Published on *The National Law Review* https://natlawreview.com

The CSR Payment Conundrum: Where Do We Go from Here?

Article By:

Health Care and Life Sciences Practice Group

In response to Republicans' failure to repeal the Affordable Care Act (ACA), the Trump Administration is using administrative action to modify the ACA and health insurance options for Americans. On October 12, 2017, President Trump signed an executive order that instructs various departments to consider regulations related to association health plans and short-term insurance. Shortly after, the Administration announced that they would no longer make cost sharing reduction (CSR) payments to insurers on the Exchanges. Section 1402 of the ACA requires insurance companies to reduce the amount that eligible low-income policyholders pay out of pocket for co-payments and deductibles. Accordingly, the federal government must reimburse insurers for reductions when the Secretary of HHS is notified.

Without these payments, insurers will either increase premiums or pull out of the Exchanges altogether. In anticipation of the announcement, some insurers have already increased premiums for the 2018 enrollment period. In spite of this, policy makers can mitigate the harm that could be felt as a result of not funding CSR payments.

The Passage of the Murray-Alexander Stabilization Bill

Senator Lamar Alexander (R-TN), Chairman of the Senate Committee on Health, Education, Labor, and Pensions (HELP) and Ranking Member Senator Patty Murray (D-WA) revealed a bipartisan plan to help stabilize the insurance market. The Murray-Alexander Bill seeks to stabilize the insurance market by funding the CSR subsidies and increasing state flexibility in their administration of the Marketplace.

The bill proposes to fund CSR payments for the remainder of 2017, as well as 2018 and 2019. The bill also reduces the time for the Center for Medicare and Medicaid Services (CMS) review of 1332 waivers, from 180 days to 90 days and creates a new 45 day expedited review process for qualifying circumstances. Through Section 1332 waivers, states are allowed to implement insurance market innovations that provide coverage "comparable" in benefits and affordability.

The Congressional Budget Office (CBO) scored the Murray-Alexander Bill and found that it would cut the federal deficit by $3.8 billion in the next decade. The CBO notes that savings would come from states offering lower-cost policies, attracting younger and healthier individuals into the market. Insurers would lower their premiums because of the influx of younger individuals and in the longterm, save the government more than $1.1 billion in premium tax credits. Despite the savings scored by CBO, the Murray-Alexander bill will not have an affect on 2018 plans. Further, the bill may not pass before open enrollment ends on December 15. The bill has bipartisan support in the Senate, but will have difficulties in the House because of Speaker Paul Ryan's opposition to the current version.

State Efforts

States can play a role in telling insurers where to apply their premium increases. For example, states could tell insurers to apply premiums to only Silver marketplace plans, all metal level plans inside and outside the marketplace, or all Silver plans inside and outside the marketplace. About 30 states assumed that CSR payments would not be disseminated and either encouraged or required states to increase premiums onto marketplace silver plans only. States that choose this option allows consumers in the marketplace to receive premium tax credits and consumers outside the marketplace to not experience any increase in premiums. Additionally, some legal scholars and health policy experts argue that states could pay for the premium themselves and then bill the federal government.

Legal Challenges

Eighteen states and the District of Columbia sued the Trump Administration seeking an immediate injunction to block President Trump from ending CSR payments to insurers. California federal judge, U.S. District Judge Vince Chhabria, denied the motion for an injunction. Judge Chhabria argued that states had enough time to plan for the end of the cost-sharing payments and adjusted accordingly. Although Judge Chhabria has denied the injunction, California Attorney, General Xavier Becerra, will still proceed with the lawsuit.

Despite the Trump Administration's attempt to unravel parts of the ACA, states and Congress are working to anticipate more downstream impacts and must act to find solutions or ways to mitigate the issues that will arise for low-income policy holders.

Stakeholders should anticipate a continuation of unstable markets as insurers will have to adjust their rates or leave the Exchanges if there are no changes made to fund CSR payments. State regulators will have to use creativity and flexible ways to help their constituents.

National Law Review, Volume VII, Number 320