



November 3, 2017

## **End of Days to Follow End of Cost Sharing Reduction Subsidies? Unlawful Cost Sharing Subsidies Highlight the Need for Principled Reform**

The Trump Administration announced that it would cease making Cost Sharing Reduction (CSR) subsidy payments to health insurers because it lacked the legal authority to continue them.<sup>1</sup>

CSR subsidies, which pay for the out-of-pocket costs of lower-income individuals enrolled in the Affordable Care Act (ACA) marketplace exchanges, are discretionary subsidies that must be funded through Congress's appropriations process each year.<sup>2</sup> As the JEC has previously noted, discretionary funding is inherently unpredictable from Congress to Congress as majorities and priorities change.<sup>3</sup>

Democrats had the opportunity to design the ACA to make these subsidies mandatory and permanent, but they did not. It is unclear why the previous administration and the Democrat-controlled Congress at the time chose not to make CSR payments permanent and automatic, as they did the Advanced Premium Tax Credit. The Trump Administration is not responsible for the choices of a previous administration that had the power to shape the law while its party held a congressional “super-majority.” The Trump Administration now is responsible for upholding the law as written.

Below are three issues to keep in mind when considering the future of the Obamacare marketplace.

### **Faulty Assumptions Lead to Faulty Rates**

In some states, insurers built in rate hikes that reflected no CSR payments before the announcement by the administration.<sup>4</sup> The assumption by other insurers that these payments would always continue led to artificially lower rates in other states. As seen in 2017, when other programs to artificially prop up insurance expired under the ACA,<sup>5</sup> premiums jumped by a rough average of 25 percent.<sup>6</sup> Insurers were aware that CSR payments could change depending on shifting congressional appropriation priorities and that a subsequent administration might uphold the law as written. Insurers that over-relied on CSR payments—in spite of discontinued appropriations in 2014 and legal challenges that resulted in an adverse court ruling in 2016—did a disservice to themselves and their customers and should not blame the current administration.

Obamacare has demonstrated repeatedly that federal government distortions in the market create uncertainty. Policymakers should consider reforms that provide long-term stability so insurers can price their products accordingly.

### Conditions Vary By State

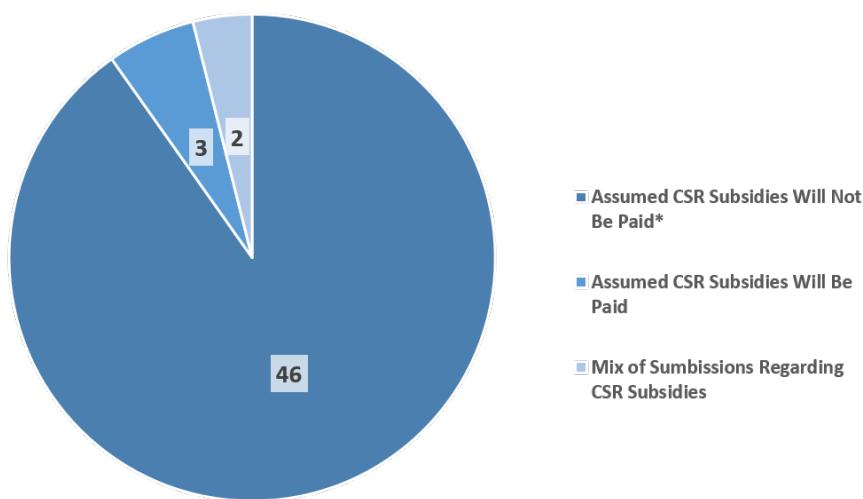
Broadly speaking, states regulate their respective individual health insurance markets, though the ACA removed a large amount of discretion in the design of insurance plans. Before changing the premium price for the upcoming year, insurers must seek approval from the state in which they want to sell plans. Earlier this year, insurers submitted premium requests for 2018 marketplace plans. Discontinued CSR payments will affect individual states differently depending on their respective levels of planning.

Insurers in the vast majority of states built in higher rates assuming that CSR subsidies would stop.<sup>7</sup> Some states have allowed insurers to produce two rate proposals: one that assumed continued CSR payments and one that did not.<sup>8</sup>

When examining the potential effects of terminating CSR payments, the Congressional Budget Office predicted some insurers could leave the marketplace, but that this effect would be temporary.<sup>9</sup>

Because insurers began realizing the intrinsic uncertainty of an appropriated program, they began to set rates reflecting CSR instability. Policymakers would do well to remove this uncertainty as Congress considers repealing and replacing the flawed ACA and moving to a stable, market based program.

**How States and the District of Columbia Accounted for CSRs in Final Rate Submissions for 2018**



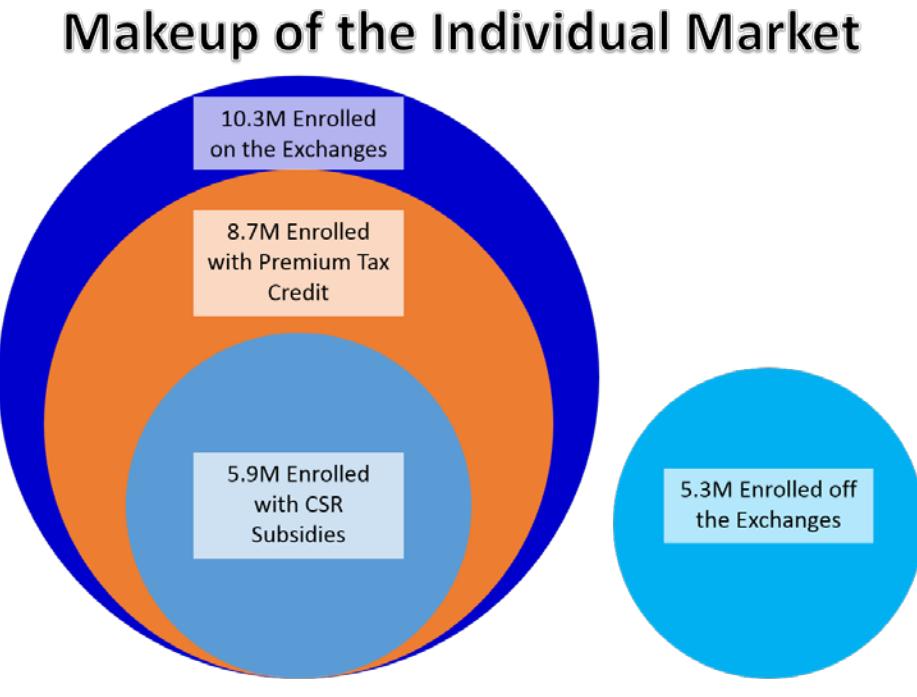
Source: NAIC

\*States that assumed CSR subsidies would not be paid allowed insures to adjust premiums in various ways. Insurers could increase premiums on silver plans on the exchange alone, on silver-level plans on and off the exchange, or increase premiums across all exchange plans.

### Critics of the CSR Announcement Seemed Unconcerned by Premium Hikes in the Past

The CSR subsidies fund out-of-pocket costs for people enrolled in a silver plan in the ACA exchanges with household earnings between 100 percent and 250 percent of the federal poverty level (FPL). Presumably, these individuals are receiving Advanced Premium Tax Credit (APTC) subsidies. These tax credits offset the premiums on the ACA exchanges and are available to people with household incomes up to 400 percent of the FPL.<sup>10</sup>

Critics of repealing and replacing Obamacare have often downplayed the effect of large premium increases in the ACA exchanges.<sup>11</sup> They argued that a high percentage of people would not feel the full effect of a rate increase because APTC subsidies rise when premiums rise. Therefore, concerns about skyrocketing premiums were characterized as either unimportant or “misleading.” This argument suggests that the large percentage of people who receive APTC subsidies are protected from rapidly rising rates. Yet if American taxpayers are not subsidizing them, then the small percentage of people who do not qualify for subsidies will bear the weight of premium hikes. Thus far, opponents of repealing and replacing the ACA have treated this small percentage of people as a footnote in Obamacare’s history.



Source: CMS, Mark Farrah Associates

According to a study by the health care analysis firm Mark Farrah Associates, roughly 7.5 million people<sup>12</sup> are ineligible for Obamacare APTC subsidies.<sup>13</sup> These people in the individual market continue to be hit hardest by Obamacare. Before the move by the

current administration to discontinue unappropriated CSR payments, this group experienced the full brunt of double-digit premium increases and higher deductibles under the previous administration.<sup>14</sup>

Opponents of efforts by President Trump and the Congress to implement a market-based system have been inconsistent in their argument about the effects of premium hikes. Republicans have been clear and consistent from the start when advocating for choice and competition to bring down insurance rates. Those who want to lower premiums for all Americans should join forces with congressional Republicans who want to repeal the flawed design of Obamacare and replace it with market-driven reforms.

## Current Debate

Recently, lawmakers have proposed appropriating money for CSR subsidies along with other reforms. While appropriating funds to pay for CSR subsidies is not likely to affect 2018 rates, there is a possibility it will affect rates in later years. The constitutional authority of Congress to appropriate funds is important and must be protected. It is just as important for insurers to bear in mind that they should not rely on inherently unstable sources of funding when requesting premiums rates in the future.

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<sup>1</sup> Department of Health and Human Services, "Trump Administration Takes Action to Abide by the Law and Constitution, Discontinue CSR Payments," HHS.gov, October 12, 2017, <https://www.hhs.gov/about/news/2017/10/12/trump-administration-takes-action-abide-law-constitution-discontinue-csr-payments.html>

<sup>2</sup> Letter from then-Chairman of the Ways and Means Committee Paul Ryan and then-Chairman of the Energy and Commerce Committee Fred Upton to then-Department of Health and Human Services Secretary Sylvia Burwell, February 3, 2015, <https://energycommerce.house.gov/sites/republicans.energycommerce.house.gov/files/114/Letters/20150203HHS.pdf>

<sup>3</sup> JEC Republicans, "Obamacare's Unstable Because of... Obamacare!" June 20, 2017, <https://www.jec.senate.gov/public/index.cfm/republicans/analysis?ID=79BD3C92-05BE-449D-B562-496DCF958F9B>

<sup>4</sup> Wilde Mathews, Anna and Louise Radnofsky, "Some Insurers Seek ACA Premium Increases of 30% and Higher," *Wall Street Journal*, August 1, 2017, <https://www.wsj.com/articles/some-insurers-seek-aca-premium-increases-of-30-and-higher-1501633167>

<sup>5</sup> Cox, Cynthia, Ashley Semanske, Gary Claxton, and Larry Levitt, "Explaining Health Care Reform: Risk Adjustment, Reinsurance, and Risk Corridors," Kaiser Family Foundation, August 17, 2016, <https://www.kff.org/health-reform/issue-brief/explaining-health-care-reform-risk-adjustment-reinsurance-and-risk-corridors/>

<sup>6</sup> JEC Republicans, State Obamacare Premium Data, January 1, 2017, <https://www.jec.senate.gov/public/index.cfm/republicans/state-aca-data/>

<sup>7</sup> Wilde Mathews, Anna, "Major Health Insurers Anticipated End of Subsidies," *Wall Street Journal*, October 13, 2017, <https://www.wsj.com/articles/health-insurers-face-big-financial-hit-after-trump-move-to-end-aca-subsidies-1507902956>

<sup>8</sup> Weixel, Nathaniel, "California: Health Plan Rates Could Jump If Key Obamacare Payments End," *The Hill*, August 1, 2017, <http://thehill.com/policy/healthcare/344839-calif-health-plan-rates-could-jump-if-key-obamacare-payments-stop>

<sup>9</sup> Congressional Budget Office, "The Effects of Terminating Payments for Cost-Sharing Reductions," p.4, August 2017, <https://www.cbo.gov/system/files/115th-congress-2017-2018/reports/53009-costsharingreductions.pdf>

<sup>10</sup> Fernandez, Bernadette, "Health Insurance Premium Tax Credits and Cost-Sharing Subsidies: In Brief," Congressional Research Service, February 10, 2017, <https://fas.org/sgp/crs/misc/R44425.pdf>

<sup>11</sup> Duffy, Cat, "Right-Wing Media Ignore Role of Subsidies, Claim Insurance Premium Increases Are a 'Death Spiral' for Obamacare," *Media Matters*, October 25, 2016, <https://www.mediamatters.org/research/2016/10/25/right-wing-media-ignore-role-subsidies-claim-insurance-premium-increases-are-death-spiral-obamacare/214098>

<sup>12</sup> The figure uses the CMS calculated 10.3 million people effectuated enrollment on the exchanges. Mark Farrah Associates reports that 5.3 million people were enrolled off the exchanges. The Mark Farrah Associates estimate of 7.5 million people without subsidies is based on open enrollment on the exchanges and off the exchanges.

<sup>13</sup> Rovner, Julie, "Overlooked by ACA: Many People Paying Full Price for Insurance 'Getting Slammed,'" *Kaiser Health News*, October 9, 2017, <https://khn.org/news/overlooked-by-aca-many-people-paying-full-price-for-insurance-getting-slammed/>

<sup>14</sup> JEC Republicans, *The 2017 Joint Economic Report*, pp. 80-82, [https://www.jec.senate.gov/public/\\_cache/files/1be1d856-dee2-40da-9bfa-400af7cbaa1b/2-28-final-2017-joint-economic-report-w-minority-views.pdf](https://www.jec.senate.gov/public/_cache/files/1be1d856-dee2-40da-9bfa-400af7cbaa1b/2-28-final-2017-joint-economic-report-w-minority-views.pdf)