

REINSURANCE FOR EARLY RETIREES
IN THE PATIENT PROTECTION AND AFFORDABLE CARE ACT

The Patient Protection and Affordable Care Act (P.L. 111-148) includes the creation of a temporary reinsurance program for employers providing retiree health benefits to retirees over age 55 and not yet eligible for the Medicare program. The HHS Secretary is required to establish and implement the program within 90 days following enactment of the law.

Section 1102 of the PPACA as amended by Sec. 10102 provides that the early retiree reinsurance program will reimburse participating employment-based plans for 80% of the cost of benefits provided to early retirees (and to the eligible spouses, surviving spouses, and dependents of such retirees) in excess of \$15,000 and below \$90,000 (adjusted annually for inflation). The plans are required to use the funds to lower costs borne directly by participants and beneficiaries, such as premiums, co-payments, and other out-of-pocket costs, but could be not used to reduce the costs of an employer maintaining the plan.

The act appropriates \$5 billion for this fund until January 1, 2014 (the beginning of health insurance exchanges) and funds are available until expended (i.e., the HHS Secretary would have the authority to stop taking applications for participation in the program if the \$5 billion is exhausted). In this respect, some have analogized this reinsurance program to the "Cash for Clunkers" auto program.

The goal of the reinsurance program is to provide an incentive to employers to maintain retiree health benefits and assist retirees with their costs for health coverage. Given the temporary nature of the reinsurance, it is intended to provide employers an incentive to maintain benefits until the health insurance exchange is fully operational. Once the health insurance exchange is fully operational, employers would have less incentive to provide health benefits to early retirees, and retirees would have less need for former employers to maintain a program.¹

Under the health insurance exchange, retirees could not be denied coverage because of pre-existing conditions and they could not be charged a higher premium because of their health status. Limited age rating would be allowed. Furthermore, subsidies would be available to individuals in families with income below 400% of the federal poverty level who purchase health insurance through the exchange. In the short term, the reinsurance provisions would help shore up early retiree coverage, but in the longer term, the underwriting reforms combined with new subsidies for individuals enrolling for coverage through the exchange could create significant incentives for employers to drop coverage for early retirees.²

Eligibility / Definitions

EMPLOYMENT-BASED PLAN —The term "employment-based plan" means a group benefits plan providing health benefits that is:

¹ Paul Fronstin, "Implications of Health Reform for Retiree Health Benefits," Employee Benefit Research Institute; Issue Brief No. 338, January 2010.

² *ibid.*

1. maintained by one or more current or former employers (including state or local governments), employee organization, a voluntary employees' beneficiary association, or a committee or board of individuals appointed to administer such plan; or
2. a multiemployer plan (as defined in section 3(37) of ERISA).

Participating eligible employer plans must implement programs and procedures to generate cost-savings with respect to participants with chronic and high-cost conditions.

HEALTH BENEFITS — medical, surgical, hospital, prescription drug, and other benefits as determined by HHS, whether self-funded, or delivered through the purchase of insurance or otherwise.

EARLY RETIREE — individuals who are age 55 and older but are not eligible for Medicare, and who are not active employees of an employer maintaining, or currently contributing to, the employment-based plan or of any employer that has made substantial contributions to fund such plan.

Process

A participating employment-based plan will submit claims for reimbursement to HHS containing documentation of the actual costs of the items and services for which each claim is being submitted.

Claims submitted will be based on the actual amount expended by the participating employment-based plan involved within the plan year for the health benefits provided to an early retiree or the spouse, surviving spouse, or dependent of such retiree. Determining the amount of a claim will take into account any negotiated prices (such as discounts, direct or indirect subsidies, rebates, and direct or indirect remunerations). Costs paid by the early retiree or the retiree's spouse, surviving spouse, or dependent (e.g., deductibles, co-payments, or co-insurance) are to be included in the amounts paid by the participating employment-based plan in determining claim amounts.

The HHS Secretary is to establish a process for appealing claim determinations and procedures to protect against fraud, waste, and abuse.

Payments received under this reinsurance program are not included in determining the gross income of a qualified health insurance issuer.