

## ALERTS AND UPDATES

### Reimbursement Requests for Early Retiree Reinsurance Program May Exceed Funding

May 10, 2010

On May 5, 2010, the Office of the Secretary (the "Secretary") of the U.S. Department of Health and Human Services (HHS) published regulations on the Early Retiree Reinsurance Program (the "Program"), established under the Patient Protection and Affordable Care Act. The Program provides reimbursement to participating employers and plan sponsors for 80 percent of certain costs of providing health coverage to early retirees under a group health plan. Early retirees are defined "as individuals who are age 55 and older but are not eligible for coverage under Medicare, and who are not active employees of an employer maintaining, or currently contributing to, the employment-based plan or of any employer that has made substantial contributions to fund such plan." A group health plan includes plans that provide major medical coverage, and also appears to include account-based plans, such as health reimbursement arrangements (HRAs).

While the Program is effective June 1, 2010, a plan sponsor is required to submit and have an application approved by the Secretary before it can submit claims and make reimbursement requests. Applications will be processed in the order in which they are received. While \$5 billion has been appropriated for the Program, it is anticipated that requests for reimbursement are likely to exceed funds available to pay the requests. In addition, any applications that are incomplete will be denied, and a new application will be required. Therefore, applicants may want to act promptly and efficiently if they wish to receive the Program's benefits.

The regulations also provide guidance on the following issues:

- An early retiree for whom health claims are reimbursable by the Program includes a former employee, as well as his or her spouse, surviving spouse and dependents who are enrolled in an eligible plan.
- A plan must have programs and procedures in place to generate cost-savings, or which have the potential to generate cost-savings, for participants with "chronic and high-cost conditions." Nonetheless, a sponsor would not be required to have such programs in place for all "chronic and high-cost conditions" or to implement new programs and procedures just to participate in the Program.
- "Chronic and high-cost conditions" are defined as conditions for which \$15,000 or more in health-benefits claims are likely to be incurred during a plan year by one plan participant. Diabetes and cancer are provided as examples of such conditions in the regulations.
- For each early retiree, the sponsor will receive reimbursement in the amount of 80 percent of the costs of health benefits (net of negotiated price concessions) for claims incurred during the plan year that are attributed to health-benefits costs between \$15,000 (the cost threshold) and \$90,000 (the cost limit).
- Despite the June 1, 2010, effective date, sponsors may seek reimbursement under the Program for plan years that begin before June 1, 2010. However, while claims up to \$15,000 incurred before June 1, 2010, will count toward the cost threshold, the ultimate reimbursement amount to be paid will be based solely on claims incurred on and after June 1, 2010, that fall between the cost threshold and cost limit for the plan year.
- Reimbursements under the Program shall be used to reduce the sponsor's health-benefits premiums or health-benefits costs or to reduce health-benefits premium contributions, copayments, deductibles, coinsurance or other out-of-pocket costs—or any combination of these costs—for plan participants.

As the Secretary may deny applications that otherwise meet the requirements based on the projected or actual availability of the Program's funding, impacted employers may want to consider beginning the application process without delay.

### **For Further Information**

If you have any questions about this *Alert*, please contact any of the [attorneys](#) in our [Employment, Labor, Benefits and Immigration Practice Group](#) or the attorney in the firm with whom you are regularly in contact.