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HHS Releases Regulations on Early Retiree Reinsurance Program

The Department of Health and Human Services (HHS) has issued interim final regulations on the early retiree reinsurance program included in the Patient Protection and Affordable Care Act (PPACA). This reinsurance program is one of the first significant parts of the health reform law to be implemented, and has garnered considerable employer interest. HHS expects the retiree reinsurance program to be established by June 1, 2010. Due to the limited funding for the program, employers who wish to participate will need to act quickly.

Background

PPACA includes a retiree reinsurance program for early retirees (pre-Medicare) and dependents under which employers can receive 80% of the costs of health claims between $15,000 and $90,000 per year. The program, which is intended to help employers maintain early retiree programs until insurance exchanges become available in 2014, will go into effect June 1, 2010 and will end on the earlier of January 1, 2014 or when the allocated $5 billion in funding is expended.

HHS has now issued interim final regulations, which set out a process similar to that used for the Medicare Part D Retiree Drug Subsidy (RDS) program. In the preamble, HHS states that because the funding for the program is limited, it expects more requests for reimbursements than there will be funds to pay. Applications will be processed in the order received and "claim submissions will be processed on a first-in, first-out basis until program funding is expended." Applications are expected to be available by mid- to late June.

Requirements to Participate

In order to participate in the retiree reinsurance program, an employment-based plan must –

- be certified by the Secretary of HHS
- include programs and procedures that have generated or have the potential to generate cost savings for plan participants with claims for chronic and high cost conditions (i.e., conditions for which $15,000 or more in applicable claims are likely to be incurred during a plan year)
- have a written agreement in place with its health insurance issuer or plan regarding disclosure of information, data, documents and records to HHS, and have required disclosures made to HHS

- ensure that policies and procedures are in place to protect against fraud, waste and abuse under the plan, and comply with requests from HHS for documentation of these programs and their effectiveness.

BUCK COMMENT. *Employers interested in participating in the retiree reinsurance program should immediately inventory existing programs for managing claims for chronic and high cost conditions and for protecting against fraud, waste and abuse. If current programs are not adequate, changes would apparently need to be implemented before an application can be submitted. On audit, the sponsor has to be able to demonstrate that its programs and procedures have generated cost savings, or have the potential to generate cost savings. Because there are significant differences of opinion on how to calculate the cost benefit of disease management programs, these calculations could create problems on audit.*

Plans and Expenses Eligible for Reimbursement

PPACA defines an "employment based plan" that is eligible for the early retiree reinsurance program to include a plan maintained by a private employer, state or local government, employee organization, voluntary employees' benefit association (VEBA), nonprofit organization, religious entity or a multiemployer plan.

Under the retiree reinsurance program, an early retiree is a plan participant who is 55 or older, but not eligible for Medicare coverage and not an active employee under an employment-based health plan. Early retirees include spouses, surviving spouses, and dependents of the retiree (regardless of age or Medicare eligibility). Eligibility of the dependent is based on the rules of the plan, regardless of whether the individual is considered a dependent for state or Federal tax purposes.

"Health benefits" include medical, surgical, hospital, prescription drug and other services for the diagnosis, cure, mitigation, or prevention of physical and mental diseases and conditions under self-funded and insured plans. For insured plans, premiums are not eligible for reimbursement – actual claims data must be submitted. Eligible expenses do not include those for "excepted benefits" under HIPAA, which would include long-term care benefits as well as stand-alone dental and vision plans.

BUCK COMMENT. *The guidance does not discuss in detail the claim submission process, including timing and frequency of payments. However, the guidance states that "claim submissions will be processed on a first-in, first-out basis until program funding is expended." Claims for plans with multiple administrators will likely need to be aggregated by individual before submission for reimbursement. For example, many early retiree plans will have separate administrators for medical and prescription drug benefits, and in some same cases for mental health services.*

The retiree reinsurance program will reimburse 80% of the costs of health claims between $15,000 and $90,000 in a plan year for each eligible individual. Only expenses incurred after the anticipated program effective date of June 1, 2010 are eligible for reimbursement. Expenses incurred prior to June 1, 2010 will not be eligible for reimbursement, but can be used to satisfy the $15,000 threshold for reimbursement.

Eligible expenses include both plan costs and retiree cost sharing. Documentation of plan costs will need to include detailed information in support of the reimbursements, including claimant name, type of service, provider and incurred date. To receive reimbursement for cost sharing paid by the early retiree (or spouse and dependents), the sponsor must provide "prima facie evidence that the early enrollee paid his or her portion of the claim." HHS notes in the preamble that a payment receipt would be an example of such evidence.

BUCK COMMENT. *Employers should contact their plan administrators to determine whether the required plan data is available for submission. Practically, many plans may not have documentation that the retiree paid his or her portion of the costs, which would limit the ability to collect those funds. Employers can still make claims based on costs that the plan paid directly.*

Use of Reimbursement Funds

The plan sponsor must use reimbursements under the retiree reinsurance program to do one of the following –

- reduce the plan sponsor's health premiums or health benefit costs
- reduce health benefit contributions, copayments, deductibles, coinsurance or other out-of-pocket costs for plan participants
- reduce a combination of plan sponsor and plan participant health benefit costs.

The reimbursements cannot be used as general revenue for the plan sponsor.

BUCK COMMENT. *Importantly, the preamble to the regulations states that the plan sponsor can use the funds to reduce benefit costs for all participants in the plan, including active employees and dependents. To prevent the use of reimbursements as general revenue, HHS requires plan sponsors to "maintain the sponsor's level of effort in contributing to support the applicable plan." As an example of what would be considered maintenance of effort, the sponsor would continue providing the same dollar level of employer subsidy with reinsurance amounts being used to pay premium increases. This maintenance of effort requirement not only limits how a plan sponsor can use the reimbursements, but also subjects the plan sponsor to audit on whether this requirement has been satisfied.*

Application Process

To participate in the retiree reinsurance program, the plan sponsor must submit for each plan an application to HHS which is signed by an authorized representative certifying that the information in the application is true and accurate. The application form and instructions on documentation are currently scheduled to be released in mid to late June. Applications will be processed in the order received. If an application is denied because it fails to meet all the requirements, it will need to be resubmitted and will be processed by HHS based on the new date of receipt. Therefore, timely submission of a complete application will be very important.

In addition to the applicant's tax identification number, name, address and contact information, the application must include the following –

- a plan sponsor agreement signed by an authorized representative which includes –
  - an assurance that the sponsor has an agreement in place with the health insurance issuer or plan
  - an acknowledgement by the sponsor that information in the application is being provided to obtain federal funds
  - an attestation that policies and procedures are in place to detect and reduce fraud
- a summary indicating how the sponsor will use the reimbursements to meet the requirements of the retiree reinsurance program, including –
  - how the reimbursements will be used to reduce costs for plan participants, health premium costs for the plan sponsor, or a combination of both
  - how the plan sponsor will use the reimbursements to maintain its level of contributions to the plan
- a description of procedures or programs the employer has in place to generate cost savings for participants with chronic and high cost conditions
- a list of all benefit options under the plan
- projected reimbursement amounts for each of the first two years of the reinsurance program.

The plan and plan sponsor must be certified by HHS before reimbursement can be requested under the retiree reinsurance program. HHS can reopen a determination regarding an application for various reasons.

Appeals Process

The regulations include an appeals process for plan sponsors if applications or reimbursements are denied. However, the regulations also note that because the funds are limited to $5 billion, even a successful appeal could result in no payment if funding has been exhausted.

> ***BUCK COMMENT.*** *Plan sponsors will need to accurately and quickly submit applications and claims for reimbursement to maximize their reimbursements under the program.*

Conclusion

Because HHS expects that the early retiree reinsurance program will be effective June 1, 2010, and because applications and reimbursements will be processed on a "first-come first-served" basis with incomplete

applications being denied, plan sponsors will need to respond quickly and accurately if they would like to participate in this program. Buck's consultants are available to assist in this process.

This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.