Paul Hastings

PPACA "Early Retiree" Retiree Health Reinsurance – Initial Observations and First Guidance

Ethan Lipsig
213-683-6304
ethanlipsig@paulhastings.com
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Introduction

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- Reinsurance program is in PPACA Section 1102
- Interim Final Rule (IFR) released on May 3, 45 C.F.R. Section 149.1 *et seq.*
  - 61-page preamble (Preamble)
  - 18 pages of rules
  - The undrerlined red text in this presentation amends April 22 presentation
- 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, and older or younger covered family members (Section 1102(a)(2)(C)) until insurance exchange/federal subsidies become available in 2014. According to a government official, persons on COBRA cannot qualify as early retirees.
- Pays 80% of net 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
- IFR answers most of them

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So, What's the Catch?

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- Only $5 billion available
  - Temporary program
  - May be first come first served – will be, according to IFR, e.g., Preamble at 23
- 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 multiple requirements (Sections 1102(b) and IFR)
  - Timely apply to HHS for reinsurance program participation (process to be similar to Medicare Part D drug subsidy (RDS))
  - Be certified by the Secretary of the Department of Health and Human Services (HHS)
  - Sponsor has PHI agreement with plan or insurer. IFR Section 149.40(e)(4)(i)
  - Implement programs and procedures to generate cost-savings for participants with chronic and high-cost conditions and fight fraud and abuse. IFR Section 149.40(e).
  - Provide documentation of actual medical claim cost

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"Who?" Questions

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- For insured plans, may the insurer apply on behalf of the employer? IFR silent other than to require application be signed by sponsor's "authorized representative." IFR Section 149.40(a). However, IFR Section 149.340 permits insurer to file claims.
- What information will have to be provided? *See* IFR Section 149.40(e).
- How will employers be certified? IFR silent, except to say that applications can be denied based on funding availability. IFR Section 149.45(a). Appears that HHS may stop certifying when certified plans' aggregate expect reimbursements exceed $5 billion.
- Who is a "retiree"? Someone who is not an active employee. Person for whom Medicare must be primary is presumed active. IFR Section 149.2, definition of "early retiree"
- Are non-dependent covered family members of early retirees covered? Yes. *Id.*
- What kind of cost-savings program is required to qualify?

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Cost-Savings Program Requirements

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- Preamble explains (at 9 *et seq*.)
  - Must target conditions for which more than $15,000 per year of claim expense is likely
  - Not all such conditions must be targeted
  - Existing efforts can be sufficient
  - No specific method prescribed

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What?

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- Reimburses plan for 80% of the net 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 (which will be June 1, 2010) through January 1, 2014) (Section 1102(a)(1) and official statements and IFR)
- 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) and IFR Section 149.2, definition of "health benefits." Excluded benefits not reinsured, e.g., long term care.
- 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))
- If reinsurance claim is denied, issue can be appealed (Section 1102(c)(6)). IFR Section 149.500. No appeal rights after $5 billion runs out.

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Use of Reinsurance Proceeds

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- IFR makes it clear that plan sponsor cannot keep the reinsurance proceeds
- It must pass them through, perhaps by 2014, as a reduction to the amount that participants would otherwise pay (any participants in the plan, not just early retirees). *See* Preamble at 32
- No specific method prescribed
- Official said that plan could raise amounts participants must pay before using reinsurance proceeds to pay for them
- But Preamble at 31-32 says that sponsor is expected to provide "same level of contribution" as before early retiree reinsurance program

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"What?" Questions

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- What is a claim?
  - All benefit costs for a participant or covered family? Per person costs under all plan options. IFR Section 149.100(d).
  - Each severable charge? No
  - All charges for treating a condition (i.e., episode of care)? No
- Must the cost be paid, accrued, or both paid and accrued during the program's life? Apparently, it must be both incurred and paid. *See, e.g.,* IFR Section 149.100(a)
- In applying the $15,000 minimum, do costs outside the reimbursement period count? Yes, for pre-June 1, 2010 portion of the then plan year
- Is reimbursement capped at 80% of first $90,000 of claim, or is a claim that is over $90,000 not reimbursable? Former
- How will appeal process work? *See* IFR Section 149.500
- If ERISA plan is reimbursed, must payment be held in trust? Sponsor, not plan, reimbursed; trust apparently not needed
- If plan is reimbursed, is tax-free nature of reimbursement a benefit? See above.

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When?

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- Program to be established by HHS by June 23, 2010 (Section 1102(a)(1)). Will be established June 1, 2010. IFR and official statements.
- 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)

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"When?" Questions

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- When will application forms be available? Mid to late June; may be similar to Medicare Part D subsidy application. IFR Section 149.40(f) details contents.
- When must applications be filed? ASAP. Processed FIFO. IFR Section 149.40(b).
- What happens if application has error? Rejected; refiling required. IFR Section 149.40(c).
- Do you need a new one each plan year? No, IFR Section 149.40(d).
- What information must be included in claim? Benefit, provider, incurred date, participant, date benefit provided, cost net of concessions, and the plan and option under which the benefit was provided. IFR Section 149.2 "claim" definition
- When can claims be submitted? Only after plan certified as to plan year and $15,000 threshold met based on actual plan payments. IFR Sections 149.310(b) and 149.325.
- What do staff-based plans do? Produce a claim. IFR Section 149.310(c).
- When will the first payments be made? IFR silent
- How long will it take for a claim to be paid? IFR silent
- How long will the $5 billion last? IFR silent
- Will claims be batch processed and paid pro rata when funds run out, be paid first come first served? First come/first serve, according to official.
- Will funds be allocated in some other fashion, e.g., by state, before claims are processed? No
- Are amounts paid before June 1, 2010 reimbursable? No

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What Else Does the IFR Tell Us?

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- Sponsor must keep records for 6 years. IFR Section 149.350.
- Sponsor must report mistakes. *Id.* Section 149.600
- Sponsor must report change in ownership. *Id.* Section 149.700
- Sponsor must provide other data on request. *Id.* Section 149.40(e)(4)

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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 so as to be near head of queue
- At least some Insurance companies and TPAs likely will handle reinsurance claims for employers

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Sources

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- Full text of PPACA Section 1102: http://us.select.mercer.com/blurb/174759/article/20106294/
- Full text of PPACA: http://democrats.senate.gov/reform/patient-protection-affordable-care-act-as-passed.pdf
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