

*Paul Hastings*

**PPACA “Early Retiree”  
Retiree Health Reinsurance**

*Ethan Lipsig  
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## ***Introduction***

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- ▶ Reinsurance program is in PPACA Section 1102
- ▶ Enacted to defray cost of providing retiree health coverage to “early retirees” (individuals not employed by sponsor who are 55 or older but not yet Medicare eligible (Section 1102(a)(2)(C)) until insurance exchange/federal subsidies become available in 2014
- ▶ Pays 80% of claim cost between \$15k and \$90k – amount will be adjusted by medical component of the consumer price index; payment is tax free (Section 1102(c)(5))
- ▶ One of the few PPACA provisions that might directly benefit large employers
- ▶ Raises lots of questions
- ▶ No real guidance yet

## ***So, What's the Catch?***

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- ▶ Only \$5 billion available
    - Temporary program
    - May be first come first served
  - ▶ But there are potentially onerous catches
    - Application and claim requirements
    - Requirement of cost-savings program for chronic or high cost conditions
    - Restrictions on use of proceeds
    - Plan audits
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# Who?

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- ▶ Eligible Plans -- plans covering “early retirees” sponsored by employers (including private employees, state and local governments, unions, VEBAs, and multi-employer plans (Section 1102(a)(2)(B)) whether self-insured or insured (Section 1102(a)(2)(A))
- ▶ To be eligible, plans must meet 4 requirements (Sections 1102(b))
  - Implement programs and procedures to generate cost-savings for participants with chronic and high-cost conditions.
  - Provide documentation of actual medical claim cost
  - Be certified by the Secretary of the Department of Health and Human Services (HHS)
  - Timely apply to HHS for reinsurance program participation (process to be similar to Medicare Part D drug subsidy)

## ***“Who?” Questions***

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- ▶ For insured plans, may the insurer apply on behalf of the employer?
  - ▶ What information will have to be provided?
  - ▶ How will employers be certified?
  - ▶ What kind of cost-savings program is required to qualify?
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## What?

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- ▶ Reimburses plan for 80% of the cost of early retiree health claims between \$15,000 and \$90,000, indexed for medical inflation . . . until the \$5 billion runs out (Sections 1102(c)(2)-(3))
- ▶ Claims must be for costs during program's existence (establishment through January 1, 2014) (Section 1102(a)(1))
- ▶ Claim amounts determined before copays, co-insurance, and deductibles (Section 1102(b)(2))
- ▶ Plans can get program payments for medical, surgical, hospital and prescription drug costs, or other benefits as the HHS Secretary determines (Section 1102(a)(2)(A))
- ▶ Plans must use program payments to lower costs for the plan, which includes costs for the plan sponsor and plan participants but not "as a general revenues" by plan sponsor (Section 1102(c)(4) and Implementation Timeline)
  - *But see* Fact sheet: "proceeds must be used to lower health costs for enrollees" and Senate Analysis: "the plans are required to use the funds to lower costs borne directly by participants and beneficiaries"
- ▶ If reinsurance claim is denied, issue can be appealed (Section 1102(c)(6))

## **“What?” Questions**

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- ▶ What is a claim?
  - All benefit costs for a participant or covered family?
    - What is the cost period?
    - Fact Sheet: “For each such early retiree, the employer plan will receive up to 80% of **costs**, minus negotiated price concessions for health benefits between \$15,000 and \$90,000.” (Emphasis added)
  - Each severable charge?
  - All charges for treating a condition (i.e., episode of care)?
- ▶ Must the cost be paid, accrued, or both paid and accrued during the program’s life?
- ▶ In applying the \$15,000 minimum, do costs outside the reimbursement period count?
- ▶ Is reimbursement capped at 80% of first \$90,000 of claim, or is a claim that is over \$90,000 not reimbursable?
- ▶ How will appeal process work?
- ▶ If ERISA plan is reimbursed, must payment be held in trust?
- ▶ If plan is reimbursed, is tax-free nature of reimbursement a benefit?

## ***When?***

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- ▶ Program to be established by HHS by June 23, 2010 (Section 1102(a)(1))
  - ▶ Program ends January 1, 2014 **or** when \$5 billion spent (Sections 1102(a)(1),(e), (f))
  - ▶ Payments are retroactive for a plan year, so employers and early retirees will be able to take advantage of them for costs incurred from the date the program is established. (Fact Sheet)



## ***“When?” Questions***

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- ▶ When will application forms be available?
- ▶ When must applications be filed?
- ▶ When will the first payments be made?
- ▶ How long will it take for a claim to be paid?
- ▶ How long will the \$5 billion last?
- ▶ Will claims be batch processed and paid pro rata when funds run out, be paid first come first served?
- ▶ Will funds be allocated in some other fashion, e.g., by state, before claims are processed?
- ▶ Are amounts paid before June 23, 2010 reimbursable?

## ***WHAT SHOULD RETIREE HEALTH PLAN SPONSORS DO?***

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- ▶ Consider whether applying for the program makes sense for plan (may not make sense for small employers)
- ▶ Be prepared to act reasonably quickly when guidance is issued
- ▶ At least some Insurance companies and TPAs likely will handle reinsurance claims for employers

# Sources

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- ▶ Full text of PPACA Section 1102: <http://us.select.mercer.com/blurp/174759/article/20106294/>
- ▶ Full text of PPACA: <http://democrats.senate.gov/reform/patient-protection-affordable-care-act-as-passed.pdf>
- ▶ History of legislation affecting retiree benefits: [http://www.ebri.org/pdf/briefspdf/EBRI\\_IB\\_01-2010\\_No338\\_RetHlth1.pdf](http://www.ebri.org/pdf/briefspdf/EBRI_IB_01-2010_No338_RetHlth1.pdf)
- ▶ U.S. Government's Fact Sheet regarding the Program:  
[http://www.whitehouse.gov/sites/default/files/rss\\_viewer/reinsurance\\_early\\_retirees\\_fact\\_sheet.pdf](http://www.whitehouse.gov/sites/default/files/rss_viewer/reinsurance_early_retirees_fact_sheet.pdf)
- ▶ U.S. Government's Implementation Timeline:  
<http://docs.house.gov/energycommerce/TIMELINE.pdf>
- ▶ Senate Analysis: <http://dpc.senate.gov/healthreformbill/healthbill96.pdf>
- ▶ Buck Consultants' Analysis of Fact Sheet:  
<http://buckconsultants.com/buckconsultants/Portals/0/Documents/PUBLICATIONS/Newsletters/FYI/2010/FYI-04-09-10-Sebelius-Addresses-Retiree-Reinsurance-Program.pdf>

# The Community Living Assistance Services and Supports Act (the CLASS Act)

April 22, 2010

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# CLASS Act: Overview

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- The CLASS Act is added as new Title 32 of the Public Health Services Act
- The HHS Secretary is given broad authority to create a national voluntary insurance program to provide cash benefits to covered individuals who need assistance with activities of daily living
- Three major elements of the program will involve:
  - **Setting actuarially sustainable benefit and premium levels**
  - **Establishing procedures for the collection of premiums and the crediting of coverage**
  - **Creating a system for assessing eligibility for benefits**



# CLASS Act: Process and Time Line

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- Effective date is technically January 1, 2011
- HHS Secretary is directed to create 3 alternative “actuarially sound” benefit designs
- New “CLASS Independence Advisory Council” reviews
- After considering the Council’s recommendation and public comment, the HHS Secretary designates one of the designs as the final “CLASS Independence Benefit Plan”
- HHS Secretary to complete that process by publishing a final regulation “not later than October 1, 2012”
- On a separate track, not later than January 1, 2012, HHS must establish an Eligibility Assessment System



# CLASS Act: Benefits

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- **Benefits are triggered by an inability to perform 2 or 3 activities of daily living (or comparable cognitive impairment)**
- **Impairment must be expected to last at least 90 days**
- **Cash benefits may be scaled from 2 to 6 levels based on extent of impairment, but must average at least an average of \$50 per day**
- **No benefits can be paid until an individual has paid premiums for at least five years – [Assuming premiums start being collected in 2013, then no benefits will be paid until at least 2018]**
- **Also, no individual can receive a benefit unless they have earned, during the first five years that they paid premiums, enough to qualify for one quarter of credit under Social Security in at least three calendar years (i.e., they must have earned a little over \$1,000 in at least three of the first five years after they sign up)**
- **Complex rules are provided re: actual distribution of cash benefits**



# CLASS Act: Premiums

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- **Eligibility: Anyone over the age of 18 who is actively at work will be allowed to sign up to participate in the CLASS program**
  - **Underwriting for the health of the participant is not allowed**
  - **A few categories of people are specifically excluded -- for example, someone who is currently in a nursing facility and on Medicaid would not be allowed to enroll**
- **Premium Levels: still to be determined**
  - **Premiums must ensure solvency of the program for 75 years**
  - **Premium levels will be influenced by many yet to be determined factors, including benefit levels, participation levels, and the relative health of those who enroll**
  - **Certain populations, including any individual with income below the federal poverty line, will pay only a nominal premium of \$5 per month**





# CLASS Act: Employer Role

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- Enrollment by individuals is voluntary, but an employer could automatically enroll an individual (subject to affirmative opt-out)
- HHS and Treasury are directed to establish procedures through which employers could automatically enroll their employees
- Those automatic enrollment features would default the employee into the payment of CLASS program premiums unless the worker affirmatively elects not to participate
- Statute seems clear that an employer CANNOT be forced to implement automatic enrollment
- Similarly, statute appears clear that an employer CANNOT be forced to institute payroll reduction payments for those employees that elect to participate in the CLASS program



# **CLASS Act: A Few Observations**

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- **Ability to construct an actuarially sound program?**
  - **Moral hazard**
  - **Secretary has certain statutory “handcuffs”**
- **Adequacy of CLASS benefits to cover many LTC risks?**
  - **Secretary can cut promised benefits later to keep program solvent**
- **Effect on existing LTC and disability income programs?**
- **Could CLASS program help educate the public on the need to prepare for LTC expenses?**
- **Budgetary implications and prospects for repeal?**
- **Potential for broader employer mandates?**



# Wrap-Up

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- Questions?
- Contact Information

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