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**CLIENT ALERT**

**MAY 2010**

**RULES ISSUED FOR EARLY RETIREMENT SUBSIDY**

The recently enacted health care reform legislation authorized Federal financial assistance for employer-based health care plans covering early retirees. Under this program, employers can apply for reimbursement to help defray the costs of certain high cost claims of retirees who are not eligible for Medicare or Medicaid. Rules for applying and administration of this subsidy were published on May 5, 2010 [75 Fed Reg 24450 (5-5-2010)].

The administrative procedures for seeking a reimbursement will, in many ways, mirror those in use for the retiree drug subsidy program which subsidizes the cost of retiree prescription drug coverage that is comparable to Medicare Part D coverage. Other key aspects of the new program, as supplemented by the recently released regulations, are:

• **Intent**

The program is designed to encourage the maintenance of employer-based health insurance coverage of early retirees by providing financial help to sponsors as an incentive to continue to provide coverage and financial relief to plan participants.

• **Eligible Plans**

A plan that provides coverage to early retirees is eligible to participate in the program only if its financial assistance application demonstrates that it has programs and procedures in place to generate cost savings for participants with chronic and high-cost

conditions and the reimbursements will not reduce its level of support for the plan.

Early retirees are individuals who are age 55 and older but are not eligible for coverage under Medicare and who are not active employees. Chronic and high-cost conditions are those for which \$15,000 or more in health benefit claims are likely to be incurred during a plan year by any one participant.

Plans eligible for financial assistance include group benefits plan maintained by:

- Private employers;
- State or local governments (including, plans offered by state retirement systems);
- Employee organizations, voluntary employees' beneficiary association, a committee or board of individuals appointed to administer such plan, or a multi-employer plan (as defined by Employee Retirement Income Security Act or ERISA).

Assistance is available to both insured and self-insured plans.

• **Reimbursable Costs**

A plan may receive reimbursement in an amount of 80 percent of the portion of the health benefit costs (net of negotiated price

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concessions) attributable to the claims that exceed \$15,000, but are below \$90,000. Costs paid by the early retiree (or his or her spouse, surviving spouse, or dependent) in the form of deductibles, copayments, or coinsurance shall be included in the amounts paid by the participating employment-based plan. For insured plans, the amount of premium the sponsor pays (and the amount of premium contribution the early retiree pays) is irrelevant for purposes of calculating reimbursement under the program. In short, premiums are not costs for items and services.

- **Reimbursement is Tax-Free**

Payments received under the program are not included in the gross income of a plan sponsor.

- **Use of Reimbursements**

Consistent with the new legislation, the regulations require that a sponsor use amounts received under this program to reduce the sponsor's health benefit premiums or health benefit costs, health benefit premium contributions, copayments, deductibles, coinsurance, other out-of-pocket costs, or any combination of these costs, for plan participants. Proceeds under this program may not be used as general revenue for the sponsor.

- **Key Dates and Funding**

Only \$5 billion has been appropriated to fund the subsidy program and it will be available on a first-come, first-served basis. Therefore, prompt action by an employer seeking to participate is essential. Applications will be processed in the order in which they are received. Because it is important that applicants submit complete applications the first time, HHS

will provide (as yet unspecified) assistance. HHS expects the program to be established by June 1, 2010 and operational on June 21, 2010. The program will expire on January 1, 2014.

**For more information please contact:**

**Bernie Smith** 216.696.3952  
[bernard.smith@tuckerellis.com](mailto:bernard.smith@tuckerellis.com)

1150 Huntington Building, 925 Euclid Avenue  
Cleveland, OH 44115  
[www.tuckerellis.com](http://www.tuckerellis.com)

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