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Centers for Medicare & Medicaid Services
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Explanation of the Processes for Reporting Early Retiree and Claims Data Inaccuracies, and for Reopening

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Section 1102 of the Affordable Care Act (42 U.S.C. §18002) established the Early Retiree Reinsurance Program (ERRP). In order to effectively administer this program, plan sponsors, among other requirements, must disclose any data inaccuracies upon which a reimbursement determination has been made[2], including inaccurate claims data and negotiated price concessions received after a reimbursement request has been made. 45 CFR 149.600. The regulations require that the sponsor disclose this information in a manner and at a time specified by the Secretary in guidance.

This guidance sets forth the manner and timing for making such disclosures and also discusses the reopening process. The Secretary of Health and Human Services may reopen and revise any ERRP reimbursement determination on its own motion, or upon the request of a plan sponsor (45 CFR 149.610).

Reporting Data Inaccuracies – 45 CFR 149.600

The Centers for Medicare & Medicaid Services (CMS) within the Department of Health and Human Services (HHS) administers the ERRP. CMS recognizes that a plan sponsor may discover that it previously submitted inaccurate data as part of a reimbursement request. Alternatively, data may require adjustment or modification after a plan sponsor submits a reimbursement request. When a data inaccuracy is discovered, a plan sponsor must submit corrected data.

Definition of "Data Inaccuracy"

For purposes of ERRP, the term "data inaccuracy" is any instance of inaccurate data included in an Early Retiree List, Summary Cost Data, or a Claim List, such as:

[1] The only change made in this update to the prior October 3, 2011 version of this guidance is the addition of Footnote 2.

[2] For more information related to the circumstances under which data inaccuracies must be disclosed and corrected, please review Common Questions 500-17 and 500-18 posted on www.errp.gov.

- An Early Retiree List record for an individual who is an active employee during the reported plan coverage dates;

- An Early Retiree List record containing an inaccurate Member ID, Member Group ID, plan coverage dates, etc.;

- Costs reported with respect to an individual who did not satisfy the definition of "early retiree" on the day the costs were incurred;

- Over-reported or under-reported Costs Paid by Plan, Costs Paid by Early Retiree, Threshold Reduction, or Limit Reduction amounts in Summary Cost Data;

- Over-reported or under-reported amounts in the Item Plan Paid Amount or Cost Paid by Early Retiree field for a claim included within the Claim List;

- Inaccurate Procedure Code or Principal Diagnosis Code for a claim included in a Claim List; or

- Over-reported or under-reported Cost Adjustment Amount included in a Claim List.

This list provides examples of data inaccuracies and is not an exhaustive list.

In contrast, instances that are not considered data inaccuracies include instances when a plan sponsor does not report <u>any</u> costs at all:

1. For a given early retiree whose costs could have been eligible for credit towards the cost threshold or cost limit, or for reimbursement, or
2. For a given claim, and those costs could have counted toward the cost threshold or cost limit, or have been reimbursed.

In these two situations, the requirement that a plan sponsor disclose previously submitted data inaccuracies does not apply. A plan sponsor may report this data, but it is not required to do so.

Manner and Timing of Reporting

When a plan sponsor discovers that previously submitted cost or claims data requires modification or the plan sponsor discovers a data inaccuracy, it must correct the inaccurate data in CMS' ERRP secure system pursuant to 45 C.F.R. 149.600. Corrections to data must be made no later than the end of the next calendar quarter after the plan sponsor knows, or should know, of the data inaccuracy. A plan sponsor should update CMS with accurate data by submitting a reimbursement request during that next calendar quarter, even if it has no additional claims to submit or does not otherwise intend to request further reimbursement.

In order for the CMS system to process the updated, corrected data, the plan sponsor must follow the regular reimbursement request process. In other words, it must update or correct any inaccurate data and submit an accurate Early Retiree List, Summary Cost Data, and Claim List. To the extent that any of the data inaccuracies were related to previously reported Costs Paid by

Early Retiree, the sponsor must also submit, as part of the reimbursement request, accurate prima facie evidence that the individual actually paid such amounts.[3] .

The reimbursement request in which the plan sponsor is correcting a data inaccuracy will count as the one reimbursement request permitted for that calendar quarter for that plan year. If a plan sponsor intends to submit additional incurred and paid claims (unrelated to any data inaccuracies) for reimbursement for that plan year, they should be included with the data inaccuracy adjustments, in one reimbursement request. Otherwise, the plan sponsor must wait until the next calendar quarter to submit the other or newly incurred and paid claims for reimbursement.

As background, a plan sponsor may request reimbursement once every calendar quarter per plan, per plan year, but not within 30 days of its last reimbursement request for that plan and plan year. A plan sponsor may update its Early Retiree List, Summary Cost Data, or submit a Claim List at any time. However, CMS does not consider Summary Cost Data or a Claim List to be reported until the plan sponsor submits this material along with a reimbursement request. Also, in order to submit a reimbursement request, the plan sponsor must have submitted a current Early Retiree List to CMS. CMS responds to the submission of the plan sponsor's Early Retiree List with an Early Retiree List Response File that indicates which individuals have approved ERRP eligibility periods. Once the plan sponsor has reviewed and processed CMS' Early Retiree List Response File, it may assemble a reimbursement request based on its claims data, and then request reimbursement.

The ERRP statute and regulations require that a plan sponsor only submit costs for health benefits that have been incurred with respect to early retirees and their spouses, surviving spouses, and dependents during a given plan year, and which have been paid, 42 U.S.C. §18002(c); 45 CFR 149.325. Claims must also take into account any negotiated price concessions that have already been subtracted from the amount the employment-based plan or insurer paid for the cost of health benefits and the amount of post-point of sale price concessions received. 45 C.F.R. § 149.110. Thus, the process of reporting data inaccuracies may result in an overpayment. In such cases, plan sponsors will be required to promptly repay[4] the difference between reimbursement amounts that were based on costs other than those contemplated by the statute and regulation, and reimbursement amounts that are based on actual costs for health benefits, including price concessions, in cases where the costs that had been submitted for reimbursement resulted in an overpayment. CMS reserves the right to adjust, by the amount the plan sponsor owes, any future reimbursement to be paid to the plan sponsor for the applicable plan for the current plan year or a different plan year, or for a different plan sponsored by the plan sponsor, if necessary to meet these requirements.

Please note that a plan sponsor cannot update data associated with a pending reimbursement request, or make a subsequent reimbursement request if a current request is pending for the same plan and plan year. This is because once a reimbursement request is submitted, the system does not allow for it to be updated, or allow the plan sponsor to submit a new reimbursement request for the same plan and plan year until the pending reimbursement request is processed. A

[3] CMS will contact any sponsor that has submitted such costs, and provide instructions about how to submit prima facie evidence.

[4] Sponsors should not send a check for the amount of the overpayment, until first receiving a demand letter from CMS.

pending reimbursement request in some instances may be canceled to allow for the reporting of the necessary updates. Contact CMS' ERRP Center at help@errp.gov or by calling toll free 877-574-ERRP (877-574-3777) (TTY for hearing impaired: 877-575-ERRP (877-575-3777)), if assistance is needed.

Reopening Process - 45 CFR 149.610

There may be instances when CMS reopens and revises a reimbursement determination on its own volition or upon the request of a plan sponsor. For example, CMS may determine through an audit that certain claims should not have been submitted and included as part of a reimbursement request, and may elect to reopen and revise the associated reimbursement determination. While 45 CFR 149.610 allows plan sponsors to request a reopening, as this program has developed it appears that most issues for which a plan sponsor might request a reopening would be resolved through the process established for reporting data inaccuracies under 45 C.F.R. 149.600 as discussed in this guidance. Plan sponsors should reserve reopening requests to instances when a data inaccuracy (and therefore a reimbursement discrepancy) cannot be resolved under the process discussed relating to 45 CFR 149.600.

A reimbursement determination may be reopened and revised only within the time periods specified in 45 C.F.R. 149.610, unless fraud or similar fault is found. Whether on its own volition or upon request of a plan sponsor, CMS may reopen and revise a reimbursement determination for any reason within 12 months following the date of the notice of a reimbursement determination. After 12 months, but within 4 years from that date, CMS may reopen and revise a reimbursement determination upon establishment of good cause. "Good cause" is defined in the regulation at 45 C.F.R. 149.2 as:

- New and material evidence exists that was not readily available at the time the reimbursement determination was made;
- A clerical error in the computation of reimbursement was made by CMS; or
- The evidence that was considered in making the reimbursement determination clearly shows on its face that an error was made.

CMS may reopen and revise a reimbursement determination at any time in instances of fraud or similar fault of an ERRP plan sponsor or any subcontractor of the plan sponsor. Except in instances of fraud or similar fault, the regulation does not allow for a reopening and revision beyond the four-year period.

In the limited instances when a plan sponsor requests a reopening under 45 CFR 149.610, CMS prefers that reopening requests be submitted electronically. When submitting a request to reopen, please comply with the following procedures:

- Submit an electronic copy of the reopening request and all applicable documentation to CMS at help@errp.gov. Please include the phrase "Reopening Request" in the subject line of the email. For ERRP purposes, plan sponsors should not send protected health

information or other identifiable information via email, as it is not considered a secure transfer.

- If mailing a reopening request and supporting documentation to CMS via U.S. Postal Service, please mail the package to:

  ERRP Center Payment Operations
  P.O. Box 6866
  Towson MD 21204

- All requests must be submitted in compliance with all applicable privacy and security laws.

- In the request for reopening, please thoroughly describe the issue and submit sufficient documentation supporting the request for reopening. Include a thorough analysis of the estimated financial impact for each reason stated within the request, including the specific amount of reimbursement that is believed at issue.

- If the request to reopen and all supporting documentation are submitted via email, **the request is not considered received until the plan sponsor receives a confirmation email from CMS .** The specific date that a request to reopen is considered to have been submitted by a plan sponsor for purposes of the deadlines specified in 45 CFR 149.610, is addressed in the following bullets. The confirmation email from CMS should be received within five business days of filing the request. If not, please contact CMS' ERRP Center at help@errp.gov or by calling toll free 877-574-ERRP (877-574-3777) (TTY for hearing impaired: 877-575-ERRP (877-575-3777)).

- If a request to reopen is submitted via email, the request is considered submitted on the date listed in the "Sent" line of the email request, not the date that the plan sponsor receives the confirmation email from CMS.

- If the request and supporting documentation are submitted via U.S. Postal Service, the submitter should have proof of delivery such as a return receipt, and is expected to provide the proof of delivery upon request by CMS. Because a request for reopening, which includes all supporting documentation, should be requested by a plan sponsor within one year of the applicable reimbursement determination, if requesting the reopening for any reason, or within four years, if the basis of the request is for good cause, a reopening request that is mailed will be considered submitted on the postmark date of the request, provided that the plan sponsor has proof of delivery.

- Upon receipt of a request to reopen, CMS will analyze the request and supporting documentation and make a decision whether or not to reopen and revise the reimbursement determination. The regulation does not establish a time period for this review; however, CMS will attempt to make a timely decision on the reopening request.

- Once a decision is made by CMS, an email communicating the CMS decision will be sent to the plan sponsor's Authorized Representative and Account Manager.

- If CMS elects to reopen, a plan sponsor can expect to receive further guidance from CMS. The reopening and revision process may require substantial CMS preparation and resources, and cannot be expected to be performed immediately after the plan sponsor receives the decision to reopen. A decision by the Secretary not to revise a reimbursement determination is final and binding (unless fraud or similar fault is found) and cannot be appealed.