



## **Early Retiree Reinsurance Update June, 2010**

### **News Update**

The Department of Health and Human Services (HHS) recently issued a draft of the application. This draft gives great direction about what employers should work on immediately. Sponsors are encouraged to make sure that they can fill in all of the fields. The draft application can be found at: <http://www.hhs.gov/ociio/regulations/index.html>

### **What is Early Retiree Reinsurance?**

Health reform made \$5 billion available for a temporary reinsurance program to provide reimbursement for a portion of health insurance cost to early retirees and their eligible dependents. Both fully-insured and self-insured employers can receive 80% of health claims which fall between \$15,000 and \$90,000 per plan year.

While the legislation allows this reinsurance through January 1, 2014, the \$5 billion could be exhausted earlier, and HHS indicates that they plan to stop approving applications when it becomes clear that the \$5 billion will be spent by their suite of approved applications. HHS has also indicated that the applications for the program will become available on or before June 21, 2010, while reimbursements will start for eligible claims that are incurred on or after June 1, 2010.

The reinsurance proceeds may be used by the Plan Sponsor (not the insurer or administrator) to reduce the retirees' cost or keep the Plan Sponsor's cost level, or a combination of the two. These payments cannot be used as income to the employer, as is the case with the continuing Retiree Drug Subsidy (RDS) program. Much like RDS, fully-insured plans have the same opportunity for federal reimbursement as self-insured plans.

While the reimbursement will be based upon actual high case experience, a ballpark average should help an employer figure out whether the reimbursement is worth their time. For the average *calendar plan year* employer with a substantial number of early retirees, the early retiree reimbursement could be approximately \$1,500 per year per early retiree in 2010, and \$2,000 per year per early retiree in 2011, assuming that the funding lasts that long.

## **Some Surprises in the Advance Copy of the Interim Final Rules**

The proposed Interim Final Rule had some surprises, but keep in mind that following the 30-day comment period there may be additional changes. Here is a brief summary of surprises:

### ***Plan Sponsors Can Benefit***

Originally, the fact sheet produced by staffers at the White House indicated that the reimbursements could only be used towards reducing retirees' premiums or improving the richness of the plan design. However, the Interim Final Rules indicate that the Plan Sponsors can use the funds to keep the Plans' own future costs *level*.

However, the Interim Final Rules clearly state that the Plan Sponsor must state how it plans to use the funds, and the Authorized Representative who signs the application must be a person within the organization with a high enough level to enforce the commitment that the Plan Sponsor states.

The Interim Final Rule does not address whether the Plan Sponsor's degree of use for the funds towards retirees versus the Plan will affect whether the application is approved or not. We recommend that Plan Sponsors be very clear about how they plan to use the funds, including timelines, plan continuity and retiree premium impact since federal fraud rules apply to this program. Plans should seek legal counsel.

### ***Claims through May 2010 will NOT be Reimbursed***

While claims incurred from the beginning of the Plan Sponsor's Plan Year through May 31, 2010 will not be reimbursable, these claims can be used to establish the \$15,000 threshold.

### ***Claims for Spouses and Children can be Included Regardless of their own Medicare Eligibility, but Not Spouses Under 65 of Retirees Over 65***

The Interim Final Rule hinges all claimants' eligibility on the age of the early retiree or surviving spouse. Even those spouses under age 55 can be counted. However, spouses of living post-65 retirees cannot be counted.

### ***Plan Sponsors must submit an expectation of 2010 and 2011 reimbursement within their application so that HHS can start denying subsequent applications***

It is impossible to know what claims will actually fall between \$15,000 and \$90,000 for an early retiree program. However, we had our actuary create a rule of thumb based on data from several large early retiree programs.

Our actuary estimates that Plan Sponsors with a calendar year Plan Year should multiply their early retiree membership count by \$1,500 for the 2010 plan year and \$2,000 for their 2011 plan year. For example, if a Plan Sponsor has 100 members in their early retiree program, then they could estimate \$150,000 for 2010 and \$200,000 for 2011. Plan Sponsors with a non-calendar year Plan Year can use \$2,000 for 2011, but the tables below provides more reasonable expectations for 2010 based on the Plan Year timing.

<b>Plan Year</b>	<b>2010 Factor</b>
July 2009 through June 2010	\$ 400
August 2009 through July 2010	\$ 650
September 2009 through August 2010	\$ 900
October 2009 through September 2010	\$1,150
November 2009 through October 2010	\$1,300
December 2009 through November 2010	\$1,400
January 2010 through December 2010	\$1,500
February 2010 through January 2011	\$1,650
March 2010 through February 2011	\$1,800
April 2010 through March 2011	\$1,900
May 2010 through April 2011	\$1,950
June 2010 through May 2011	\$2,000

While the values above still provide a reasonable estimate for purposes of the application, smaller pools might not get any funds because there is less likelihood that an individual will cross the \$15,000 threshold. We estimate that the probability of a member crossing the \$15,000 threshold is approximately 8%.

### ***Members' Share of Claim Costs can be Included***

Member costs, such as coinsurance, deductibles and co-pays can be included in the claim for reinsurance. However, a Plan Sponsor must be able to literally **prove** that the member actually paid his or her portion of the bill. Since this proof does not exist, we will use the plan paid portion of all claims unless a Plan Sponsor expressly requests in writing that we include all member costs. We will change this policy if relief from this proof comes in the form of future regulation.

### **Some Affirmations in the Rules**

There was one affirmation from the original law and the advance copy of the Interim Final rules. For one, the reimbursement formula did not change. Also, as believed beforehand: ***This IS a rush!***

A complete and accurate application is the Plan Sponsors' major hurdle. All efforts should be squarely focused on preparing for the application and making sure a Plan Sponsor applies as early as possible. Below, we provide a checklist.

## Steps Employers Should Take to Prepare for the Application Process

- Highest priority. If you have not created a subgroup of early retirees, submit a list of each of your early retirees to your account manager.
  
- Develop Plan for Use of Money. Plan sponsors should meet with their GASB actuary and attorney, and seek input from other stakeholders including unions. The Interim Final Rules provide that payments may be used (1) to reduce the plan sponsor's share of increases in health benefit premiums or health benefit costs, and (2) to reduce health benefit premium contributions, copayments, deductibles, co-insurance or other out-of-pocket costs for plan participants. The funds may be used to lower health benefit costs, including premiums, for all participants in the plan, including retirees, their spouses and dependents, and active employees, their spouses and dependents. The funds may not be used for the general revenues of plan sponsors.
  
- Document your plans for how the reimbursement will be used
  - A clear written summary is sufficient
  - Remember to be specific as to timelines and priority of uses of funds
  - Consider making obligated use of funds contingent upon the timing of the reimbursements
  
- Prepare documentation that there are programs and procedures to address high case management, chronic disease management, wellness, prevention, etc. for the early retiree membership. We have prepared a template version and language that can be borrowed, but the template will need to be edited by the Sponsor as certain elements do not apply universally. We have also produced a summary of the most likely conditions arising in the \$15,000 to \$90,000 range within this document.
  
- Determine which bank account is appropriate for accepting these funds. Sponsors will need the bank's name, address, account number, routing code, account manager and phone number (see draft application).
  
- Prepare estimate of reimbursement for 2010 and 2011
  - See information provided earlier on this topic.
  
- Make sure that the Authorized Representative is identified, available, knows ramifications of this responsibility, and knows the urgency of the role

While a day-to-day person at the Plan Sponsor might be able to accomplish the bulk of the application, the Authorized Representative need only enroll, sign in; click a few buttons attesting to the application. The attestation must contain an assurance that the Plan Sponsor has an information sharing agreement in place with its insurer or claims administrator, an acknowledgement that the application

is being provided to obtain federal funds, and an attestation that the Plan Sponsor or issuer of insurance has policies and procedures to detect and reduce fraud, waste and abuse. However he/she also certifies that the information on the application is true and accurate, and must be an individual with legal authority to sign and bind a Plan Sponsor to a contract. Be careful of vacations and unavailable times; a hold up from the Authorized Representative might be the difference between success and failure.

- Watch for further messages on this topic.
- Sign up for e-mail notices from HHS at <http://www.hhs.gov/news/email/index.html> and make [www.hhs.gov/ociio](http://www.hhs.gov/ociio) your Internet landing site, checking there twice daily.
- Determine your Plan Year ahead of time. The Interim Final Rules lay out a lot of instructions as to determining the timing of a Plan Year. The Plan Year plays a big role on how to calculate the reimbursement.
- Prepare Agreement regarding disclosure of information, data, documents and records to HHS. To address this issue on the application, we have drafted a template agreement.
- Now that the draft of the application is available, make sure that you have all of the fields that you will need.

## **How We Can Help**

We will not apply for this program on behalf of our customers, but we will provide cost reports for those who are successfully approved. Fees for this service will be determined after the method and level of claims reporting detail as well as allowable frequency of cost reporting is disclosed by HHS.

We assume that in the interest of receiving funds before the program is exhausted, Plan Sponsors would prefer the most frequent interval of cost reporting as their default option. We will not report costs where the reimbursement is less than the cost of supplying the cost report.

***Change from prior information:* In order to affirm that each member exceeding \$15,000 is actually eligible for the program, we will send cost reports to Sponsors so that the Sponsor can perform a final review on the members' eligibility. Sponsors will then submit the report to HHS.**

On the employer portal are several critical documents that will allow the Plan Sponsor to apply for this program, including the following items:

- PHI Agreement template that allows the Department of Health and Human Services to work with BlueLink TPA on claims inquiries and sets up roles and responsibilities. Please sign this and send it to your account manager. Note that significant changes will require a legal review.
- Study that shows expected chronic and high cost conditions that cost over \$15,000, and explanation of how our care management team and programs work to avoid and reduce costs associated with the conditions.
- Substantiation of BlueLink TPA processes and procedures to avoid and reduce fraud, waste and abuse. An additional document is provided for those who use Prime Therapeutics as their PBM. Plan Sponsors are encouraged to document their own internal policies that similarly exist, such as dependent audits.

This transaction is between a Plan Sponsor and the federal government; Plan Sponsor's are solely responsible for submitting their applications. We suspect that any number of applications may get denied for one reason or the other, and far more applications will not be submitted in time before the big union plans apply. BlueLink TPA will do our best to respond to our customer's requests, but is not responsible for the success or failure of any particular application. The application process is the major hurdle for Plan Sponsors.

*This is not a substitute for legal advice, and is intended to be informational in nature only. For legal advice please seek the counsel of an attorney specializing in ERISA matters.*

## **Contacts**

Link to Secretary of DHHS Kathleen Sebelius' webchat recording:

<http://www.youtube.com/user/USHealthReform>