April 2010

New Federal Early Retiree Reinsurance Program

An important provision of the Healthcare Reform legislation includes a temporary program providing "reinsurance" for health plans that cover early retirees. These plans have an opportunity to obtain reimbursement for large medical expenses for eligible retirees and their dependents. The new temporary Early Retiree Reinsurance Program is to become operational as early as June 23 and will last until the $5 billion dollar fund is exhausted (or, if earlier, December 31, 2013). It is anticipated that the full $5 billion will be spent in a very short period, very likely in the first year of operation.

Under the Early Retiree Reinsurance Program, retiree health plans covering retirees age 55 and older not eligible for Medicare can participate. If approved, the reinsurance fund will reimburse eligible plans 80% of a retiree's total medical or drug claims that exceed $15,000 in a plan year. The reimbursement is limited to the "excess cost" for the retiree relating to total claims between $15,000 and $90,000 (a maximum of $60,000) in the plan year. The excess costs of spouses and dependents of early retirees also will qualify for reimbursement under the Early Retiree Reinsurance Program.

> For example, if a plan covers 500 early retirees, their spouses and dependents and 10% of them each had $45,000 of claims during the year, the reimbursement would be ($45,000-$15,000) x 80% x 50 early retirees = $1,200,000.

The value of the Early Retiree Reinsurance Program will vary for each health plan but it has been estimated that, on average, reimbursements under the Early Retiree Program will be between $2,000 and $4,000 per early retiree, spouse and dependent per year.

Under the new law, the Secretary of Health and Human Services (the "HHS") is required to create the temporary reinsurance program within 90 days of the enactment of the healthcare reform legislation – by June 23. While we have few details about the new program, we do recommend that employers who offer retiree health coverage to former employees will need to be ready to make an application as soon as the program is established. It is likely that the application process will be similar to the application process for the Retiree Drug Subsidy.

Requirements for Participation/Reimbursement

1. *Must Be An Employment-Based Plan.*

Only plans that are "employment-based plans" can qualify for reimbursement. "Employment-based plans" are health plans that are sponsored by one of the following entities:

- A private or public employer; or
- A union; or

- A VEBA; or
- A multiemployer plan.

Health benefits.

"Health benefits" are medical, surgical, hospital, prescription drug, and other benefits as determined by the Department of Health and Human Services ("HHS"), whether provided by a self-funded plan or a fully insured plan.

Early retirees.

"Early retiree" is defined as an individual who is:

- age 55 and older,
- not eligible for coverage under Medicare, and
- who are not active employees of the employer maintaining, or currently contributing to, the employment-based plan[1]

For purposes of calculating the subsidy, spouses, surviving spouses and dependents of an early retiree also are included. Based on the language of the statute it appears that only the spouse and/or dependents of "early retirees" are eligible. That is, dependents of other retirees (retirees under 55 or age 55 and older but eligible for Medicare) do not appear to be covered by the program. The one exception seems to be a surviving spouse or dependent of a former employee who would have otherwise qualified as an early retiree.

A question relating to the inclusion of dependents in this program is whether a claim is based individually for each dependent or as a family unit. While the language of the statute is not clear, we believe claims will be based on expenses on a per person basis.

We will need to wait for guidance for the final answer to these questions.

2. Plans Must Apply For The Early Retirement Reinsurance Reimbursement.

The employment-based plan must file an Application for participation and approval with HHS. The time, manner and content of the Application are currently unknown, but it seems likely that the Medicare Part D Retiree Drug Subsidy Program ("RDS") will be the model. If HHS adopts the RDS model, all communications with HHS will be done via the Internet, only aggregate claim information need be submitted (rather than itemized, service-by-service documentation) but the obligations and audit requirements of the Federal False Claims Act will apply.

3. Plans Must Also Implement Certain Procedures And Provide Certain Documents.

In addition to filing an Application, the employment-based plan must (a) implement programs and procedures to generate cost-savings for participants with chronic and high-cost conditions and (b) provide documentation of the actual cost of medical claims involved

[1] Or of any employer that has made substantial contributions to fund the plan.

4. Submission Of Claims For Reimbursement.

While it is likely that filing claims for reimbursement will be submitted using aggregate claim data via the Internet, plans must document the actual costs of the items and services forming the basis of claims for reimbursement. The full documentation must be retained as part of the plan records.

A plan's claim for reimbursement is based on the actual amount expended by the plan during a plan year for the health benefits provided to an early retiree or the spouse, surviving spouse, or dependent of the retiree. (The costs paid by the early retiree or the retiree's spouse, surviving spouse or dependent in the form of deductibles, co-payments, or co-insurance are included in the amounts paid by the plan.)

In determining the amount of a claim, the plan must take into account any negotiated price concessions (such as discounts, direct or indirect subsidies, rebates, and direct or indirect remunerations) the plan obtained. While not spelled out in the statute, it is likely that self-funded plans with stop-loss contracts in effect will not be able to file for expenses that are reimbursed by a stop-loss carrier.

The amount of the reimbursement is 80% of that portion of the annual costs attributable to the early retiree during the plan year that exceed $15,000 but not more than $90,000. Thus, the maximum reimbursement per early retiree is $60,000.

There is little specific information in the statutory language that addresses the timing of the filing of claims. A claim accumulates on a "plan year" basis. For plans subject to ERISA, that will be the plan year adopted under the plan. For other plans, it will likely be the fiscal year. Due to the limited nature of the funding, it is likely that plans will submit claims once the threshold has been exceeded. Whatever the rules, prompt filing will be important due to the limit on the funding for this program. This is just one of the many details for which guidance is needed.

5. Payments Made To The Plan, Not The Plan Sponsor

All reimbursement payments go to the participating employment-based plan, not the plan sponsor. Because the payment is received by the plan, not the sponsoring employer(s), the reimbursement is excluded from income to a sponsoring employer. The plan must use these payments to reduce the costs of the plan. Payments may be used to:

(1.) reduce premium costs for the plan sponsor (for an insured plan) or
(2.) reduce premium contributions,
(3.) reduce co-payments, deductibles, co-insurance, or other out-of-pocket costs for plan participants.

HHS, when issuing guidance on the use of these funds, is likely to be more specific and address the permissible uses for self-funded plans. The reimbursement payments may not be added to the general revenues of the plan sponsor, even on a temporary basis.

6. Safeguards To Ensure Proper Use Of Reimbursement Payments.

In establishing the program, HHS is required to establish safeguards to prevent the fund from improper reimbursement. These requirements will be reflected in the application and approval process. Among the requirements, HHS must:

- develop a mechanism to monitor the appropriate use of the reimbursement payments (presumably including audits and penalties).
- establish an appeals process to permit participating employment-based plans to appeal HHS determinations of claims submitted.

- conduct annual audits of claims data submitted by participating employment-based plans to ensure that those plans comply with the requirements of the program.

7. Appropriation.

The legislation appropriates to HHS $5 billion to carry out this Early Retiree Reinsurance Program. HHS has the authority to stop taking applications for participation in the program based on the availability of funding from the $5 billion.

GBS will be monitoring regulatory activity for the release of guidance relating to the program as well as the actual starting date. In the interim we have compiled a list of information plan sponsors interested in applying for the program should have prepared in advance. This will allow plan sponsors to file an application for the program as promptly as possible.

If you have questions, please contact your Gallagher Benefit Services representative.

Advance Data Preparation List

Plan Sponsor Information (All data will be verified against this number)

Employer Identification Number (EIN)
Legal organization Name
Phone Number
Organization Type (Select from: Commercial, Government, Nonprofit, Religious, or Union)
Plan Sponsor Address Full Address

Required Authorized Representative Information

Email Address
First Name
Middle Initial (optional)
Last Name

Required Account Manager Information

Account Manager Information (data is verified against the Social Security Number)

First Name (must be associated with Social Security Number)
Middle Initial (optional)
Last Name (must be associated with Social Security Number)
Social Security Number
Date of Birth (must be associated with the Social Security Number)
Job Title
Active Email Address
Phone Number
Account Manager Full Mailing Address

Plan Information

Plan Sponsor ID
Plan Start Data and Plan Year End Date
Plan Name

Benefit Option(s) Information

Benefit Option Name
Unique Benefit Option Identifier
Benefit Option Type (Self-Funded or Fully Insured)

Electronic Funds Transfer (EFT) Information

Bank Name
Account Type (Checking or Savings)
Company Name associated with account
Account Number
Bank Routing Number
Bank Address
Bank Contact

- Name
- Phone Number
- Email Address