

HHS Issues Draft Application for New Early Retiree Reimbursement Program

Hinshaw Alert

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The Patient Protection and Affordable Care Act requires that the U.S. Department of Health and Human Services (HHS) establish the Early Retiree Reinsurance Program (the Program), which is designed to provide federal reimbursement to participating plan sponsors for a portion of the costs of providing health coverage to qualifying early retirees. This Alert summarizes the key elements of the Program and reviews the steps that plan sponsors must take in order to apply for Program reimbursements.

On June 7, 2010, an application for participation in the Program was published in draft form on the HHS website. The application process has not yet been opened, but will begin sometime prior to June 30, 2010. The date on which applications will begin to be accepted, along with information as to how and where to send completed applications, will be posted on the HHS website in the coming weeks. Applications will be processed in the order in which they are received, and incomplete applications will be denied and must be resubmitted.

Overview of the Program

Group health plans that offer coverage to early retirees may apply to receive reimbursement for claims incurred by those early retirees. For purposes of the Program, an “early retiree” is considered to be a current participant in a group health plan who is between the ages of 55 and 64, is not an active employee, and is not eligible for Medicare or any other employer-based coverage. The term “early retiree” will also include the enrolled spouse, surviving spouse, and dependents of such covered individuals.

Plan sponsors whose applications are approved may receive reimbursement for claims incurred by eligible early retirees within a specified dollar range. The reimbursement amount is equal to 80 percent of the annual aggregate claims for each participant between \$15,000 and \$90,000. Significantly, while the sponsor may only receive reimbursement for the claims of early retirees and their spouses, surviving spouses and dependents, the reimbursement funds may be used to lower health benefits costs for *all* plan participants, including active

employees.

The Program is available to “employment-based plans,” a term which is broadly defined to include any group health benefit plan maintained by a private employer, state or local government, employee organization, voluntary employees’ benefit association, a committee or board of individuals appointed to such plan, or a multiemployer plan. Both self- and insurance-funded plans may apply.

Program Requirements

To participate in the Program, a plan sponsor must satisfy the following requirements:

1. The sponsor’s employment-based plan must be certified by HHS (certified through the application process, explained below).
2. The sponsor’s employment-based plan must include 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, as defined in the regulations.
3. The sponsor must make available information, data, documents and records to HHS for the purpose of determining the reimbursement and reimbursement-related oversight.
4. The sponsor must have a written agreement with its health insurance issuer or employment-based plan regarding disclosure to HHS of information necessary for the sponsor to comply with the Program.
5. The sponsor must ensure that policies and procedures to protect against fraud, waste and abuse under this program are in place, and must comply with any request from HHS to produce such policies and procedures.

Preparing the Application

HHS published the draft application to give applicants time to assemble information required under the Program. At this time, the only anticipated change from the draft application to the official application is the addition of certain information with regard to submitting the application. Therefore, plan sponsors who are interested in the Program should now begin collecting the information that will be needed to complete the application.

Substantive requirements of the application include the following:

1. A sponsor agreement signed by an authorized representative, which acknowledges or attests to the Program requirements explained above.
2. A summary indicating how the sponsor will use the reimbursement to reduce: (i) premium contributions, co-payments, deductibles, coinsurance or other out-of-pocket costs for the plan participants; (ii) health benefits costs or health benefits premium costs for the sponsor; or (iii) any combination of these costs.
3. A summary of the procedures or programs the sponsor has in place that have generated, or have the potential to generate, cost savings with respect to plan participants with chronic and high-cost conditions, along with the specific identification of those conditions.
4. A summary of how the sponsor will use the reimbursement to maintain its level of contribution to the plan.

5. The projected amount of reimbursement to be received under the Program for the first two plan-year cycles, with specific amounts for each of those cycles.
6. List of all benefit options under the employment-based plan that any early retiree for whom the sponsor receives program reimbursement may be claimed. A “benefit option” is defined as a particular benefit design, category of benefits, or cost-sharing arrangement offered within an employment-based plan.

Any employer providing early retiree coverage to its former employees should seriously consider submitting an application under the Program. As funding for the Program is limited to \$5 billion, HHS expects more requests for reimbursement than there are funds to pay them. Therefore, to ensure that a timely and complete application will be submitted as soon as possible, plan sponsors interested in applying should now diligently prepare for the application process based on the requirements from the regulations and the draft application form.

For more information, please contact [James D. Harbert](#), [Lisa M. Burman](#), [Anthony E. Antognoli](#), or your regular [Hinshaw attorney](#).

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