

REFORM *Update*

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The Health Care Reform Acts included a program to help employers reduce the cost of providing retiree health benefits to early retirees - the Early Retiree Reinsurance Program (ERRP). With a target for launch of “90 days following” the passage of Health Care Reform, ERRP will need to be launched by June 21, 2010.

The Federal government typically follows a lengthy regulatory release process including numerous drafts and comment periods prior to issuing guidance. In the case of ERRP, with a very tight timetable, the standard process has been bypassed and interim final rules were directly released in the May 5th Federal Register.

The application process is expected to be completed by mid-June. The interim rules indicate that ERRP will be structured and implemented to follow a process very similar to the existing process for retiree health plans that apply for the Retiree Drug Subsidy enacted with the Medicare Part D legislation.

Until the ERRP application process is completed, the interim rules may help employers evaluate whether ERRP will benefit their organization.

This *Update* will provide:

- An Overview of ERRP
- Requirements for Eligible Plans
- Reimbursement Requirements
- Action Steps for Employers

Additional details will follow in June addressing the application process.

ERRP Interim Rules Overview

ERRP provides financial assistance to employers that offer health coverage to early retirees and to plan participants. ERRP provides partial reimbursement of claims for certain early retirees as follows:

- Effective date June 1, 2010
- Must be employment-based plan covering early retirees
- Private and public employers with “eligible” self funded or insured health plan

- Early retirees defined as plan participants age 55 or older and not eligible for Medicare
 - ▶ Includes enrolled spouse, surviving spouse, and dependents of such individuals
 - ▶ Retirees cannot be active employees (defined as “current employment status” under Medicare Secondary Payer rules) of an employer that maintains or contributes to an employment-based health plan or contributes to a fund that provides health benefits
- Reimburses 80% of claims between \$15,000 and \$90,000 per participant during plan year
 - ▶ Claims incurred after January 1, 2010 accumulate toward \$15,000 “threshold limit”
 - ▶ Once \$15,000 limit achieved, claims incurred on or after June 1, 2010 can be submitted for reimbursement until \$90,000 “cost limit”
 - ✓ Early retiree John incurs \$40,000 in claims from January 1 to May 31 and then \$70,000 in claims from June 1 until December 31
 - ✓ \$40,000 used only to meet cost threshold – as it is over \$15,000 cost threshold
 - ✓ \$70,000 in claims eligible for reimbursement = \$56,000 (80% or \$70,000)
 - ▶ Threshold and cost limits indexed annually for plan years beginning after October 1, 2011

Funding is limited to five billion dollars. This amount is expected to be exhausted rapidly. Employers may want to prepare to apply now, given the details released in this guidance. Employers that prepare early will have a better chance of applying quickly enough to benefit from the ERRP.

Definition of “Eligible” Health Plan

In order to participate in ERRP, an employer’s health plan must be certified by the Secretary of DHHS and include programs or procedures that have generated or have potential to generate cost-savings with respect to participants with chronic and high cost conditions. Certification appears to be automatic at the point an employer’s application is approved. Application must be approved and the plan sponsor certified before any claims can be submitted for ERRP reimbursement. Certifications can be re-opened within one year for any reason, within four years if evidence exists that information was incorrect, or at any time when fraud is suspected.

A plan sponsor must:

1. Make available all information government requires
2. Establish a written agreement with health insurance issuer or “health plan” regarding ability to access and disclose data - information disclosed will be considered PHI under HIPAA and the written agreement provides health plan with right to provide information to the plan sponsor for ERRP participation
3. Ensure policies and procedures to protect against fraud, waste and abuse of ERRP are in place (sponsor must provide timely response to requests from the Secretary of DHHS to produce policies, procedures, documents, and data to substantiate)

4. Submit application with required documentation in manner and timeframe Secretary requires

Though the application process has not been finalized, it appears likely it will parallel the existing application process for the Retiree Drug Subsidy (RDS). The process will be electronic and requires sponsoring employers to follow very specific steps as part of the process:

1. Employer formally completes application
 - ▶ Signed by authorized representative certifying information in application is true and accurate based on the authorized representative's knowledge
2. Employer identifies starting date and end date for plan
 - ▶ Unlike the annual RDS process, employer only applies for ERRP once
3. Application submitted for **each plan** employer intends to request reinsurance reimbursements
4. Employer will include the following information as part of the application process:
 - ▶ Applicant's tax ID number
 - ▶ Applicant's name and address
 - ▶ Contact name, telephone and e-mail address
 - ▶ Plan sponsor agreement signed by an authorized representative, including:
 - ✓ Assurance employer has written agreement with health plan to use PHI for ERRP
 - ✓ Written acknowledgement (from employer and any subcontractor used to provide any of the information) that information provided is being used to apply for Federal funds
 - ✓ Attestation plan has policies and procedures to detect fraud, waste and abuse and applicant will produce policies, procedures, and evaluation of effectiveness on request
 - ▶ Summary of how ERRP reimbursement will reduce cost to participant or plan, such as:
 - ✓ Reduce plan participant premium contributions, copayments, deductibles, coinsurance
 - ✓ Reduce health benefit premium cost for plan sponsor
 - ✓ Maintain employer's level of plan funding (i.e., not pass trend increase along to participants)
 - ▶ Overview of procedures or programs in place that have generated or have potential to generate cost savings with respect to participants with chronic and high cost conditions
 - ▶ Projection of amount of reimbursement for the first two years of ERRP (if possible, based on 80% of historical claim data falling between \$15,000 and \$90,000)

- ▶ List all benefit options offered to early retirees that that may receive ERRP reimbursement
- ▶ Any other information the Secretary may require

Applications will be processed in the order they are received. Any application that fails to meet all requirements will be denied and the applicant will need to submit a new application to participate in ERRP. Given the “first come first served” process and limited ERRP funding, it appears important that the initial application be completed properly (or risk losing a place in line prior to funding being exhausted). The Secretary of DHHS may deny all or a portion of reimbursement based on projected or actual utilization as funding is limited to five billion dollars.

Reimbursement Requirements

After certification, plan sponsor can apply for reimbursements as follows:

- 80% of claims over \$15,000 and under \$90,000 for each plan participant
- Health expenses include medical, surgical, hospital and prescription drugs
- Cost must be **paid** to be eligible
- Cost must be measured net of negotiated health provider price concessions
 - ▶ Including discounts determined after the fact such as prescription rebates
 - ▶ Reconciliation process will allow employers to disclose after the fact price discounts
- Cost includes all health expenses covered by plan (paid by health plan and retiree)
- Must report any data inaccuracies in a time and manner specified by the Secretary

Under no circumstances can the proceeds from ERRP be used as general revenue for the plan sponsor. ERRP reimbursements may only be used in specific ways including either or both:

- To reduce sponsor's health benefit premiums or health benefit costs
- To reduce health benefit premium contributions, copayments, deductibles, coinsurance or other out of pocket costs for plan participants

Only some details on the timing of ERRP reimbursements were released:

- Reimbursement at a time and in a manner the Secretary specifies **after** claims submitted
- Claims for specific plan year can only be submitted upon approval of application for that plan year
- Claims cannot be submitted until they exceed the cost threshold for that plan year
- When provider in normal course of business does not submit a claim (such as some HMO plans), information typically required for claim must be provided to the Secretary
- Claims below cost threshold must be submitted to verify cost threshold is met

- Claims above the cost limit should not be submitted
- The Secretary will determine form and manner in which claim data should be submitted

Records relating to ERRP application and participation must be maintained for six years following the close of the plan year. The following records must be maintained:

- All documentation, data and other information relating to ERRP
- Any records specified by the Secretary
- Any additional guidance released by the Secretary
- The sponsor must require health insurance issuer or health plan to maintain and produce any records related to ERRP upon request
- Plan sponsor maintains responsibility for ensuring all records maintained

ERRP also allows plan sponsors to appeal adverse reimbursement determination, but appeals will not be allowed if denial is due to lack of funds. Appeals must be made within 15 calendar days of the receipt of a determination, it must include the reason or reasons why a plan sponsor disagrees with the determination, and supporting documentation is allowed to be included. The Secretary's decision of an appeal will be considered final and binding.

Action Steps for Employers

Even though a formal application process is not yet available, the guidance provides enough details for employers to start gathering information needed to apply for ERRP. It may be helpful to consider some or all of the following action steps:

Step 1: Contact all vendors used to deliver early retiree benefits. You need to determine what information each vendor can provide:

- Historical review of claims by plan participant (not Medicare eligible) for previous two years
- Claim reports by each retiree plan participant (not by retiree with dependents)
- Claim reports exclude retiree, spouse, surviving spouse or dependents covered by Medicare
- For 2010, claims report split based on whether incurred prior to or after June 1
- If your vendor currently trades data with the government as part of the RDS subsidy process, information about data collection in use today (expected to be similar to ERRP process)

Step 2: If medical and prescription drug benefits are provided by a separate vendor investigate how to merge the claim data to a single report with total claims by plan participant.

Step 3: Look at retiree health plan procedures or programs that help generate cost savings with respect to plan participants with chronic and high cost conditions - disease management programs, case management or even value-based initiatives might be seen as cost saving plans. If you are uncertain about what your plan has available, look to your health plan vendor for program descriptions.

Step 4: Ask vendors to provide a summary of their policies and procedures that they have adopted to protect against fraud, waste and abuse.

Step 5: Put together a general overview of all the benefit options that your organization offers early retirees and expects that reimbursements from the reinsurance program will be paid on.

Step 6: Ask health plan vendors if they have a written agreement or sample language of a written agreement that will allow your organization to confirm that they will be using PHI to apply for reinsurance reimbursements.

Step 7: Determine how reimbursements for the plan will be used to offset your costs or your plan participants' cost related to the retiree health care program. The two year historical review of claims should provide a good estimate of the funds you may expect to receive.

Keep your eyes open for application information. It appears wise to be prepared in advance because the application timing may be critical in determining if your plan will actually receive ERRP payments.

Our next *Update* will tackle the just released guidance on extending dependent coverage up to age 26.

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