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## Early Retiree Reinsurance Program Compliance – Seven Ounces of Prevention

By: [Virginia B. Evans](#) and [Christopher P. Dean](#)

Health care providers and suppliers with employer-based health plans that participate in the Early Retiree Reinsurance Program (ERRP) should be mindful of the ongoing compliance obligations under ERRP. While many plans considered their compliance programs when submitting their applications to ERRP in 2010, now is a good time for those plans to review the effectiveness of their ERRP compliance programs.

The ERRP was created by the Patient Protection and Affordable Care Act in March 2010. Following the Department of Health and Human Services' (HHS) interim final regulations, ERRP began accepting initial applications by June 2010. To facilitate this new program, HHS continuously updates the seemingly evolving ERRP requirements and guidelines by posting information at the ERRP website, [www.errp.gov](http://www.errp.gov).

Many plans submitted applications to ERRP in 2010 and each participating plan was required to affirm that it had an effective compliance plan before seeking reimbursement from ERRP's \$5 billion fund. As an ERRP participant, each plan agreed to an ongoing obligation to continuously submit correct data, update incorrect data, and report changes in the plan to HHS.

There may be consequences if a participating plan does not meet its ongoing compliance obligations. HHS may audit each plan and, if an audit were to discover material violations of the ERRP regulations or guidance, HHS could recoup all of the funds paid by ERRP to that plan.

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Now that it is 2011, participating plans at health care providers and suppliers should consider taking seven simple steps to reduce both future compliance liabilities and the stress of a potential audit. Because health care providers and suppliers are accustomed to dealing with HHS payment rules that threaten the recoupment of the entire payment from federal funds, those participating plans can learn valuable lessons from their health care compliance brethren and take affirmative actions similar to health care compliance officers to steel themselves against ERRP compliance risks.

**1. Electronic security.** Plans should review HHS' online guidance regarding electronic security and program integrity. For example, plans should terminate the access of former employees who have access to the ERRP Secure Website System and of employees who no longer assist in ERRP reporting. Plans should also verify that password sharing is prohibited and that the narrowly defined user roles for cost reporting and reimbursement requests remain sacrosanct and independent from each other.

**2. Personnel security.** Plans should periodically review the Office of Inspector General Exclusions List to verify that their employees who are involved in the ERRP program are not excluded individuals.

**3. Reimbursement data.** Cost data and reimbursement requests should be updated to reflect discounts, cost concessions and rebates.

**4. Compliance program.** Each plan was required to attest that an effective compliance program was in place to prevent fraud, waste and abuse. One way to have an effective compliance program is to have a functional ERRP compliance plan included in the plan's or entity's internal audit or compliance program.

**5. Use of ERRP funds.** HHS expects each plan to demonstrate that ERRP funds are used to reduce health care costs and not for general revenue. Plans should document that ERRP funds have been used to reduce health benefit premiums or costs, or to reduce individual copays, contributions, deductibles, coinsurance or other out-of-pocket expenses. Self-funded plans should also document the use of

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ERRP funds in place of reserve funds and the use of any interest received on ERRP funds placed in interest-bearing accounts.

**6. Record storage.** Plans are required to keep their records for six years after the conclusion of the plan year in which costs were incurred. HHS can also reopen the plan's participation indefinitely in the case of fraud. For example, a participating plan with a plan year of October 1, 2010, to September 30, 2011, would need to keep its records until at least September 30, 2017, or even longer to rebut allegations of fraud.

**7. Change of ownership.** Each plan is required to notify HHS at least 60 days in advance of a change in ownership. Changes of ownership include the removal, addition, or substitution of a partner or the merger or asset sale of the plan sponsor, unless the sponsor is the surviving entity.

In the rush to keep pace with the rapidly implemented ERRP regulations, guidance, and reimbursement architecture, participating plans may have last focused on compliance when they submitted their plan applications in 2010. Now, it would be wise for plans to review whether their compliance programs are effective.

In this case, taking seven ounces of prevention today may be better for a participating plan than worrying about the potential recoupment of a pound of ERRP funds as a result of an HHS audit in the future.