



# EMPLOYEE BENEFITS CLIENT ALERT

April 30, 2010

## **Health Care Reform Early Retiree Reinsurance Program**

As we previously reported, last month Congress passed and President Obama signed the Patient Protection and Affordable Care Act of 2010 and the Health Care and Education Reconciliation Act of 2010 (collectively, the "PPACA"). Among other things, the PPACA requires the Secretary of the Department of Health and Human Services ("HHS") to establish a temporary program to reimburse certain plans that provide health insurance coverage to early retirees (the "Program"). The Program provides limited reimbursement to certain "plans" for "claims" by "early retirees." Reimbursement may only be used for certain purposes. In this Client Alert, we discuss the Program.

### **Participation in the Program**

Participation in the Program is limited. A plan is eligible to participate in the Program (an "Eligible Plan") only if it meets all of the following requirements:

- It is employment-based. Generally, an employment-based plan is one that is maintained by an employer, an employee organization (including a union) or both (a "Former Employer"). This includes both single-employer plans and multiemployer (Taft-Hartley) plans.
- It provides health benefits. Health benefits include medical, surgical, hospital, and prescription drug benefits and other benefits as determined by HHS.
- It covers early retirees. An early retiree is an individual age 55 or older who is not an active employee of a Former Employer sponsoring or contributing to the plan and is not eligible for any part of Medicare.

An Eligible Plan must take certain steps in order to participate in the Program.

- It must implement programs to generate cost savings for participants with chronic or high-cost conditions.
- It must provide documentation of the actual cost of medical claims for which reimbursement is sought.
- It must submit an application for participation through procedures to be established by HHS.
- It must be certified by HHS.

### **Reimbursement through the Program**

Participating Eligible Plans may submit claims for reimbursement to HHS. The amount of the claim is the amount expended by the Eligible Plan within the plan year per early retiree (including the retiree's spouse, surviving spouse, or dependents). This amount includes costs paid by the retiree, such as deductibles and co-pays.

The Program will reimburse an Eligible Plan for up to 80% of a claim, to the extent the claim exceeds \$15,000 but is less than \$90,000. Both figures are indexed annually based on the Medical Care Component of the Consumer Price Index, rounded to the nearest multiple of \$1,000. For 2010, this means that the maximum reimbursement is \$60,000 per early retiree (including the retiree's spouse, surviving spouse, or dependents).



Reimbursements may only be used to lower plan costs. For example, reimbursements may be used to reduce the premiums of a Former Employer, or to reduce the premiums, co-pays, deductibles or other out-of-pocket expenses of the participants. Reimbursements may not be used as general revenues of a Former Employer and are not included in the gross income of any Former Employer maintaining or contributing to the Eligible Plan.

## Duration of the Program

HHS must establish the Program by June 21, 2010. The Program is funded through a \$5 billion appropriation and will end on January 1, 2014 or when the \$5 billion is exhausted (unless more funds are appropriated for the Program).

## Additional Information

If you wish to visit with us about the latest health care reforms, please contact your Kutak Rock LLP attorney or a member of our Employee Benefits Practice Group listed below. For more information on our Employee Benefits practice and for recent Employee Benefits news and alerts, please visit us at [www.kutakrock.com](http://www.kutakrock.com).



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