



Claims Ineligible for Reimbursement under the Early Retiree Reinsurance Program

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Background

The Early Retiree Reinsurance Program (ERRP) statute states that employment-based plans may submit for reimbursement certain claims for “health benefits,” which are defined in the statute as “medical, surgical, hospital, prescription drug, and such other benefits as shall be determined by the Secretary...” Affordable Care Act §1102(a)(2)(A). The regulation tracks the statutory language and clarifies that “such benefits include benefits for the diagnosis, cure, mitigation, or prevention of physical or mental disease or condition with respect to any structure or function of the body.” 45 C.F.R. § 149.2. The regulation further states that “health benefits” do not include excepted benefits under the HIPAA regulations (e.g., disability income insurance, automobile medical payment insurance). Guidance in the “common questions” on the ERRP website, www.errp.gov, also clarifies that the “health benefits” that HHS will reimburse under the ERRP are items and services for which Medicare would generally reimburse.

This document further clarifies ERRP reimbursement policy. In addition to the exclusions listed in the ERRP regulation, ERRP will not credit toward the program’s cost threshold or reimburse for the items and services listed below, which are generally excluded from Medicare coverage.

That said, some of Medicare’s specific limits do not apply in ERRP. Medicare imposes amount, duration, and scope limits on certain items and services such as home health services and skilled nursing facility care. HHS will not be imposing the Medicare frequency or maximum limits because we intend to recognize limits set under the employment-based health plan. Also, because ERRP may only review and reimburse for costs in those plan years when an early retiree’s (or an early retiree’s spouse, surviving spouse, or dependent(s)) medical claims exceed the \$15,000 cost threshold, effectively tracking such limits across plan years would not be administratively possible.

Nor will HHS be applying Medicare medical necessity determinations to ERRP claims. HHS will defer to the medical necessity determinations made by the applicable sponsor’s plan.

HHS will not be imposing Medicare benefit restrictions that would require sponsors and HHS to develop a claims history, such as the requirement that an individual have been in a hospital before being admitted to a skilled nursing facility.

Except as listed below, Medicare’s restrictions on the site or circumstances of care would not

apply to ERRP. For example, HHS will count toward the program's cost threshold or reimburse otherwise valid ERRP claims for items and services of providers not participating in Medicare. A sponsor and/or its health insurance issuer must comply with all applicable state and Federal requirements regarding benefits, regardless of whether a given item or service associated with such a benefit requirement can be submitted to HHS for purposes of ERRP. Furthermore, merely because ERRP will not reimburse for an item or service does not mean that a sponsor may not cover the item or service in its health benefits; it just may not submit ERRP claims for such an item or service.

Specific Items and Services Excluded by ERRP

The following is a list of certain items and services that are not covered by Medicare and will not be credited toward the cost threshold or reimbursed under ERRP:

1. Custodial care (e.g., personal care by non-medically trained personnel, institutional care that does not meet the requirements for coverage as skilled nursing facility care)
2. Routine foot care (e.g., orthopedic shoes)
3. Personal comfort items (e.g., TV in a hospital room)
4. Routine services and appliances for vision (e.g., glasses, contact lenses)
5. Hearing aids and auditory implants
6. Cosmetic surgery (except when required for the prompt repair of an accidental injury or for the improvement of the functioning of a malformed body part)
7. Routine dental services
8. Assisted suicide
9. In-vitro fertilization, artificial insemination, sperm and embryo procurement
10. Abortion services, except if the pregnancy resulted from rape or incest or endangers the life of the woman
11. Drugs that are not covered by a standard Part D plan (unless covered under Parts A or B)
12. Items or services not furnished in the United States

For prescription drugs that would not be covered under Medicare Part A or Part B, sponsors may only submit drug costs for ERRP reimbursement if they are drugs that would be covered as a Part D drug by a standard Medicare Part D plan.

This information is provided for you as a general guide. In October, a detailed list of codes that correspond with these exclusions will be posted at www.errp.gov. If you have questions, please email them to help@errp.gov, with the phrase "ERRP/Medicare Question" in the subject line.

The excluded items and services specified in this guidance are not exhaustive. As the ERRP program is implemented, additional guidance may be issued.