

## Health Care Reform Alert HHS Releases Draft Application for the Retiree Reinsurance Program

As we discussed in a prior Alert (see: <http://jaeckle.com/RetireeReinsurance>), the health care reform law provides a federal subsidy for some health plans that cover early retirees, to help offset the cost of such coverage. The subsidy program became effective as of June 1, 2010. Only limited funds were allocated to the program and are to be disbursed on a “first come first served” basis until exhausted; accordingly, it behooves a health plan sponsor who might qualify for the subsidy to apply as soon as possible. The final application is reportedly to be released later this month (June 2010), and there are many questions about what information will be required in the application.

The Department of Health and Human Services (HHS) has now released drafts of the application, the accompanying instructions, and a “supporting statement” for the program. We have posted these documents on our website, here:

**Draft Early Retiree Reinsurance Program Application:**

[http://jaeckle.com/files/Health\\_Care/Link\\_Library/ERRP\\_Hard\\_Copy\\_Application\\_Draft\\_Markup.pdf](http://jaeckle.com/files/Health_Care/Link_Library/ERRP_Hard_Copy_Application_Draft_Markup.pdf)

**Draft Early Retiree Reinsurance Program Instructions:**

[http://jaeckle.com/files/Health\\_Care/Link\\_Library/ERRP\\_App\\_Instructions\\_Markup.pdf](http://jaeckle.com/files/Health_Care/Link_Library/ERRP_App_Instructions_Markup.pdf)

**Draft Supporting Statement:**

[http://jaeckle.com/files/Health\\_Care/Link\\_Library/CMS-10321\\_Supporting\\_Statement.pdf](http://jaeckle.com/files/Health_Care/Link_Library/CMS-10321_Supporting_Statement.pdf)

The draft documents reveal some important details concerning the program application process:

- Initially, plan sponsors will be able to submit paper applications, as the online application system hasn't yet been finalized.
- HHS plans to utilize outside contractors to assist in the administration of the program, including the creation of an online application.
- The application must be signed by an “authorized representative” of the health plan sponsor. The authorized representative must be an individual who with legal authority to sign a contract on behalf of the sponsor. The draft instructions state that the authorized representative of a sponsor that is a private employer could be the President or Human Resources Director, or an officer or employee with similar authority. For a multiemployer plan, the authorized representative could be a member of the joint Board Of Trustees.
- The application must also designate an “account manager”, which will be the individual “who coordinates the application process” for the plan sponsor and acts as the primary contact with HHS. The draft instructions state that the account manager could be an employee of the sponsor or a third party consultant. The account manager's Social Security

number and contact information must be disclosed in the application in order to verify his identity.<sup>1</sup>

- As discussed in our prior Alert (<http://jaeckle.com/RetireeReinsurance>), eligible plans must have programs and procedures to generate cost savings for participants with “chronic and high-cost conditions”, defined as conditions likely to result in \$15,000 or more in annual claims by any one participant. The draft instructions state that the required programs and procedures must have addressed conditions that *have* resulted in \$15,000 or more in claims, or *likely would have* resulted in claims at or above this level, but for the requisite cost-saving procedures. This clarification could help sponsors by broadening the scope of cost-saving programs and procedures that could be identified for purposes of this program requirement.
- As discussed in our prior Alert, the application must include a projection of the plan’s expected reimbursement amounts for the first two plan year cycles. The draft application states that the sponsor may provide a range of expected reimbursement amounts that includes a low-end estimate, a “most likely” amount and a high-end estimate. Again, this is (potentially at least) a useful clarification, as it may provide some flexibility in computing the two year projection – the most difficult part of the application.
- As discussed in our prior Alert, the sponsor must state how it will use any reimbursements under the program. The draft application confirms that, if the sponsor uses any part of the subsidy for its own use, it may only use such funds to offset increases in its premium costs (or benefit costs, if self-insured). The application further states that in this case, the sponsor must summarize how program funds will relieve the sponsor of using its own funds to subsidize premium or benefit cost increases, “thereby allowing [the] organization to instead use its own funds to maintain its level of financial contribution to the [plan].” Thus, the draft application confirms that a “maintenance of effort” undertaking is a part of the application process, at least if the sponsor uses any part of the subsidy to offset increases in the employer premium.

In its supporting statement, HHS estimates that on average it will take an applicant 35 hours to complete the application; the majority of this time is expected to be needed to complete the required projection of reimbursements for the first two plan years.

***If you have any questions about the retiree reinsurance program or any other aspect of health care reform, please contact Robert W. Patterson at 716.843.3910 or [rpatterson@jaeckle.com](mailto:rpatterson@jaeckle.com), or Michele O. Heffernan at 716.843.3850 or [mheffernan@jaeckle.com](mailto:mheffernan@jaeckle.com)***

This Jaeckle Alert, prepared by the attorneys at Jaeckle Fleischmann & Mugel, LLP, is intended for general information purposes only and should not be considered legal advice or an opinion on specific facts. For more information on these issues, contact one of the attorneys listed above or your existing Firm contact. Prior results do not guarantee a similar outcome. The invitation to contact is not a solicitation for legal work in any jurisdiction in which the contacted attorney is not admitted to practice. Any attorney/client relationship must be confirmed in writing.

© 2010. All Rights Reserved.

---

<sup>1</sup> It appears that when the online application system is put in place the account manager will have to (electronically) “sign” the application, in addition to the authorized representative.