What's Ahead for the ACA?

Effects of Trump's Executive Order & CSR Termination

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STATE Health & Value STRATEGIES

Driving Innovation Across States

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Georgetown University Health Policy Institute
CENTER ON HEALTH INSURANCE REFORMS

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State Health and Value Strategies (SHVS) assists states in their efforts to transform health and health care by providing targeted technical assistance to state officials and agencies. The program is a grantee of the Robert Wood Johnson Foundation, led by staff at Princeton University's Woodrow Wilson School of Public and International Affairs. The program connects states with experts and peers to undertake health care transformation initiatives. By engaging state officials, the program provides lessons learned, highlights successful strategies, and brings together states with experts in the field. Learn more at www.statenetwork.org.

About Manatt Health

Joel Ario and Arielle Traub with Manatt, Phelps & Phillips, LLP prepared this presentation. Manatt Health, a division of Manatt, Phelps & Phillips, LLP, is an integrated legal and consulting practice with over 90 professionals in nine locations across the country. Manatt Health supports states, providers, and insurers with understanding and navigating the complex and rapidly evolving health care policy and regulatory landscape. Manatt Health brings deep subject matter expertise to its clients, helping them expand coverage, increase access, and create new ways of organizing, paying for, and delivering care. For more information, visit www.manatt.com/ManattHealth.aspx

About Georgetown’s Center on Health Insurance Reforms

- A team of experts on private health insurance and health reform
- Conduct research and policy analysis, provide technical assistance to federal and state policymakers, regulators, and consumer advocates
- Based at Georgetown University’s McCourt School of Public Policy

Today's Objectives

- Review the Trump Administration's October 12th Executive Order and decision to terminate cost sharing reduction (CSR) funding
- Provide opportunity for state Q&A and discussion

Executive Order

Executive Order: Provisions, Impact, State Options

- Association Health Plans (AHPs)
- Short-term Limited Duration (STLD) Plans
- Health Reimbursement Arrangements (HRAs)

Association Health Plans: What's Old is New Again

- Executive Order:
  - Dept of Labor regs within 60 days
  - Allow more employers to form AHPs
  - Potentially – include individuals/self-employed
  - Potentially – preempt state regulation of self-funded MEWAs
- AHPs treated as large-group plans exempt from ACA rating rules, EHB
  - Ability to cherry pick healthy groups/individuals
  - History of fraud, insolvency
  - De-stabilize regulated small-group, individual markets

Association Health Plans: What's Old is New Again

- State options?
  - Assess current regulatory framework for in-state & out-of-state MEWAs
- Preempted?
  - Litigation
  - Financial regulation
- Not preempted?
  - Require compliance with small-group, individual market rules

Not Your Grandma's STLD Plan

- Executive Order:
  - Tri-agency regs within 60 days
  - Expand availability of STLD plans
  - Longer duration, renewable
- Exempt from ACA market rules
  - Ability to cherry pick healthy individuals
  - De-stabilize regulated individual market

Not Your Grandma's STLD Plan

- State Options?
  - Ban STLD plans
  - Require compliance with some/all individual market rules
  - Risk payments to regulated market
  - Marketing oversight, consumer disclosures
  - Post-marketing oversight

For Employers: the HRA

- Executive Order:
  - Tri-agency rules within 120 days
  - Increase usability of HRAs, expand ability of employers to offer
  - Use in conjunction with individual insurance
- Impact on individual market unknown
  - Improve employer options OR
  - Employer dumping of poor risk?

For Employers: the HRA

- State options?
  - Review employer non-discrimination law
  - Require consumer disclosure of HRA
  - Issuer reporting/certification
  - Ask for help from State Health & Value Strategies

CSR Payment Cutoff & Considerations for States

CBO's Projected Effects of Terminating CSR Payments

- **CBO estimates that gross premiums (prior to application of tax credits) for silver plans offered through the Marketplace would be 20% higher in 2018, with 1 million fewer people covered**
  - Driven by consumer confusion and market disruption
- **Longer term projection is that federal deficit increases by $194 billion over 10 years, with reduction in uninsured of 1 million relative to current law starting in 2020**
  - Driven by states raising premiums for silver plans to optimize consumer benefits, thereby increasing premium tax credits relative to current law and lowering net premiums for enrollees

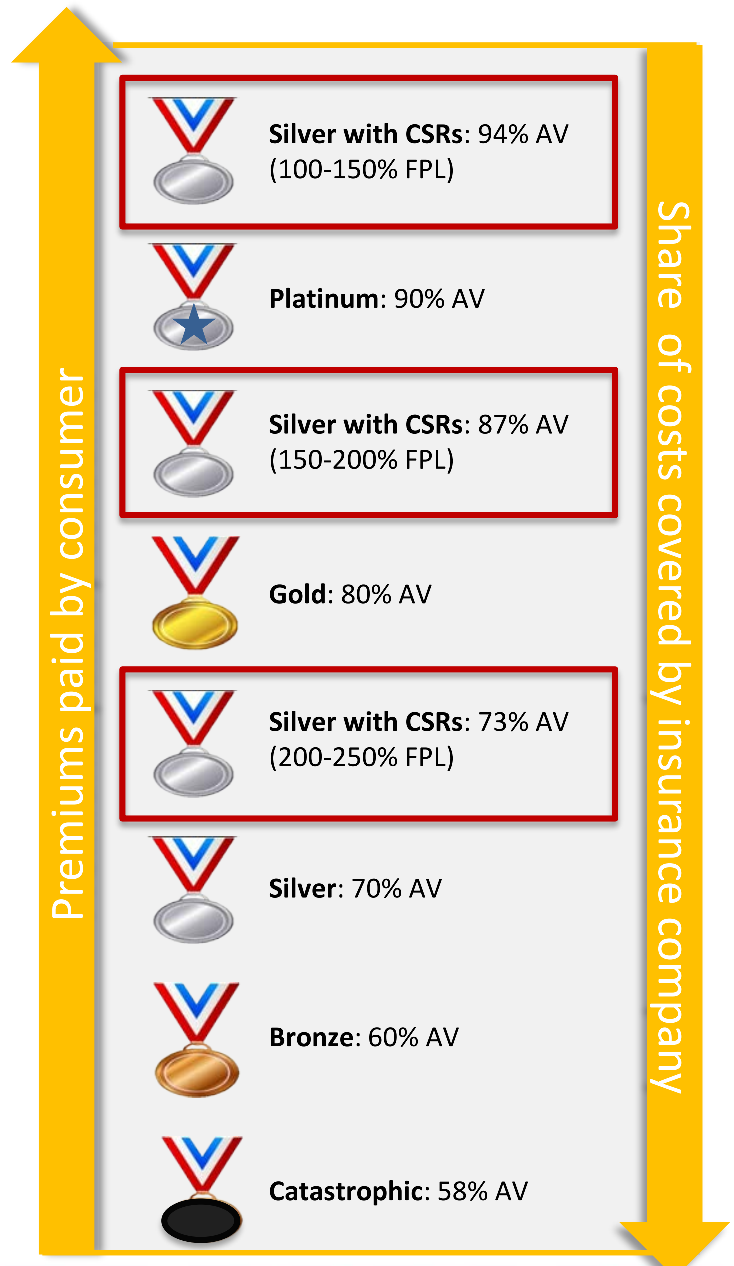
Source: https://www.cbo.gov/system/files/115th-congress-2017-2018/reports/53009-costsharingreductions.pdf

What Does Terminating CSRs Mean For 2017?

- Insurers still have obligation for CSRs but will not be reimbursed for their costs for October-December
- Carriers have limited right to exit market in federal contracts, subject to state law
- No carriers have announced intent to exit mid-year but some smaller ones could face financial hardship
- States could insist on 90-180 day notices but may find that difficult if solvency is the issue

CSR Loading For 2018

- Most insurers loaded CSR costs into their silver plans with premiums comparable to gold/platinum plans (CBO estimated 20% rate increase)
- Many consumers will be protected by increased subsidies (80% on Marketplaces)
- Unsubsidized consumers who select loaded silver plans will pay the higher price but only get the 70% AV plan
- **Challenge is to educate unsubsidized consumers about other metal level options or, if available, unloaded silver plans outside the Marketplace**



Note: AV is the average percent of the cost of benefits expected to be covered

State Strategies Vary in Handling Last Minute CSR Termination

- **Strategy 1:** Load CSRs On Marketplace Silver Plans (with off-Marketplace option)
- **Strategy 2:** Load CSR Costs On All Silver Plans
- **Strategy 3:** Load CSR Costs On All Metal Levels
- **Strategy 4:** Permit Insurers to Pursue Their Own Strategies
- **Strategy 5:** Prohibit CSR Loading

Messaging to consumers about Open Enrollment differs by selected state strategy

Strategy 1: Load CSRs On Marketplace Silver Plans (with off-Marketplace option)

- **More than 30 states planned ahead for termination**
- **Most common strategy was to load silver only to optimize tax credits**
- **Many states added a nearly identical off-Marketplace silver plan with no CSR load**

Subsidized Consumers	Unsubsidized Consumers	New Enrollees
• **Can purchase any plan and have increase covered by tax credits** • Still have to purchase Marketplace silver to get CSR • Should consider gold and bronze plans, which will be more affordable because silver benchmark may be priced in gold/platinum range	• **Could purchase other metal levels to avoid premium increase** • Could purchase silver outside Marketplace without CSR load	• **More may qualify for subsidies because silver benchmark will be higher-priced**

Biggest challenge is to reach non-subsidized consumers who may be auto-enrolled into last year's Marketplace silver plan or unwittingly pick that plan

Strategy 2: Load CSR Costs On All Silver Plans

- **Some states loaded all silver plans with no off-Marketplace unloaded option (including some states that originally used strategy 5)**
- **Optimizes tax credits but limits choice for unsubsidized consumers**

Subsidized Consumers	Unsubsidized Consumers	New Enrollees
• **Can purchase any plan and premium increase will be covered by increased tax credits** • Still have to purchase Marketplace silver to get CSR • Should consider gold and bronze plans, which will be more affordable because silver benchmark will be higher-priced	• **Could purchase other metal levels in Marketplace to avoid premium increase** • Silver plans on and off-Marketplace will carry CSR load	• **More may qualify for subsidies this year because silver benchmark will be higher-priced**

Strategy 3: Load CSR Costs On All Metal Levels

- **A few states required CSR loading across all metal levels**
- **Reduces average increase for silver and does not optimize tax credits (i.e., silver benchmark not increased as much)**

Subsidized Consumers	Unsubsidized Consumers	New Enrollees
• **Can purchase any plan and premium increase will be covered by increased tax credits** • Still have to purchase Marketplace silver to get CSR • Other metal levels will be priced in same way as prior years relative to silver plans	• **Will pay a CSR increase for all metal levels on and off Marketplace unless state approved off-Marketplace plans with no CSR load**	• **More may qualify for subsidies because silver benchmark will be higher-priced** (though less increase in benchmark than under strategies 1 and 2)

Strategy 4: Permit Insurers To Pursue Their Own Strategies

Impact depends on how insurers chose to load CSRs:

- Appears that most carriers loaded all silver (strategy 2)
- If one or more carriers did not load CSRs, could reduce silver benchmark
- Variations within a state will complicate messaging

Subsidized Consumers	Unsubsidized Consumers	New Enrollees
• **Can purchase any plan and premium increase will be covered by increased tax credits** • Still have to purchase Marketplace silver to get CSR	• **Depends on what insurers did** • Most likely scenario is they must purchase non-silver plans to avoid premium increase	• **More may qualify for subsidies because silver benchmark will be higher-priced in most scenarios**

Strategy 5: Prohibit CSR Loading

- **Most states in this category allowed rerating after CSR termination**
  - Appears that most insurers loaded silver (strategy 2)

- **Among states that continue to prohibit CSR loading, insurers may withdraw or face solvency issues, though lack of insurer pushback suggests insurers are okay with current rates**

Subsidized Consumers	Unsubsidized Consumers	New Enrollees
• **Can purchase any plan and premium increase will be covered by increased tax credits**	• **Depends on what insurers did** • Most likely scenario is they must purchase non-silver plans to avoid premium increase	• **More may qualify for subsidies but less likely that silver benchmark will be increased as much as with other strategies**

What Happens if Congress Appropriates CSRs

- **Most insurers have loaded CSRs into their rates for 2018**
  - These insurers will “double dip” on CSRs if Congress appropriates CSRs
- **Likely outcome is that any Congressional appropriation will address double dipping**
- **Alexander-Murray requires states to address double payments by federal government**
  - Gives states multiple rebate options and allows “other means” proposed by state
- **Some states have developed their own remedies**
  - California intends to account for over-payments in future rates
  - Florida intends to prohibit insurers from accepting late CSR payments
  - Rerating could be option but would require change in federal law and present logistical challenges
- **Federal action highly uncertain**
  - May become more likely if CBO’s prediction that CSR termination will increase federal spending proves true when all 2018 rates are public
- **States would be wise to consider their response to Congressional appropriation**
  - Also possible that a court will enjoin the termination of CSRs, which would raise same double dipping issue

Next Steps for States

- Communication strategy that helps consumers sort out their options in most confusing open enrollment period since 2014
- Coordinate between Marketplace and Insurance Department in SBM states
- Consider consumer assistance options in FFM states with federal support reduced
- Remain nimble as more surprises may come from Congress and the Trump Administration

Q&A

Thank You

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