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## First Come, First Served New Early Retiree Reinsurance Program

As part of the Patient Protection and Affordable Care Act, a new program was created to reimburse employers for certain medical expenses of retirees not yet eligible for Medicare. Employers that provide retiree medical benefits should be aware that the funding for this program is limited. In fact, the government is anticipating that it will have to stop accepting applications early in the process. Employers should be ready to file an application as early as June 1 – the first day of this temporary reinsurance program.

#### Program FAQs

##### 1. What health plans can seek reimbursement?

- Health plans, voluntary employees' beneficiary associations ("VEBAs"), multiemployer health plans, and state and local government health plans covering retirees (or retirees and active employees) can all seek reimbursement. This program applies to both self-funded and fully-insured health plans.

##### 2. For whom can a health plan seek reimbursement?

- The plan can seek reimbursement for an early retiree – someone who is age 55 or older but not yet eligible for Medicare. In addition to these early retirees, the plan can seek reimbursement for the early retirees' spouses and dependents.

##### 3. What will be reimbursed?

- 80% of the costs of all qualified medical claims paid above \$15,000 but below \$90,000.
- The sum of the total claims per early retiree for the plan year incurred after June 1, 2010, (i.e. not discrete claims) net of discounts, rebates, or other cost concessions.
- For 2010, plans can use amounts paid prior to June 1 to reach the \$15,000 threshold, but reimbursable amounts must be incurred on or after June 1. This means the plan must become responsible for payment of the claim on or after June 1.

##### 4. How can employers use the reimbursements?

- While an employer may not use these reimbursements for its general revenues, it may use them to reduce plan or participant costs. The Department of Health and Human Services ("HHS") is currently interpreting this to mean that employers can use reimbursements under this program to pay for increases in medical premiums and benefit costs.
- These reimbursement funds do not have to be spent solely on early retiree expenses; they can be used to reduce the costs for any plan participant, including, for example, active employees if they are in the same plan as the early retirees.
- Employers do not have to use the funds for the plan year in which the qualified medical expenses are incurred. Accordingly, an employer will not need to readjust its current premium structure in light of expected reimbursements.

##### 5. Are amounts paid under this program taxable to the employer?

- No, they will not be taxable to the employer.

#### Steps to Take Now

Applications will be processed in the order received and, as noted above, HHS will stop accepting applications once the available funding (\$5 billion) is projected to be exhausted. Although the application form has not yet been released, it is not too early to begin collecting the required information. The application process may start as early as June 1, 2010.

To be ready, interested employers should immediately take the following steps to gather some of the more salient information that will be required on the application:

1. Review and analyze the plan's claims for the last year and take other necessary steps to project the amount of reimbursement that may be received by the plan under the program for the first two plan year cycles, with specific amounts for each of the two cycles. This will likely require input from the plan's third-party administrator.
2. Determine and describe how the plan will use reimbursements under the program.
3. Identify the plan's programs in place designed to reduce the expense for chronic and high cost conditions (a medical condition that will likely generate \$15,000 a year or more in medical expense). A plan need not have programs in place to cover all chronic and high cost conditions, but must take a reasonable approach in identifying which conditions are to be addressed by such programs. There are also several types of cost reduction programs that may qualify, such as disease management programs.
4. Review and revise, if necessary, the plan's policies and procedures to detect and reduce fraud and waste.

The lawyers in Venable's [Labor and Employment](#) and [Employee Benefits and Executive Compensation](#) groups are ready to assist you in gathering the necessary information so that you are ready to promptly submit an application to the early retiree reinsurance program as soon as the application process begins.

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