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Health Care Reform – Special Edition

Health Care Reform: Early Retirement Reinsurance

LEGISLATIVE BRIEF

May 21, 2010

This memorandum is the seventh installment in our effort to address the critical and imminent changes brought about by the Patient Protection and Affordable Care Act ((H.R. 3590; Reform Bill) and the Health Care and Education and Affordability Reconciliation Act (H.R. 4872; Reconciliation Bill), collectively referred to as the Health Care Reform Law.

Plans to be Subsidized, for Now

To encourage employers to continue providing retiree health benefits to individuals who retire prior to age 65, the Health Care Reform Law contains a $5 billion Reinsurance Program to subsidize health care expenses incurred by retirees under age 65. Although not a lot of employers in the West offer retiree health benefits, those that do, tend to provide retiree coverage up to Medicare eligibility. In the East, most large employers provide lifetime retiree health benefits. As you may know, from an underwriting perspective, the highest claims expense a plan has is for medical claims incurred by individuals in retirement prior to becoming eligible for Medicare. Congress attempts to address this problem by providing a subsidy has its own limits. The subsidy becomes available as of June 2010. The Department of Health and Human Services (HHS) published its Interim Final Rule on the mechanics of the subsidy on May 5, 2010. Here is a summary of the rules.

The Subsidy Itself

The Reinsurance Program will subsidize the cost of claims incurred by retiree plan participants who meet the following conditions:

- Age 55 or older
- Not eligible for Medicare
- No longer an active employee of the employer maintaining the plan.

The Program pays the subsidy upon proof submitted by a qualifying Plan Sponsor. The benefit also applies to spouses, surviving spouses, and dependents of the plan participant.

1. **The Subsidy Amount.** The program will pay 80% of the cost of medical claims between $15,000 and $90,000 incurred and paid during the Plan Year for an eligible individual. Plan Sponsors can submit claims once the claims crosses the $15,000 threshold. For 2010, the reimbursement amount is only for claims incurred on or after June 1, 2010. Claims incurred and paid earlier in 2010 can be used toward the deductible.

2. **Qualifying Plan Sponsors.** Plan Sponsors of employment-based health plans include private employers, state and local governments, employee organizations (i.e. unions), and multi/multiple employer groups. The Program will not pay insurers directly. To qualify, the Plan Sponsor must be able to demonstrate that it has programs and procedures in place that have produced or have the capability to produce cost savings involving chronic and high cost conditions.

3. **Application Requirement.** To qualify for the subsidy, the Plan Sponsor first must file an application and obtain certification. HHS will process applications on "first come, first served" basis. If approval is denied, the HHS rule provides an appeals process. We have attached Section 149.40 of the Regulation describing the contents of the application.

4. **Use of Reimbursement.** Plan Sponsors must use reimbursements to "lower costs of the plan" by reducing the premium cost, the contribution requirements, or co-pays under the plan. If the active and retiree benefits are in the same plan, the Plan Sponsor can use the subsidy to reduce the overall cost of the plan including benefits to active employees.

5. **Amounts Reimbursed.** The Program will reimburse 80% of the actual amount charged to the plan. This amount must reflect the effect of negotiated pricing or rebates. In other words, HHS will use the true "net cost" of the expense to the plan.

6. **The Definition of a Medical Claim.** Medical claims mean: hospital, surgical, medical, drug, and such other benefits that HHS determines as included. The claim can be in an insured or self-insured plan.

Here's the Problem

Congress provided $5 billion to provide the subsidy for claims incurred between now and January 1, 2014. Plan Sponsors will begin the application submission very shortly. HHS, apparently, will provide forms for this purpose. Most pundits expect the subsidy allocation to be used up within a year and mostly by large employers. If you provide retiree health benefits to a pre-Medicare population, you must evaluate your need and act quickly. The Secretary of HHS has the authority to cut off the submission of applications and to reduce or refuse reimbursement, based on funding. This HHS decision is not appealable.

Action Plan

1. If you provide retiree health benefits to pre-Medicare individuals/early retirees, evaluate the importance of the subsidy for your plan.

2. If justified, seek agreement with your insurer (if applicable) regarding the method and timing of release of medical information necessary for obtaining the subsidy.

3. Establish or review your policies against fraud, waste, and abuse under the plan.

4. Prepare and submit your application in a timely manner on the forms produced by HHS.

5. Seek the advice of a benefits professional in this process.

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