Vermont Legislative Joint Fiscal Office

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ISSUE BRIEF

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Implications of the Recent Executive Action on Cost-Sharing Reductions
Preliminary Review

Summary

The Trump Administration announced on October 12, 2017 that it would discontinue cost-sharing reduction (CSR) payments to health insurance companies. Congressional action may be forthcoming to restore these payments. Barring Congressional or other action to reinstate the payments, here are some considerations:

a. CSR payments are paid to health insurers on behalf of income-eligible individuals who purchase the ***silver***-level qualified health plans (QHPs) on the Exchange.
b. Under current federal law, insurance companies must continue to provide cost-sharing reductions (CSRs) to income-eligible individuals who purchase silver QHPs on the Exchange.
c. The loss of CSR payments from the federal government to insurers may cause insurers to respond by doing one of the following:
   1. Increasing 2018 premiums on silver QHPs only
   2. Increasing 2018 premiums for all QHPs
   3. Not increasing any premiums for 2018 QHPs, instead capturing the increases through 2019 premiums
d. As premiums on silver plans increase, so do the federal premium tax credits – subsidies that help people afford their health insurance. [1]
   1. The net impact on individuals will depend on all of the following factors:
      A. The individual's income
      B. When and how insurers choose to increase premiums
      C. Plan selection
   2. The net impact on small employers that purchase insurance through the Exchange will depend on when and how insurers choose to increase premiums and on the plan(s) that the employer or employee, or both, select.
   3. The net impact on federal spending will depend on how the increase in federal premium tax credits compares to the savings from not providing CSR payments.

The future of CSR payments and the financial impacts on the federal government, State government, individuals, and small employers and their employees remain unclear. In addition, legal challenges and the potential for Congressional action could affect the eventual outcome.

[1] The federal premium tax credit is a refundable tax credit to help individuals and families with incomes up to 400% of the federal poverty level afford health insurance plans on the Exchange. The size of the tax credit is based on a sliding scale and on the premium for the second-lowest cost silver-level Exchange plan.

Background

On October 12, 2017, the Trump Administration announced that it would discontinue CSR payments to health insurance companies. It said that this decision was based on a legal opinion from the U.S. Attorney General that the funding provision relied upon by the Obama Administration to make CSR payments did not, in fact, appropriate funds for this purpose.[2] The Administration also cited the "absence of any other appropriation that could be used to fund CSR payments."[3]

Cost-sharing assistance in Vermont

CSR payments are subsidies paid by the federal government under the Affordable Care Act to health insurers on behalf of individuals who purchase health insurance plans through the Exchange and who earn less than 250% of the federal poverty level (FPL). Federal CSR payments are largest for enrollees with incomes up to 150% of the FPL and smallest for enrollees with incomes between 200% and 250% of the FPL. Cost-sharing assistance applies when an income-eligible individual enrolls in a silver-level Exchange plan. The insurer then reduces the individual's out-of-pocket limit and his or her cost-sharing amounts for deductibles, co-payments, and coinsurance, effectively increasing the actuarial value of the individual's health plan. About 12,200 Vermonters are currently enrolled in plans with federal CSRs. In 2016, the federal government paid approximately ***$12 million*** to Vermont health insurers in federal CSR payments.[4]

Federal law requires health insurers to reduce income-eligible individuals' out-of-pocket limits and cost-sharing amounts.[5] It also requires the federal government to reimburse the insurers for these reductions.[6] Although the Trump Administration has said that it will no longer reimburse health insurers for providing CSRs, the requirement remains for the insurers to provide CSRs to eligible enrollees. Because the insurers must offer CSRs but will not be reimbursed by the federal government for them, they will likely cover the cost of providing the CSRs by increasing health insurance premiums (see Effect on Enrollees below).

In addition to the federal CSR payments, the State of Vermont enacted its own cost-sharing assistance to provide supplementary CSR payments to health insurers on behalf of approximately 6,000 Vermonters with incomes between 200% and 300% of the FPL.[7] Vermont's authorizing language specifies that "cost-sharing assistance shall be available for the same qualified health benefit plans for which federal cost-sharing assistance is available."[8] Since federal financial support for cost-sharing assistance is no longer available but insurers still must provide CSRs, Vermont

[2] Opinion from Attorney General Jefferson B. Sessions, October 11, 2017: https://benefitslink.com/src/cms/CSR-Payment-Memo.pdf.
[3] Memo from Acting Secretary of Health and Human Services Eric Hargan, October 12, 2017.
[4] Estimates from the Department of Vermont Health Access (DVHA).
[5] 42 U.S.A. § 18071: https://www.gpo.gov/fdsys/pkg/USCODE-2011-title42/pdf/USCODE-2011-title42-chap157-subchapIV-partA-sec18071.pdf
[6] *Id.*
[7] Approximately 14,400 Vermonters benefit from one or both of these cost-sharing reductions.
[8] 33 V.S.A. § 1812: http://legislature.vermont.gov/statutes/section/33/018/01812.

lawmakers may wish to clarify during the 2018 legislative session the status of the State's cost-sharing assistance and its relationship to the CSRs required under the Affordable Care Act.[9]

Effect on Enrollees

BlueCross and BlueShield of Vermont (BCBSVT) says that there will be no changes in premiums or benefits for the current 2017 QHPs. Whether enrollees in the merged individual/small group market will face higher premiums for their current or similar plans depends on how the health insurers respond to the loss of federal CSR payments.[10] However, it is unclear how the executive action will impact the 2018 QHP premiums for plans that are supposed to go on sale November 1, which is just weeks away. There are three possible ways that BCBSVT and MVP Health – the two insurers that offer QHPs on Vermont's Exchange – might respond to this federal action:

Option 1. Increase 2018 premiums on silver QHPs only, as only silver plans are eligible for the CSRs. Under this scenario:

- MVP silver plan premiums would increase by approximately 8.7%.[11]
- BCBSVT has not done an analysis of this scenario.

Option 2. Increase 2018 premiums for all QHPs. Under this scenario:

- All MVP QHPs would increase by approximately 3.1%.[12]
- All BCBSVT QHPs would increase by approximately 1.9%.[13]

Option 3. Not increase any premiums for 2018 QHPs, instead capturing the increases in the 2019 QHP rate filings.

It should be noted that Options 1 and 2 would require the approval of the Green Mountain Care Board (GMCB). Further, such increases would impact not only individual market beneficiaries but also small businesses that purchase insurance through the Exchange, as the individual and small group markets in Vermont have merged.

If health insurance premiums rise for silver plans on the Exchange, so will federal premium tax credits, because premium tax credits are tied to the premium for the silver-level plan with the second-lowest cost. As a result:

- The federal government will be responsible for paying additional amounts to individuals through these premium tax credits.
- The net impact to the federal government will depend on whether the savings from eliminating CSR payments are greater or less than the increased tax credit costs.

[9] The State spends approximately $1.2 million per year on the State cost-sharing assistance. The State does not receive federal matching dollars for these payments, so these are all General Fund dollars.

[10] A report from the Congressional Budget Office suggests that gross premiums for silver plans offered through Exchange marketplaces would, on average nationwide, rise by about 20 percent in 2018 relative to the amount in CBO's March 2016 baseline and rise slightly more in later years. Available at https://www.cbo.gov/publication/53009

[11] MVP Health 2018 Exchange Filing Actuarial Report (page 10). L&E Actuaries and Consultants, 7/11/17.

[12] MVP Health 2018 Exchange Filing Actuarial Report (page 10). L&E Actuaries and Consultants, 7/11/17.

[13] BCBSVT Health 2018 Exchange Filing Actuarial Report (page 13). L&E Actuaries and Consultants, 7/11/17.

- The net impact to individuals who ***are*** eligible for premium tax credits will depend on whether the increase in premiums is greater or less than the amount of the increased tax credit and on their plan selection.
    - For example, if insurers respond by loading the cost of CSRs onto the silver Exchange plans only (Option 1), the increased federal premium tax credits would keep the net cost to beneficiaries with incomes between 100% and 200% of the FPL who purchase the second-lowest silver plan about the same as before.
- The net impact to individuals who are ***not*** eligible for premium tax credits,[14] to small employers that purchase insurance on the Exchange, and to their employees will depend on which option the insurers choose in response to the executive action, on plan selection, and on the premium and out-of-pocket costs that result from those decisions.
    - People who will see the highest net increase in health insurance costs are in this group.

Other states have already implemented strategies to deal with the potential, and now actual, elimination of CSR payments.

- Many states, including Idaho, Louisiana, Pennsylvania, and South Carolina, will load all costs onto silver plans only (similar to Option 1 above), including those sold off the Exchange.[15]
- Indiana will load all costs onto plans at all metal levels (bronze, silver, gold, and platinum); Colorado adopted that approach as its backup plan if CSRs are not funded (similar to Option 2 above).

Some states are also concerned that the elimination of CSR payments will cause health insurers to exit the Exchange or marketplace entirely.

Looking Forward

At this time, it is too soon to know how Vermont insurers will adjust to the loss of CSR payments or what plan changes the GMCB would approve. On October 13, 2017, the Attorneys General of 20 states, including Vermont, filed suit in the U.S. District Court for the District of Northern California, asking that court to require the federal government to continue making CSR payments to insurers.[16] In addition, there is ongoing federal litigation on the future of CSR payments to which a number of states, including Vermont, and the District of Columbia have been granted party status; a notice filed by the Executive Branch in the U.S. Court of Appeals for the D.C. Circuit on October 13, 2017 notified that court that the upcoming October 18, 2017 payment would not occur and referenced an upcoming status update scheduled for October 30, 2017.[17] Finally, it now appears that the U.S. Congress may react to the executive action by passing legislation that allows for CSR payments to

[14] These are individuals who do not have access to employer-sponsored coverage, purchase Exchange plans, and have incomes greater than 400% of the FPL.

[15] Vermont does not allow individual or small group plans to be offered outside the Exchange, so any increase in silver plan premiums would affect everyone who buys silver plans.

[16] *State of California, et al. v. Donald J. Trump, et al.*, Complaint for Declaratory and Injunctive Relief, filed October 13, 2017: https://ag.ny.gov/sites/default/files/final_complaint_10.13.pdf.

[17] *House v. Price*, Notice from Executive Branch to U.S. Court of Appeals for the D.C. Circuit, filed October 13, 2017: https://assets.documentcloud.org/documents/4108037/Trump-administration-court-filing-on-cost.pdf.

continue in some form. The Joint Fiscal Office and Office of Legislative Council will continue to monitor the situation.

In addition to the discontinuation of CSR payments to insurers, the President signed an Executive Order on October 12, 2017 that seeks to expand the availability of and access to association health plans; short-term, limited-duration insurance; and health reimbursement arrangements (HRAs).[18] Specifically, the Order directs the Secretaries of the applicable federal departments to "consider proposing regulations or revising guidance" to:

- Allow small employers to group together into associations to self-insure or purchase large group health insurance together and to form associations based on common geography or industry.
- Expand the availability of short-term, limited-duration insurance, including allowing that insurance to cover periods longer than three months and to be renewed by the consumer.
- Increase the usability of HRAs, expand employers' ability to offer HRAs to their employees, and allow HRAs to be used with non-employer-sponsored insurance.

It will take time for the Trump Administration to consider these issues and to develop the new regulations and guidance contemplated by this Order. The General Assembly may wish to address some or all of these issues at the State level during the 2018 legislative session to the extent permitted under federal law. The Joint Fiscal Office and Office of Legislative Council will continue to monitor these issues, as well.

[18] Presidential Executive Order: Promoting Healthcare Choice and Competition Across the United States, issued October 12, 2017: https://www.whitehouse.gov/the-press-office/2017/10/12/presidential-executive-order-promoting-healthcare-choice-and-competition