



The Early Retiree Reinsurance Program - The Equivalent of the Oklahoma Land Rush

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While some employers are not looking forward to many of the mandates of the March 23, 2010 Patient Protection and Affordable Care Act (the "Affordable Care Act"), the Early Retiree Reinsurance Program (the "Program") of the Affordable Care Act provides reimbursement to certain employers of up to 80% of the health benefit costs (net of negotiated price concessions) attributable to an early retiree's medical claims that exceed \$15,000, but are below \$90,000 for each plan year.¹

Early retirees are individuals age 55 and older who are enrolled in a certified employment-based plan, and not eligible for coverage under Medicare. Moreover, as the name of the Program suggests, early retirees are not active employees of an employer. Coverage includes the retiree's spouse and dependents.

In order for an employer to be eligible for reimbursement under the Program, the employer must maintain an employer-based health plan. The health plan must be certified by the Secretary of HHS before claims can be submitted and a reimbursement request made under the Program. Applications for the Program will be processed by HHS on a first-come, first-serve basis. The actual application will be available in late June and the contents of the proposed application are set forth in interim final rules issued on May 5, 2010 at 45 C.F.R. § 149.40.

To be prepared for the application process, it is important to gather the information for the application beforehand. Specifically, the application will require gathering: (1) the employer's tax identification number, name and address, and (2) the employer's contact name, telephone number, and e-mail address. The application also requires the employer to create (i) a summary of how the applicant will use the reimbursement received under the Program to meet the requirements of the Program (including how the plan sponsor will use the funds to reduce participants' costs and how the employer plans to implement programs to generate savings for plan participants); (ii) a projected amount of reimbursement to be received over each year of the two

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plan year cycles; and (iii) a list of all benefit options under the plan that early retirees and dependents may claim.

To ultimately qualify, the employer must show that the plan:

1. has been certified by the Secretary of HHS based upon its filed application;
2. includes programs and procedures that have generated or have the potential to generate cost savings with respect to plan participants with chronic and high cost conditions. (One example provided by the interim regulations is a diabetes management program, which includes aggressive monitoring and behavioral counseling in order to prevent complications and unnecessary hospitalization, which might lead to costs in excess of \$15,000 for a plan year for each diabetic participant);
3. makes available information, data documents, and records concerning the plan as requested by HHS, which records must be maintained for six years after the expiration of the plan year in which the costs were incurred;
4. has a written agreement between the sponsor and the health insurance issuer (the health insurer for insured plans or the actual plan for self-insured plans) requiring the insurer or self-insured plan to disclose information on behalf of the plan sponsor to HHS to demonstrate compliance with the Program; and
5. shows that it has policies and procedures to protect against fraud, waste and abuse under the Program and agrees to comply timely with the request from the Secretary of HHS to produce the policies and procedures and any documents or data to substantiate the implementation of the policies and procedures and their effectiveness concerning fraud and waste.

Although the Program's application will be available in late June or early July, health care costs incurred, as of June 1, 2010 and thereafter, will be eligible for reimbursements and health care costs from the beginning of the plan year will count towards meeting the \$15,000 threshold. For example, if the plan year is a calendar year, expenses incurred between January 1 and May 30, 2010, will count towards satisfying the \$15,000 threshold but only expenses incurred after June 1, 2010 are eligible to be reimbursed.

The sponsor must use the reimbursement from the Program to (1) reduce the sponsor's health benefit premiums or health benefit costs or (2) reduce the health benefit premium contributions, copayments, deductibles, coinsurance or other out-of-pocket costs for plan participants. Reimbursement under the Program must not be used as general revenue for the benefit of the sponsor. 45 CFR § 149.200.

The Office of the Press Secretary of the White House issued a news release in May, which concluded that large firms providing retiree coverage had dropped from 66% in 1988 to 31% in 2008 and that the Affordable Care Act setting aside some \$5 billion for financial assistance to employers was to help employers maintain coverage for early retirees who are not eligible for Medicare. Since the Program ends on the earlier of January 1, 2014, or when the earmarked funds have been spent, it is imperative for employers to act timely if they wish to be eligible for the first significant handout by the Affordable Care Act.

¹Medical claims include medical, surgical, hospital, prescription drugs and other claims determined by the Secretary of the Department of Health and Human Services ("HHS"). 45 CFR § 149.2.