Bailout or Bust? How CSR Payments Are in a Precarious State

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What's Happened

Earlier this year, President Trump began discussing the idea of eliminating cost sharing reduction ("CSR") payments to insurance companies. (1) CSR payments are reimbursements the federal government provides to insurance companies that provide discounts to enrollees with incomes between 100 and 250% of the poverty line. (2) In a recent tweet, the President referred to CSR payments as "bailouts" to insurance companies and threatened to end these payments "very soon!" So what does this all mean?

If President Trump eliminates CSR payments, insurance companies will lose $7 billion in funding from the federal government. (3) As Gary Claxon from the Kaiser Family Foundation explains, "For lower-income marketplace enrollees in silver plans, insurers reduce deductibles, out-of-pocket limits, and other cost sharing, with the cost reimbursed monthly by the federal government." (4) In other words, insurance companies set their rates with the CSR reimbursement in mind. As a result of the threatened elimination of CSR payments by the federal government, some insurers have threatened to increase premiums,(5) while other insurers have left some markets entirely. (6) For example, in Iowa, Aetna and Wellmark announced that they will leave the marketplace in 2018, leaving only two insurance companies in the state: Gunderson Health Plan Inc. and Medica Insurance Co. (7) Humana announced its departure from the Tennessee marketplace (8) resulting in huge rate hikes for the state's remaining insurance companies. (7) Molina left both Utah and Wisconsin (9) leaving Wisconsin with twelve companies and Utah with only two: SelectHealth and University of Utah Health Plans. (10) Anthem exited the Virginia marketplace, but then recently announced that it will return. (11)

The stakes are high if CSR payments are eliminated. A new report by the Kaiser Family Foundation estimated that if CSR payments end, premiums in silver plans would increase 15% in Medicaid expansion states and 21% in non-expansion states. (12)

CSRs have a Complicated History in the Court System

On November 21, 2014, The House of Representatives filed a suit in the District Court of Columbia against the US Department of Health and Human Services Secretary, Sylvia M. Burwell. (13) In the suit, the House contended that the ACA cannot legally reimburse insurers through CSR programs. (14) They argued that the funds for Section 1402 of the ACA, which authorizes cost sharing reduction payments, were never actually appropriated by Congress. (15) Despite the Secretary's various attempts to interpret the text of the ACA to show Section 1402 and Section 1401, for which Congress had in fact appropriated money, were "programmatically integrated," the District Court agreed with the House and found that the plain language of the ACA did not allow the reimbursements. (16) Thus, the District Court held in favor of the House and issued an injunction to stop the federal government from making CSR payments. (17)

On December 5, 2016, the US Court of Appeals for the District of Columbia put the injunction of the lower court on hold. (18). Since then, the case has been renamed *House v. Price* to reflect the new HHS Secretary, Thomas E. Price. Since the initial filing of the lawsuit seventeen states, including California, have joined to advocate for the continuance of CSR payments. As of August 1, 2017, the Court of Appeals granted another stay, putting the case on hold for an additional 90-day period. (19). Although President Trump has been threatening to end CSR payments, some scholars note that the courts may not actually allow him to do so. (20) Absent any viable alternatives, the abrupt elimination of CSR payments would leave the insurance market in chaos. It is therefore no wonder why so many states are vehemently advocating for CSR payments to continue and the case has been held in abeyance the last three 90-day intervals.

Predictions About the Future and What Congress Is Doing Now

While the future of CSR payments remains uncertain, some members of Congress have taken action to ensure their defeat. For instance, the "Graham-Cassidy Bill," would have effectively ended all CSR payments. (21) Although, Graham-Cassidy is off the table for now, the uncertainty over CSR payments leaves insurance companies pressed for time to set premiums. Insurers using HealthCare.gov renewed their contracts yesterday, and many more will need to renew their contracts in the upcoming months. The uncertainty seems destined to lead to significant premium increases. (22)

The CSR's state of limbo highlights a larger issue that some Congress members are pushing to address. Introduced by John Conyers, the "Medicare for All Act" proposes to establish a single payer healthcare system that would allow the government to negotiate rates rather than leaving it up to the free market. This bill has recently gained traction and now has sixteen cosponsors. Although, the bill is not likely to pass this legislative session, it does shed light on an option that would solve many issues in the healthcare market, like this one, in a meaningful and definitive way. Perhaps the CSR dilemma will be the catalyst the nation needs to move towards systemic change.