

HEALTH REFORM IMPACT

What you need to know NOW

NEWS FOR THE CLIENTS AND FRIENDS OF BASS, BERRY & SIMS PLC

Early Retiree Reinsurance Program: Time to Get in Line

May 28, 2010

A new temporary reinsurance program designed to encourage employers to continue offering health benefits to early retirees becomes effective next week. Beginning June 1, 2010, and continuing until January 1, 2014, the program will help offset the cost of early retiree programs under employer sponsored health plans. Participation in the program, however, is not automatic as employers and their health plan designs must be certified by the Department of Health and Human Services ("HHS") as eligible to participate. In addition, the overall cap of \$5 billion available under the program means funds will likely be exhausted prior to 2014. Because applications will be processed in the order they are received, interested employers should take immediate steps to ensure they complete required application materials in a timely manner.

The program will reimburse certified employers for a portion of the cost of providing health benefits to their early retirees, including the retirees' spouses, surviving spouses and dependents. Early retirees include participants who are age 55 or older, not eligible for Medicare and not actively employed by the plan sponsor. The reimbursement amount will be 80% of the cost of the early retiree's health claims between \$15,000 and \$90,000 per year that are paid by the health plan. Costs for an insured health plan include actual claims paid but not premiums for coverage.

In order to participate in the program, employers must file an application with HHS. The application process is intended to be similar to that for requesting reimbursements under the Medicare Part D Subsidy Program and, among other things, must include:

- identifying information regarding the employer;
- a summary of how the employer will use the reimbursements;
- a summary of plan features that generate (or have the potential to generate) cost savings for participants with "chronic and high cost" conditions;
- the projected health reimbursement amounts for the first two plan year cycles, with specific amounts for each cycle;
- a list of all benefit options under the health plan; and
- an attestation that anti-fraud, waste and abuse policies and procedures are in place.

Sponsors of self-insured plans will likely have to communicate with their claims administrator to obtain some of this information, which will require compliance with certain HIPAA mandates.

Some flexibility is allowed in defining "chronic and high cost" conditions for purposes of the cost-saving requirement, but eligible conditions are generally those for which the plan expects to spend \$15,000 or more on an eligible participant in a given plan year. The plan need not provide cost-saving measures for all chronic conditions and may limit the measures to particular conditions. Examples of acceptable "cost saving" measures include more generous cost-sharing structures (e.g., lowering or eliminating deductibles for office visits related to the condition) and preventive benefits/monitoring programs for the condition.

HHS intends to issue an application form with detailed instructions in mid- to late-June. HHS will process applications on a first-come, first-serve basis until the projected reimbursements reach the \$5 billion cap. At that time, HHS has the authority to stop accepting applications. Because incomplete or inaccurate applications will be returned and applicants who wish to correct their application will have to reapply (the initial application will not retain its original filing date), it is critical that applications be complete and accurate upon initial submission.

Reimbursements under the program are not taxable to employers but must be used to lower plan costs (e.g., future premiums, contributions, co-pays, deductibles, co-insurance or other out-of-pocket costs for plan participants). While reimbursements cannot be used as general revenue of the plan sponsor, they can be used to benefit all plan participants (retirees and non-retirees), including active employees and their spouses and dependents.

Given the limited availability of funds and the resulting incentives to apply early, employers should immediately gather the required documentation and data to complete the application process. Employers will also want to evaluate whether plan design changes are needed to participate in the program or whether such changes will adversely impact the health plan's "grandfathered" status, which could unintentionally expose the plan to full compliance with all provisions of the health reform legislation.

If you have any questions regarding the information in this client alert, or with respect to other provisions of the health reform legislation as it relates to your employee benefit plans, please contact any of the attorneys in our Employee Benefits Practice Group listed below.

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