



Health Care Reform Express



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Five Billion Dollars Available to Help Employers Maintain Health Insurance for Early Retirees—If They Act Quickly

In an effort to encourage employers to continue to offer health insurance to early retirees and their spouses, surviving spouses and dependents, the Patient Protection and Affordable Care Act appropriated five billion dollars for an Early Retiree Reinsurance Program (the Program). For purposes of the Program, “early retirees” are those who are (a) age 55 or older but not yet eligible for Medicare and (b) not active employees of an employer currently contributing to an employer-based plan.

The Program will temporarily reimburse the sponsors of employment-based health plans for 80 percent of the actual cost of medical claims for each early retiree between \$15,000 and \$90,000 in a plan year, subject to annual adjustment by the Medical Care Component of the Consumer Price Index. On May 5, 2010, the Department of Health and Human Services (HHS) issued an Interim Final Rule establishing the Program, which will begin June 1, 2010.

HHS and others expect that the applications for these funds will exceed the appropriated amount well before the January 1, 2014, ending of the Program. Thus, employers will need to quickly gather the necessary information and submit a complete and thorough application as soon as HHS begins accepting applications.

Eligibility and Participation Requirements

The Program is open to group benefit plans maintained by private employers, state and local governments, non-profit organizations and others, including both fully-insured and self-funded plans. To be eligible, however, the plan must have in place programs and procedures that have generated (or have the potential to generate) cost-savings for participants with chronic and high-cost conditions. Additionally, any amounts paid to a plan must be used to lower costs for the plan. For example, reimbursement may be used to reduce or offset future increases in the plan sponsor’s health benefit costs or premiums or plan participants’ contributions, co-payments, deductibles, etc. Reimbursement may not, however, be used as general revenue.

Documentation Requirements

Documentation of actual costs must be submitted with claims for reimbursement, and plans will be subject to audits to protect against fraud, waste and abuse. A plan sponsor must have a written agreement with the health insurance issuer or the employer-based plan to allow disclosure of

“protected health information” to HHS; this will allow the issuer or plan to provide to HHS claims information required for administration of the Program and allow HHS to audit the Program.

Application

To receive reimbursement, a plan must apply to HHS and be “certified” as having satisfied the eligibility and application requirements. An application must include a projection of the amount of reimbursement that would be received by the plan during the first two plan years of the Program.

Applications will be processed by HHS on a first-come, first-served basis, and HHS has the discretion to stop accepting applications based on its projected payments under the Program vis-a-vis the five billion dollars available for the Program. Applicants will be expected to perform their due diligence when applying so as to have a complete application upon first submission. The Program will end on January 1, 2014, or whenever the five billion dollars has been spent, whichever occurs first.

Time Is Of The Essence

As noted, HHS and others expect reimbursement applications to exceed the funds available for the Program. Accordingly, employers interested in applying for the Program need to act quickly. They should immediately review the Program and application requirements detailed in the [HHS Final Interim Rule](#) and begin gathering data concerning eligible individuals whose medical expenses are likely to exceed \$15,000 for the current plan year. Employers also should watch for any additional rules or guidance from the HHS, submit a complete and thorough application as soon as HHS begins accepting applications, and contact legal counsel with any questions.

This Bulletin is one of a series prepared by the Bricker & Eckler Health Care Reform Task Force on various provisions contained in the Patient Protection and Affordable Care Act and regulations adopted thereunder. This Bulletin was prepared by Elizabeth C. Stock, Faith M. Williams and James G. Petrie. Please contact Faith Williams, Jim Petrie, Bette Squeglia or any member of the Health Care Reform Task Force for further information. The Bricker & Eckler Health Care Reform web site can be assessed at www.bricker.com/reform.

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