



# HEALTH CARE REFORM update



BlueCross BlueShield  
of Kansas City  
An Independent Licensee of the  
Blue Cross and Blue Shield Association

## Employer Early Retiree Reinsurance

On March 23, 2011, President Obama signed into law the “Patient Protection and Affordable Care Act” (PPACA). A reconciliation bill making changes to the Act was signed by the President on March 30, 2011. The PPACA as amended by the reconciliation bill is collectively referred to as the Act in this summary. This summary provides an overview of the Employer Early Retiree Reinsurance Program (ERRP).

On May 5, 2010, the Department of Health and Human Services (HHS) issued an interim final regulation (referred to as the Regulation in this summary) and posted the final application and additional guidance on the Early Retiree Reinsurance Program in PPACA.

**Note: As of May 6, 2011, the HHS is no longer accepting new applications for the ERRP.**

### *Summary*

This federal program provides a “reinsurance” payment to employer-sponsored group health plans to subsidize the cost of providing coverage to early retirees (§1102 of PPACA). Early retirees are generally defined as individuals who are age 55 and older but are not eligible for coverage under Medicare, and who are not active employees of an employer. Whether an individual is “retired” will be determined using standards under the Medicare Secondary Payer (“MSP”) rules pertaining to coverage by reason of current employment status.

### *Scope*

Applicable to all group health plans, in both small and large group, whether insured or self-funded and appears to apply without regard to whether the plan is grandfathered. It also includes state and local governmental plans.

### *Effective Date*

HHS began accepting applications on June 29, 2010. The program continues until January 1, 2014 or until it exhausts the allocation of \$5 billion. As referenced above, as of May 6, 2011, HHS is no longer accepting new applications for this program.

### *Program Details*

Group health plans are eligible be reimbursed 80% of claims between \$15,000 and \$90,000 incurred by an early retiree or the spouse, surviving spouse, or dependent of such retiree. However, HHS announced on August 12, 2011, that it was modifying these claim ranges. For plan years starting on

and after October 21, 2011, 80% of claims between \$16,000 and \$93,000 that are incurred are eligible for reimbursement. Claims may include medical, surgical, hospital, drug, and other costs as determined by HHS. Early retirees means individuals who are age 55 and older but are not eligible for coverage under Medicare, and who are not active employees of the employer or another employer funding a plan.

Reimbursement for reinsurance will be made to a “sponsor” of a certified “employment-based plan.” An eligible employment-based plan is a group health plan that provides benefits to early retirees (but can cover active employees as well) that is certified by HHS, and provides documentation of the actual cost of medical claims involved.

In order to be eligible for the program, an employment-based plan also must implement programs and procedures to generate cost-savings with respect to participants with “chronic and high-cost conditions.”

“Chronic and high-cost” is defined as a condition for which \$15,000 or more in health benefit claims are likely to be incurred during a plan year by any one participant. The plan need not adopt new procedures to satisfy this requirement, and need not have these procedures for all conditions.

“Cost savings” is defined with reference to a participant. For example, if a participant with a chronic and high cost condition receives more generous cost-sharing than other participants, the requirement seems to be satisfied. Preventive benefits/monitoring programs that will save the plan money (e.g., diabetes monitoring) should also satisfy this requirement.

### ***Other Key Provisions***

In order to be eligible for the program, the group health plan must submit an application for participation to HHS. Applications from eligible employment-based plans will be approved in the order in which they are received by HHS (provided they contain all necessary information; see below). After the application is approved, HHS will “certify” the plan, thereby allowing it to submit data regarding claims once those are claims are paid by the plan. Once HHS projects that the \$5 billion appropriated is no longer available, further applications may not be accepted (new applications are no longer accepted as of May 6, 2011). Sponsors with more than one plan will need to file one application per plan.

The Regulation requires that applications include the following:

- Applicant’s Tax Identification Number.
- Applicant’s name and address.
- Contact name, telephone number and email address.
- Plan sponsor agreement signed by an authorized representative, which includes:
  - An acknowledgment that the information in the application is being provided to obtain Federal funds, and that all subcontractors acknowledge that information provided in connection with a subcontract is used for purposes of obtaining Federal funds.
  - An attestation that policies and procedures are in place to detect and reduce fraud, waste, and abuse, and that the sponsor will produce the policies and procedures, and necessary information, records and data, upon request by the Secretary, to substantiate existence of the policies and procedures and their effectiveness.
  - Other terms and conditions required by the Secretary of HHS.

- A summary indicating how the applicant will use any reimbursement received under the program to meet the requirements of the program, including:
  - How the reimbursement will be used to reduce premium contributions, copayments, deductibles, coinsurance, or other out-of-pocket costs for plan participants, to reduce health benefit or health benefit premium costs for the sponsor, or to reduce any combination of these costs;
  - What procedures or programs the sponsor has in place that have generated or have the potential to generate cost savings with respect to plan participants with chronic and high-cost conditions; and
  - How the sponsor will use the reimbursement to maintain its level of contribution to the applicable plan.
- Projected amount of reimbursement to be received under the program for the first two plan year cycles with specific amounts for each of the two cycles.
- A list of all benefit options under the employment-based plan that any early retiree for whom the sponsor receives program reimbursement may be claimed.
- Any other information the Secretary requires.

In calculating the claims, the group health plan is to take into account any negotiated price concessions which is defined here as including direct or indirect subsidies, rebates, and direct or indirect remunerations. Also, the claims calculation is to include amounts paid in the form of deductibles, copayments, or coinsurance.

The reinsurance payments are to be used to lower costs for the group health plan. This may include reducing premium costs for the employer or reducing premium contributions, copayments, deductibles, coinsurance, or other out-of-pocket costs for the participants. The payments are not to be treated as general revenues for the plan sponsor, and the sponsor must maintain its previous level of contribution. The reinsurance payment is not treated as gross income for the employer.

### ***Appeal Rights***

If a plan sponsor disagrees with a determination made by HHS as to amount of reimbursement, an appeal may be made directly to HHS within 15 calendar days. Once the \$5 billion allocated for the reinsurance program is exhausted, no appeal rights exist.

### ***Recordkeeping***

A plan sponsor must make available information, data, documents, and records related to the reinsurance program for six years following the end of the plan year in which the claims were incurred, or longer if otherwise required by law.

### ***Fraud Policies/Procedures***

A sponsor must have policies and procedures in place to guard against fraud, waste, and abuse.

*This summary is provided for informational purposes only and is not intended as legal advice. Please consult your legal advisor for additional information.*

---

References

PPACA: [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111\\_cong\\_bills&docid=f:h3590enr.txt.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h3590enr.txt.pdf)

Interim Final Regulation: (<http://edocket.access.gpo.gov/2010/pdf/2010-10658.pdf>  
<http://www.errp.gov/>)