Trump Halts Cost-Sharing Reductions

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Overview

On Thursday, October 12, 2017, the White House indicated that President Trump will end ACA cost-sharing reduction ("CSR") payments to insurance companies effective immediately. This was followed up by a White House statement indicating that the payments had lacked appropriations and therefore the government could not lawfully continue making them. While the impact to insurance companies and individuals who obtain subsidized coverage in the Marketplace is expected to be significant, the direct impact to employers and employer sponsored health plans is expected to be minimal.

CSR Payments Explained

Under the ACA, Congress authorized two types of subsidy payments to help Americans pay for and utilize health coverage in the Marketplace.

The first is premium subsidy assistance, which allows those with household incomes between 100% and 400% of the Federal Poverty Level (FPL) to obtain subsidies that reduce premiums costs for health coverage purchased in the Marketplace.

The second, and at issue here, is CSR payments, available to those who qualify for premium subsidy assistance and who have incomes between 100% and 250% of the FPL. CSR payments reduce the cost of deductibles, co-pays, and other means of cost sharing by directly reimbursing insurers for those costs. Roughly 7 million people are currently receiving CSR payments.

CSR Controversy

In 2014, House Republicans filed a lawsuit against then-HHS Secretary Burwell claiming that federal laws require every government expenditure to be tied to an annual or permanent funding source. This is known as appropriations. The lawsuit claimed that ACA legislation failed to include permanent appropriations for CSR payments. In May 2016, the US District Court for the District of Columbia agreed, and so absent annual approval, such payments are unlawful beginning in 2014. The judge ordered that such payments be immediately halted (enjoined), but stayed its decision (in effect, made it not applicable) pending appeal.

The government had been issuing CSR payments until today's announcement.

President Trump’s Decision

The President announced that the government will no longer issue CSR payments and that such payments would be halted immediately (the Marketplace plan year runs through December 31). The immediate impact of this decision will affect insurance companies in the Marketplace, as presumably they will not be reimbursed for CSR payments for November and December 2017. Under the terms of Marketplace agreements, insurance companies can withdraw immediately if government payments or subsidies are halted. If this happens, many individuals could suddenly find themselves without coverage.

Additionally, for the 2018 calendar year, carriers will not receive CSR payments from the government. This will lead to higher costs and individuals choosing to forgo Marketplace coverage as it has become too expensive. In fact, many carriers filed their 2018 rates assuming the Government would pull funding for the CSR payments, leading to significant rate increases in the individual market.

Implications for Employers

The direct impact of this decision is minimal.

Applicable large employers (“ALE”) - those with 50 or more full time equivalent employees - are subject to ACA employer shared responsibility “A” or “B” penalties for failure to offer affordable and/or minimal value coverage to full-time employees, if one or more of those employees obtain a subsidy or CSR in the exchange.

Even if CSRs are eliminated, since a prerequisite to an individual obtaining a CSR subsidy is to qualify for a premium reduction subsidy, there should be no change to an ALE’s “A” or “B” penalty exposure since premium reduction subsidies are not impacted by this White House decision.

Further, since an ALE must make an offer of affordable and minimum value coverage in order to avoid “A” or “B” penalties, we do not anticipate a significant increase in employees forgoing coverage in the Marketplace and enrolling in employer sponsored plans (since those individuals would generally have been ineligible for Marketplace subsidies due to the employer’s offer of affordable and MV coverage in the first place).

Additionally, if carriers exit the Marketplace or otherwise cancel plans in light of this change in policy, employers may see an increase in requests for special enrollment in their group health plans due to the loss of eligibility for Marketplace coverage.

The indirect implications are less clear. Stopping CSR payment will make individual insurance more expensive in the Marketplace. This may lead to carriers dropping out of the Marketplace, or if they remain, pricing plans beyond the reach of those individuals who previously benefited from CSR payments. This will likely result in an increase in the uninsured population. All payers in the health care system are affected by higher costs when there is a high uninsured population receiving uncompensated care.

Next Steps

The White House has indicated a desire to work with Congressional leaders to find a bipartisan fix for health reform. Since the collapse of health reform legislation late last month, there does not appear to be much appetite or political will to find a permanent solution. However, with the termination of CSR payments, it is possible a temporary or permanent fix could yet again be considered.