date of the change.

Submitting Claims and Appealing Determinations

Once the sponsor has obtained a certification for its plan, claims can be submitted for reimbursement. Reimbursement is always conditioned on the availability of funds.

- Claims must be for expenses incurred and paid during the plan year for an early retiree. Pending claims are not eligible for reimbursement

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- Claims for each early retiree below the \$15,000 threshold should be submitted to substantiate that the threshold has been met
- Claims must include the following information: (i) the treatment(s) or service(s) provided, (ii) the date they were provided, (iii) the name of the person to whom they were provided, (iv) the name of the health care provider, and (v) the cost of the treatment(s) or service(s), net of any known negotiated price concessions
- Claims can include both the employee's costs (with substantiating documentation) and the plan's cost, net of price concessions, but claims cannot be made for the cost of insurance premiums
- Claims for each early retiree for the plan year under all benefit programs under the plan must be combined
- Claims incurred prior to June 1, 2010 will count towards the \$15,000 claim threshold and the \$90,000 claim limit, but only claims incurred on or after June 1, 2010 will be eligible for reimbursement
- Claims may be submitted for a given plan year only upon approval of an application for that plan year

Sponsors can challenge DHHS' reimbursement determination, but must do so in writing, within 15 calendar days, specifying the findings or issues with which it disagrees and the reasons for the disagreement. There is no appeal from a determination if the denial is based on the unavailability of funds in the ERRP. No hearings, nor any phone or oral presentations are allowed. The decision of the Secretary of DHHS is final and binding.

Action Steps

Sponsors of group health plans should take note of this opportunity to be reimbursed under the ERRP, be aware of the application requirements and move quickly, if they wish to take advantage of this program.

If you have any questions about the ERRP or any other changes imposed by the ACA, or would like assistance in applying for the ERRP, please contact any of the Honigman attorneys listed on this Alert.