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United States Government Accountability Office
Washington, DC 20548

September 30, 2011

The Honorable Michael B. Enzi
Ranking Member
Committee on Health, Education, Labor, and Pensions
United States Senate

Subject: *Private Health Insurance: Implementation of the Early Retiree Reinsurance Program*

Dear Senator Enzi:

During the last decade the number of large employers offering health benefits to retirees—including early retirees not eligible for Medicare—has declined. Among all large firms that offered health benefits to active employees from 2001 to 2010, the percentage that offered health benefits to retirees decreased from 39 percent in 2001 to 28 percent in 2010.[1] According to the Agency for Healthcare Research and Quality, individuals age 55 to 64 who lack health insurance are vulnerable to high health care costs associated with serious and chronic illnesses.[2]

The Early Retiree Reinsurance Program (ERRP) was established pursuant to the Patient Protection and Affordable Care Act (PPACA) to provide reimbursement to participating employment-based health plans.[3] The reimbursements provided by the program are intended to cover a portion of the cost of providing health benefits to early retirees—individuals age 55 and older who are not eligible for Medicare.[4] Sponsors of participating health plans can include commercial organizations, government entities, nonprofit organizations, religious organizations, and unions. Under the program, these plan sponsors

[1]The Kaiser Family Foundation and Health Research & Educational Trust, *Employer Health Benefits 2010 Annual Survey* (Menlo Park, Calif. and Chicago, Ill.: September 2010). Large firms were defined as firms with 200 or more employees.

[2]Agency for Healthcare Research and Quality, *Near-Elderly Adults, Ages 55-64: Health Insurance Coverage, Cost, and Access* (Rockville, Md.: May 2009).

[3]Pub. L. No. 111-148, § 1102,124 Stat. 119, 143 (2010). Typically such a health plan is not a discrete entity to which payments can be directly made. Therefore, in implementing the program, the Department of Health and Human Services has interpreted this provision to require reimbursement to a sponsor, which it has defined to mean: a "plan sponsor" as defined in § 3(16)(B) of the Employee Retirement Income Security Act of 1974, except that in the case of a plan maintained jointly by one employer and an employee organization and for which the employer is the primary source of financing, the term means the employer. Early Retiree Reinsurance Program, 75 *Fed. Reg*. 24450, 24451, 24467 (May 5, 2010) (definition of "sponsor" to be codified at 45 C.F.R. § 149.2).

[4]For purposes of ERRP, health benefits provided to spouses, surviving spouses, and dependents of early retirees are also eligible for reimbursement, even if these individuals are under the age of 55 and/or are eligible for Medicare. Throughout this report, we use the term early retirees to refer to early retirees and their spouses, surviving spouses, and dependents. In addition to early retirees, eligible plans can also cover active employees and their spouses and dependents as well as retirees who are eligible for Medicare.

can use ERRP reimbursements to reduce their own health benefit costs, plan participants' health benefit costs, or any combination of these costs.[5]

PPACA appropriated $5 billion in funding for ERRP and directed the Secretary of Health and Human Services (HHS) to establish the program no later than 90 days after the enactment of PPACA, or by June 21, 2010.[6] HHS's Center for Consumer Information & Insurance Oversight (CCIIO) established the program on June 1, 2010, and is responsible for its implementation—including determining which plan sponsors are eligible to participate in the program and providing reimbursements to the participating plan sponsors. Under PPACA, ERRP is scheduled to end on January 1, 2014.

You asked us to review the implementation of ERRP. In this report we address: (1) CCIIO's process for implementing ERRP; (2) program expenditures and the types of plan sponsors that had ERRP reimbursements approved as of June 30, 2011; and (3) how plan sponsors intend to use ERRP reimbursements.

To describe CCIIO's process for implementing ERRP, we reviewed HHS' interim final rule for the implementation of the program,[7] program guidelines available on the ERRP Web site, and ERRP policies and procedures. To obtain additional information about the implementation of ERRP, we interviewed CCIIO officials with responsibility for the program. Additionally, to obtain information about plan sponsors' experiences with the implementation of the program, we interviewed a sample of plan sponsors from among the 25 sponsors for which CCIIO approved the greatest amount of ERRP reimbursements as of March 17, 2011. Thirteen of these 25 plan sponsors agreed to be interviewed and we confirmed that these 13 sponsors represented a variety of different types of plan sponsors.

To describe program expenditures and the types of plan sponsors for which CCIIO approved ERRP reimbursements as of June 30, 2011, we reviewed program updates and other data from CCIIO on the number of plan sponsors determined eligible to participate in the program and the amount of program funds expended as of June 30, 2011, the most recent quarterly data available at the time of our analysis. We also examined data we received from CCIIO on the amount of reimbursements approved by type of plan sponsor (e.g., commercial, government, nonprofit, religious, or union) as of June 30, 2011. Additionally, we reviewed published data related to the provision of employee health benefits from sources such as the Kaiser Family Foundation, Mercer, and the Employee Benefit Research Institute (EBRI) and interviewed a representative from EBRI.

To describe how plan sponsors intend to use ERRP reimbursements, we reviewed applications to participate in ERRP submitted by the 25 plan sponsors for which CCIIO approved the greatest amount of reimbursements as of March 17, 2011.[8] Some of these 25 plan sponsors manage the provision of health benefits for multiple employers (e.g., all of the school districts in a given state). In these cases, use of ERRP reimbursements by the plan sponsor may have different effects on the various employers and retirees participating in the plan based on such factors as differences in cost sharing established by collective bargaining agreements in place for each employer. We also interviewed 13 of these 25 plan

[5]Because program funds cannot be used as general revenue, plan sponsors must maintain their previous level of contribution (in the aggregate or per capita, net of any ERRP reimbursements received) toward the plan.

[6]Officials from HHS's Center for Consumer Information & Insurance Oversight (CCIIO) told us that a portion of the $5 billion appropriated for the program is used for program administration.

[7]75 *Fed. Reg.* 24450 (to be codified at 45 C.F.R. pt. 149).

[8]The 25 plan sponsors whose applications we reviewed included 14 government entities, 9 commercial organizations, and 2 nonprofit organizations. As of March 17, 2011, CCIIO approved over $1.1 billion in reimbursements for these plan sponsors, or 62 percent of the total approved ERRP reimbursements as of that date.

sponsors, as described above, to obtain additional details on their plans for using ERRP reimbursements.[9]

Our findings on plan sponsors' experiences with the program and their use of ERRP reimbursements pertain only to the sponsors we interviewed and whose applications we reviewed. We determined that the agency data we used were sufficiently reliable for our purposes by interviewing agency officials who were knowledgeable about the data and reviewing the data for outliers and internal inconsistencies. We conducted this performance audit from March 2011 through September 2011 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Results in Brief

CCIIO took several steps to implement ERRP, including educating plan sponsors about the program, approving applications from plan sponsors to participate, and approving reimbursements to participating plan sponsors for a portion of their early retiree health benefit costs. In total, CCIIO approved applications from 6,078 plan sponsors to participate in the reimbursement program—nearly all of those who submitted applications during a 10-month application period. Of these plan sponsors, 4,935 (or 81 percent) were approved by December 31, 2010. CCIIO officials told us that the applications to participate and subsequent requests for reimbursement they received were processed in the order in which they were received and were not given preference for any reason.

From the beginning of the program through June 30, 2011, the most recent period for which quarterly data were available at the time of our analysis, CCIIO approved more than $2.7 billion in reimbursements to plan sponsors for eligible health costs for early retirees. This represents nearly 54 percent of the $5 billion appropriated for the program. The largest share—about 46 percent—of the $2.7 billion in ERRP reimbursements approved as of June 30, 2011, went to government entities. In general, this distribution of reimbursements is consistent with the provision of retiree health benefits in the marketplace. In particular, government entities are more likely than other types of employers to provide health benefits to their retirees. HHS projects that the $5 billion appropriated for ERRP will be expended by the end of fiscal year 2012—before the January 1, 2014, end date for the program.

The majority of plan sponsors in our review intend to use ERRP reimbursements to reduce a combination of the plan sponsor's costs and plan participants' costs. Specifically, 17 of the 25 plan sponsors whose program applications we reviewed indicated that they intended to use ERRP reimbursements to reduce a combination of their own and participants' costs. Of the remaining 8 plan sponsors, 4 indicated that they intended to use ERRP reimbursements to reduce only participants' costs, and 4 indicated that they intended to use ERRP reimbursements to reduce only their own costs.

HHS provided us with written comments on a draft version of this report. In its written comments, HHS noted that ERRP was designed to stabilize the availability of employer-sponsored health coverage for early retirees by providing assistance to plan sponsors. HHS also noted that the majority of plan sponsors indicated that they will use program funding to offset both their own health costs and those of plan participants. HHS also provided technical comments, which we incorporated as appropriate.

[9]The 13 plan sponsors we interviewed included 6 government entities, 6 commercial organizations, and 1 nonprofit organization. As of March 17, 2011, CCIIO approved nearly $652 million in reimbursements for these plan sponsors, or 36 percent of the total approved ERRP reimbursements as of that date.

Background

Established in June 2010, ERRP provides reimbursements to plan sponsors for a portion of the cost of providing benefits to early retirees covered by the sponsor's participating health plans. In order to be eligible to participate in the program, health plans must have cost-saving programs and procedures for chronic and high-cost conditions in place at the time they apply for the program. Eligible health plans must also provide documentation of the actual cost of medical claims for which they are requesting reimbursement.

Under PPACA, health costs that are eligible for reimbursement under ERRP include medical, surgical, hospital, and prescription drug costs.[10] For eligible claims paid by a plan on behalf of each early retiree, ERRP will reimburse 80 percent of the amount that exceeded $15,000 (the cost threshold) but was not greater than $90,000 (the cost limit) in a given year.[11] In determining the amount of eligible claims, plan sponsors may choose to add the costs paid by the early retiree in the form of deductibles, copayments, or coinsurance as long as the plan sponsor submits adequate documentation.

Under PPACA, plan sponsors must use their ERRP reimbursements to lower costs for the participating health plan, though they can do so in a variety of ways.[12] Plan sponsors can use the reimbursements to reduce their own health benefit costs or health benefit premium costs; to reduce plan participants' premium contributions, copayments, deductibles, coinsurance, or other out-of-pocket costs; or to reduce any combination of these costs.[13] Plan sponsors are not permitted to use the funds received from the program as general revenue and may be subject to program audits to verify their compliance with this and other program requirements.

CCIIO's Implementation of ERRP Included Educating Plan Sponsors, Approving Program Applications, and Approving Reimbursements

CCIIO took several steps to implement ERRP. These steps included publishing regulations and other program guidance, educating plan sponsors about the program, approving applications from plan sponsors to participate, and approving reimbursements to participating plan sponsors for a portion of their early retiree health benefit costs.

According to CCIIO officials, various means were used to educate sponsors of employment-based health plans about ERRP. Officials noted that in the early stages of the program, outreach methods included a series of webinars and blog entries introducing the program and conference calls explaining ERRP regulations. In addition, officials told us that they conducted a significant amount of education through answering questions from individual plan sponsors and other industry stakeholders. The CCIIO officials stated that many plan sponsors who were likely to be eligible to participate in ERRP were already participating in

[10]Pub. L. No. 111-148, § 1102(a)(2)(A), 124 Stat. 143. PPACA permits CCIIO to include other health benefits as determined by the Secretary of HHS. In general, CCIIO applies the Medicare benefit standard to determine whether a given item or service is a health benefit and thus eligible for ERRP reimbursement.

[11] Pub. L. No. 111-148, § 1102(c), 124 Stat. 144. Eligible claims must be calculated excluding any negotiated price concessions. The $15,000 cost threshold and $90,000 cost limit are to be adjusted each fiscal year based on the percentage increase in the Medical Care Component of the Consumer Price Index for all urban consumers. For plan years starting on or after October 1, 2011, the annual cost threshold will be $16,000 and the annual cost limit will be $93,000.

[12]In certain instances plan sponsors may be able to use the reimbursements to reduce costs for a different plan that is participating in ERRP.

[13]Although plan sponsors can only receive reimbursement for health benefit costs paid on behalf of early retirees, plan sponsors who use the reimbursements to reduce plan participants' costs must reduce costs for all participants, including retirees who are eligible for Medicare, active employees, and their spouses and dependents. CCIIO officials told us that funds received in a current plan year need not be used to offset costs for that same plan year but can be used, in whole or part, to offset costs in the upcoming plan year.

the Retiree Drug Subsidy (RDS) program—which is a separate government program that reimburses sponsors for prescription drug costs incurred on behalf of Medicare-eligible retirees—and were therefore aware of ERRP in advance of specific outreach by CCIIO. The CCIIO officials also told us that in August and September 2010, CCIIO issued press releases publicizing the program in order to reach those who were not yet aware of the program.

As part of its implementation of ERRP, CCIIO began accepting applications to participate in the program on June 29, 2010. Plan sponsors were required to submit various types of information in their applications, including: (1) a description of programs and procedures in the plan that are intended to generate cost savings with respect to at least two chronic and high-cost conditions; (2) how the plan sponsor intended to use ERRP reimbursements; and (3) the type of plan sponsor—commercial organization, government entity, nonprofit organization, religious organization, or union—submitting the application.[14] CCIIO officials told us that plan sponsors were not provided guidelines regarding the categorization of their type of plan sponsor other than the instruction to choose only one category that best described their organization. It is therefore possible that similar types of organizations may have categorized themselves differently.[15] CCIIO officials told us that the applications they received were not given preference based on any particular category of submitted information or for any other reason and were processed in the order in which they were received.

CCIIO stopped accepting applications on May 5, 2011, because they concluded that they had accepted sufficient applications to exhaust program funding.[16] In total, CCIIO approved applications from 6,078 plan sponsors—nearly all of those who submitted applications—to participate in the reimbursement program. Of these plan sponsors, 4,935 (or 81 percent) had their applications approved within the first 6 months of the application period, or by December 31, 2010. According to CCIIO officials, fewer than 100 applications were denied during the 10-month application period. Reasons given for denials included failure of the plan sponsor to meet the criteria for participating in the program and failing to respond to CCIIO's requests for additional/missing information. In addition, CCIIO officials told us that applications received after the application deadline were deemed invalid, as opposed to denied, and fewer than 100 applications were deemed invalid.

In addition to determining which plan sponsors were eligible to participate in ERRP, CCIIO began accepting requests from plan sponsors for program reimbursements in October 2010.[17] CCIIO processed reimbursement requests in the order in which they were received

[14]Most plan sponsors used an early version of the application that also asked for other information, including whether the health plan was self-funded or delivered through the purchase of insurance, the benefit options offered under the plan, and the amount of reimbursement the plan sponsor expected to request during each of the first two plan years of the program.

[15]A plan sponsor's categorization may not reflect the type of retirees covered by the plan sponsor's health plans. For example, some participating health plans are managed by a voluntary employees' beneficiary association (VEBA), which is a form of trust fund whose sole purpose is to provide employee benefits. Although these plans might provide benefits to unionized retirees or retirees who were previously employed by commercial organizations, a VEBA may categorize itself as a nonprofit.

[16]CCIIO posted an announcement on the ERRP Web site on April 1, 2011, stating that all applications had to be received by May 5, 2011. See also 76 *Fed. Reg*. 18766 (Apr. 5, 2011).

[17]The majority (11 out of 13) of the plan sponsors we interviewed told us that the timing of their plan year (i.e., calendar year or an alternate plan year schedule) did not impact their participation in ERRP; 12 of the 13 plan sponsors had a calendar year plan. Sponsors were eligible to apply for participation in ERRP for plan years that began prior to June 1, 2010, provided they ended after that date. For claims incurred before June 1, 2010, the amount of such claims up to $15,000 was counted toward the cost threshold and the cost limit for that plan year. The amount of claims incurred before June 1, 2010, that exceeded $15,000 was not eligible for reimbursement and did not count toward the $90,000 annual cost limit. The reimbursement amount to be paid was based solely on claims incurred on and after June 1, 2010.

from plan sponsors.[18] CCIIO officials told us that they considered other methods of distributing reimbursements—such as limiting total reimbursement amounts by year or setting aside a certain proportion of funds for small, medium, and large plan sponsors—during the development of the program, but ultimately decided that first-come, first-served met the goals of the program most effectively, had the fewest inherent inequities, and was consistent with the program's statutory requirements. In order to more equitably distribute funds, they decided to allow only one reimbursement request per plan, per plan year, during each calendar quarter.

In order to request reimbursement from ERRP, plan sponsors are required to submit, in a detailed claim list, documentation of the actual costs of the health care items and services for each early retiree for whom the sponsor is requesting reimbursement.[19] CCIIO implemented this requirement in April 2011. Before this requirement was implemented, plan sponsors could request reimbursement by submitting aggregate cost data for all eligible health care costs, as well as lists of eligible retirees who incurred such costs. By March 30, 2012, plan sponsors that received reimbursement based on aggregate cost data must also submit detailed claim lists to substantiate the costs that were reimbursed.

CCIIO began approving reimbursements to plan sponsors in October 2010. According to CCIIO officials, no reimbursement requests had been denied for reasons of inaccuracy or inappropriateness as of June 30, 2011. However, only requests submitted prior to April 2011—without detailed claim lists—had been processed and paid as of that date. CCIIO officials told us that requests for reimbursement submitted in the early months of the program were generally processed within 1 month of receipt. However, the April 2011 implementation of a procedure to conduct quality assurance reviews of the detailed claim lists extended the processing time. CCIIO officials told us that they began these quality assurance reviews during the summer of 2011. New reimbursement system features that will automate review of the claim lists and reduce processing time should be in place by late September 2011. CCIIO officials told us that they intend to continue to process reimbursement requests in the order in which they are received until they have expended all of the reimbursement funding. At the time that our report was finalized, CCIIO had not released procedures detailing how funds would be spent near the end of the program.

CCIIO officials also told us that in order to ensure that plan sponsors are in compliance with the requirements of the program, including the submission of accurate and appropriate claims data, CCIIO plans to hire an audit contractor and begin conducting audits of reimbursement recipients by the end of 2011. CCIIO intends to conduct 10 audits in the first year of the contract, with two option years that, if awarded, would provide for 10 additional audits per year. Officials stated that audits will be conducted on a range of plan sponsors representing the diversity of program participants with regard to the size and type of the organization, the total amount of reimbursements received, and the vendor the sponsor relied on for reporting data to ERRP. However, a greater proportion of audits will be focused on those plan sponsors who received the greatest amount of program funds. CCIIO officials

[18]CCIIO officials told us they were aware that there was widespread belief among plan sponsors at the start of ERRP that requests for reimbursement would be processed based on the date that the plan sponsor submitted their application to ERRP. These officials noted that CCIIO published information in August 2010 in the FAQ section of the ERRP Web site clarifying that requests for reimbursement would be processed based on the date that the plan sponsor submitted the request for reimbursement and not based on the date that the plan sponsor submitted their program application.

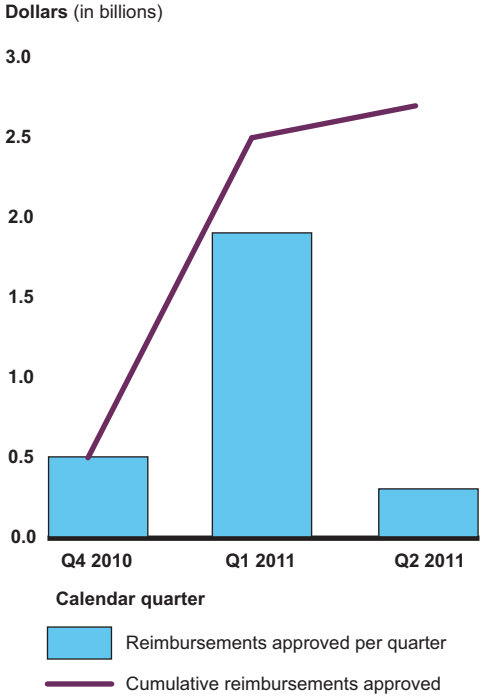
[19]Eligible early retirees for purposes of ERRP are individuals age 55 and older who are not eligible for Medicare and who are not active employees of an employer maintaining, or currently contributing to, the employment-based plan or of any employer that has made substantial financial contributions to the sponsor's employment-based plan. *See* Pub. L. No. 111-148, § 1102(a)(2)(C), 124 Stat. 144. For purposes of ERRP, health benefits provided to spouses, surviving spouses, and dependents of early retirees are also eligible for reimbursement, even if these individuals are under the age of 55 and/or are eligible for Medicare.

also noted that they were developing procedures detailing how funds recovered as a result of audits will be used; these procedures had not been released by the time our report was finalized.

CCIIO Approved More than $2.7 Billion in Reimbursements to Government Entities and Other Types of Plan Sponsors as of June 30, 2011

From the beginning of the program through June 30, 2011, the most recent period for which quarterly data were available at the time of our analysis, CCIIO approved more than $2.7 billion in reimbursements to plan sponsors for eligible early retiree health costs.[20] This represents 54 percent of the $5 billion appropriated for the program. As of June 30, 2011, CCIIO had approved reimbursements for 1,930 (or 32 percent) of the 6,078 plan sponsors participating in the program. The amount of reimbursement approved per request ranged from less than $100 to nearly $92 million, with a median reimbursement amount of about $119,000. The majority of the reimbursements approved as of June 30, 2011, were approved during the first calendar quarter of 2011. (See fig. 1.)

Figure 1: Amount of Reimbursements Approved for Participating Plan Sponsors through June 30, 2011, by Calendar Quarter and Cumulatively



Source: GAO analysis of CCIIO data.

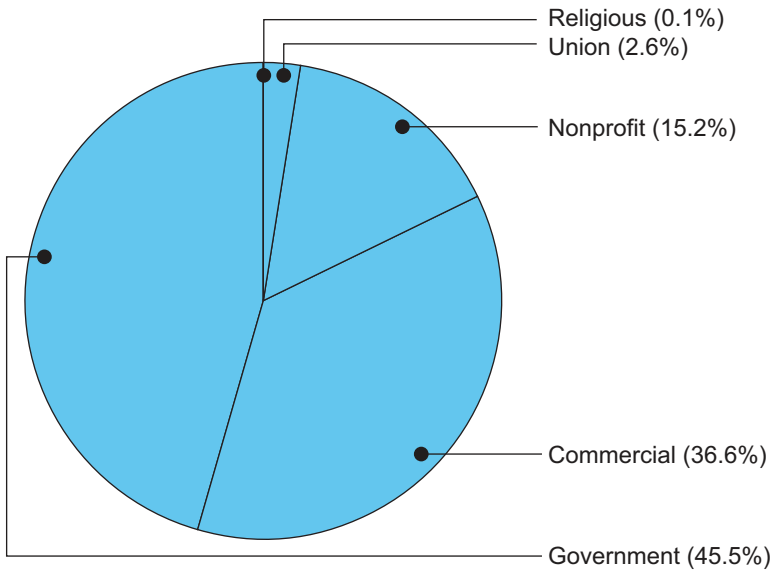
Note: CCIIO officials told us that they had placed reimbursement requests submitted on or after April 1, 2011, on hold while they developed procedures for reviewing the detailed claim lists that sponsors were required to include with those requests. It is likely that this contributed to the low amount of reimbursements approved during the second quarter of 2011.

[20]As of June 30, 2011, administrative obligations totaled $58 million, which is 2 percent of the ERRP reimbursements approved as of this date. CCIIO estimates an additional $64 million in administrative expenses between June 30, 2011, and the end of the program, for total administrative costs of $122 million, or 2 percent of the $5 billion appropriated for the program.

HHS projects that the $5 billion appropriated for ERRP will be expended before January 1, 2014—the program's end date.[21] Specifically, in its budget justification for fiscal year (FY) 2012, HHS projected that approximately $3.6 billion in program funds would be disbursed in FY 2011 and the remaining $1.4 billion would be disbursed in FY 2012.[22] CCIIO officials told us that any additional reimbursements that might be made from the last quarter of 2012 through 2013 would likely be paid through recovery of any overpayments or audit activities that resulted in a recovery of funds.

As of June 30, 2011, CCIIO had approved reimbursements for all five types of plan sponsors—commercial organizations, government entities, nonprofit organizations, religious organizations, and unions—although the largest share (about 46 percent) of reimbursements approved as of this date went to entities that categorized themselves as government entities. (See fig. 2.) A plan sponsor's categorization may not reflect the type of retirees covered by the plan sponsor's health plans. For example, unionized retirees may participate in a health plan that is sponsored by a government entity or nonprofit organization.

Figure 2: Percentage of Reimbursements Approved for Five Types of Health Plan Sponsors, as of June 30, 2011



Source: GAO analysis of CCIIO data.

Note: Plan sponsors self-categorized their type of organization in their ERRP application. According to CCIIO officials, plan sponsors were not provided guidelines regarding their categorization other than the instruction to choose only one category that best described their organization. It is therefore possible that similar types of organizations may have categorized themselves differently. A plan sponsor's categorization may not reflect the type of retirees covered by the plan sponsor's health plans. For example, unionized retirees may participate in a health plan that is sponsored by a government entity or nonprofit organization.

[21]Department of Health and Human Services, Fiscal Year 2012 Justification of Estimates for Appropriations Committees: Centers for Medicare & Medicaid Services (Baltimore, Md.: Feb. 14, 2011).

[22]CCIIO officials told us that administrative costs would likely continue until at least the statutory end date of the program on January 1, 2014, because plan sponsors may choose to apply their reimbursements to plan expenses in 2012 or 2013, requiring continued program oversight.

In general, this distribution of reimbursements is consistent with the provision of retiree health benefits in the marketplace. In particular, government entities are more likely than other types of employers to provide health benefits to their retirees. For example, in its 2010 survey of employer health benefits, the Kaiser Family Foundation found that among large employers offering health benefits to active workers in 2010, 87 percent of state and local governments also offered health benefits to their retirees.[23] This represents a much higher percentage than was found for other types of employers.[24] Similarly, as of June 30, 2011, government entities represented the largest share—nearly 51 percent—of the plan sponsors approved to participate in ERRP.

Most Plan Sponsors in Our Review Expect to Use ERRP Reimbursements to Reduce Both Sponsor and Participant Costs

Based on our review of program applications and our interviews with plan sponsors, the majority of plan sponsors intend to use the reimbursements received through ERRP to reduce a combination of the plan sponsor's health benefit or health benefit premium costs and plan participants' premium contributions, copayments, deductibles, coinsurance, or other out-of-pocket costs. Specifically, 17 of the 25 plan sponsors whose program applications we reviewed indicated that they intended to use ERRP reimbursements to reduce a combination of their own and participants' costs.[25] Although the program applications we reviewed did not indicate the proportion of funds that the plan sponsors intended to use for each purpose, 3 of these 17 plan sponsors indicated that they would use the reimbursements to reduce their own costs first, with any remaining funds used to reduce participant costs. In addition, 4 of the 25 plan sponsors whose program applications we reviewed indicated that they intended to use ERRP reimbursements to reduce only plan participants' costs and 4 of the 25 plan sponsors indicated that they intended to use the reimbursements to reduce only their own costs.

The plan sponsors we interviewed provided additional detail about how they had used or intended to use the reimbursements received from ERRP. Nine of the 13 plan sponsors we interviewed had started using the reimbursements, while 4 of the plan sponsors had not yet used the reimbursements. Additionally, 6 of the 9 plan sponsors that had started using the reimbursements and 3 of the 4 remaining plan sponsors told us that they had used or intended to use the reimbursements to reduce a combination of their own and participants' costs.[26] However, the amounts the plan sponsors had used or intended to use for each purpose varied. For example, one plan sponsor had used 75 percent of the reimbursements to reduce the plan sponsor's costs and 25 percent to reduce plan participants' costs while another plan sponsor had split the reimbursements evenly among the two purposes. An

[23]The Kaiser Family Foundation and Health Research & Educational Trust, *Employer Health Benefits 2010 Annual Survey* (Menlo Park, Calif. and Chicago, Ill.: September 2010). Large employers were defined as those with 200 or more workers. Although these statistics are for all retirees rather than only early retirees, according to Kaiser, among employers that offered health benefits to retirees in 2010, most large employers (93 percent) offered them to retirees under the age of 65.

[24]Among the other large employers that participated in Kaiser's survey, the percentages that offered health benefits to retirees ranged from 16 percent of employers in the retail industry to 40 percent of employers in the finance industry.

[25]Some of these 25 plan sponsors manage the provision of health benefits for multiple employers (e.g., all of the school districts in a given state). In these cases, use of ERRP reimbursements by the plan sponsor may have different effects on the various employers and retirees participating in the plan based on such factors as differences in cost sharing established by collective bargaining agreements in place for each employer.

[26]In addition, 4 of the 13 plan sponsors we interviewed stated that they had used or intended to use the reimbursements to reduce only plan participants' costs. For those plan sponsors that were multiemployer organizations such as a VEBA, we used the term 'plan sponsor' to mean the underlying employers participating in the plan. In these cases, a reduction in plan sponsor costs actually results in a reduction of costs for the underlying employers.

additional plan sponsor (a multiemployer organization) told us that it had split the reimbursements proportionally to the share of the plan premium paid by the underlying employers and retirees participating in the plan, which varied among different employers. For example, if a particular employer paid 90 percent of the plan premium and plan participants associated with that employer paid 10 percent of the plan premium, the employer received 90 percent of the reimbursements and the plan participants received 10 percent of the reimbursements.

Agency Comments

HHS provided us with written comments on a draft version of this report. These comments are reprinted in enclosure I. HHS also provided technical comments, which we incorporated as appropriate.

In its written comments, HHS reiterated that the percentage of employers that offer health coverage to early retirees has declined significantly over the last decade and noted that individuals who are age 55 and older are likely to face significant challenges obtaining individual health coverage because of age or preexisting conditions. According to HHS, ERRP was designed to stabilize the availability of employer-sponsored health coverage for early retirees by providing assistance to plan sponsors. HHS emphasized that the majority of plan sponsors indicated that they will use program funding to offset both their own health costs and those of plan participants. As an example, they stated that the California Public Employees' Retirement System (CalPERS) worked with its benefit carriers to mitigate 2011 premium increases by 3 percent in anticipation of ERRP reimbursements. HHS also noted that ERRP initially permitted plan sponsors to request reimbursement on an aggregate basis in order to ensure that the program was available to plan sponsors by the statutory deadline—90 days after the enactment of PPACA. However, as our report notes, beginning in April 2011, HHS implemented requirements for plan sponsors to submit detailed claim lists with their reimbursement requests. HHS also affirmed that they plan to conduct field audits of selected plan sponsors to ensure that ERRP funds were used appropriately.

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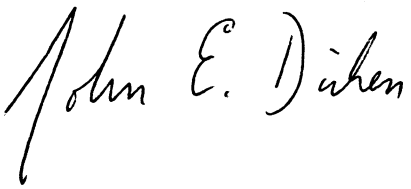
As agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies of this report to the Secretary of Health and Human Services and other interested parties. The report also will be available at no charge on the GAO Web site at http://www.gao.gov.

If you or your staff have any questions regarding this report, please contact me at (202) 512-7114 or dickenj@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff members who made key contributions to this report were Kristi Peterson, Assistant Director; Krister Friday; Karen Howard; and Aubrey Naffis.

Sincerely yours,



John E. Dicken
Director, Health Care

Enclosure

Enclosure I

Comments from the Department of Health and Human Services

DEPARTMENT OF HEALTH & HUMAN SERVICES — OFFICE OF THE SECRETARY

Assistant Secretary for Legislation
Washington, DC 20201

John Dicken, Director
Health Care
U.S. Government Accountability Office
441 G Street NW
Washington, DC 20548

SEP 09 2011

Dear Mr. Dicken:

Attached are comments on the U.S. Government Accountability Office's (GAO) draft correspondence entitled, "Private Health Insurance: Implementation of the Early Retiree Reinsurance Program" (GAO-11-875R).

The Department appreciates the opportunity to review this correspondence prior to publication.

Sincerely,

Jim R. Esquea
Assistant Secretary for Legislation

Attachment

GENERAL COMMENTS OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES ON THE GOVERNMENT ACCOUNTABILITY OFFICE'S (GAO) DRAFT REPORT ENTITLED, "PRIVATE HEALTH INSURANCE: IMPLEMENTATION OF THE EARLY RETIREE REINSURANCE PROGRAM" (GAO-11-875R)

The Department appreciates the opportunity to review and comment on this draft report.

The Affordable Care Act created the Early Retiree Reinsurance Program (ERRP) to support sponsors of employment-based health plans that provide health coverage to early retirees and their spouses, surviving spouses, and dependents. As the draft report notes, the percentage of employers that offer such coverage has declined significantly. Access to employer-sponsored coverage is critical for individuals in the early retiree age group. Individuals who are 55 or older are likely to face significant challenges obtaining individual health coverage because of age or pre-existing conditions.

The ERRP was designed to stabilize the availability of employer-sponsored coverage for early retirees and their spouses, surviving spouses, and dependents by providing assistance to plan sponsors, including for-profit companies, schools and educational institutions, unions, State and local governments, religious organizations and other nonprofits. Consistent with the survey results included in the draft report, the majority of participating plan sponsors indicated that they will use program funding to offset both increases in their own costs to provide coverage and increases in plan participants' costs. Some sponsors have already applied ERRP funds to reduce costs for plan participants. For example, CalPERS, the California Public Employees' Retirement System, requested reimbursement on behalf of 5,302 early retirees, spouses, surviving spouses, and dependents in 2010. In anticipation of ERRP reimbursement, CalPERS worked with its benefits carriers to mitigate 2011 premium increases by three percent – a savings of up to $200 million. According to CalPERS officials, the ERRP funding will directly benefit 1.1 million public employees, retirees, and their dependents.

The Affordable Care Act required that the ERRP be established within 90 days of enactment. To ensure that the ERRP was available to eligible plan sponsors by the statutory deadline, the Department initially permitted plan sponsors to request reimbursement on an aggregated basis. In April 2011, the Centers for Medicare and Medicaid Services (CMS) implemented detailed claims data requirements for reimbursement requests. In addition to these detailed data submissions, CMS plans to conduct field audits of selected plan sponsors to ensure that all ERRP funds were used appropriately and consistently with the program statute and regulation. CMS will continue to work with plan sponsors and other ERRP stakeholders to improve the program and provide assistance to employers and other sponsors who offer valuable health coverage to early retirees.

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