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Silver Switcheroos & Silver Loads: The Response to the CSR Decision

The Trump Administration has continued its series of decisions aimed at undermining market stabilization and Open Enrollment. The latest of events began at the start of October with an executive order directing the Departments of Health and Human Services, Labor, and Treasury to re-issue regulations and roll back protections gained through the Affordable Care Act (ACA). Later that day, the Trump Administration announced they would no longer reimburse Cost Sharing Reduction (CSR) payments to insurers.[1] CSRs are subsidies that the government paid to insurers so insurers could lower the out-of-pocket costs of a Silver Plan for people between 100% and 250% of the Federal Poverty Level. Even though the government has stopped these reimbursements, insurers are still required to provide lower prices for Silver Plans to qualified enrollees. In response, in many states, insurers and state officials have worked together to find ways insurers can offset CSRs without de-stabilizing the Marketplace and still provide affordable insurance options for consumers.

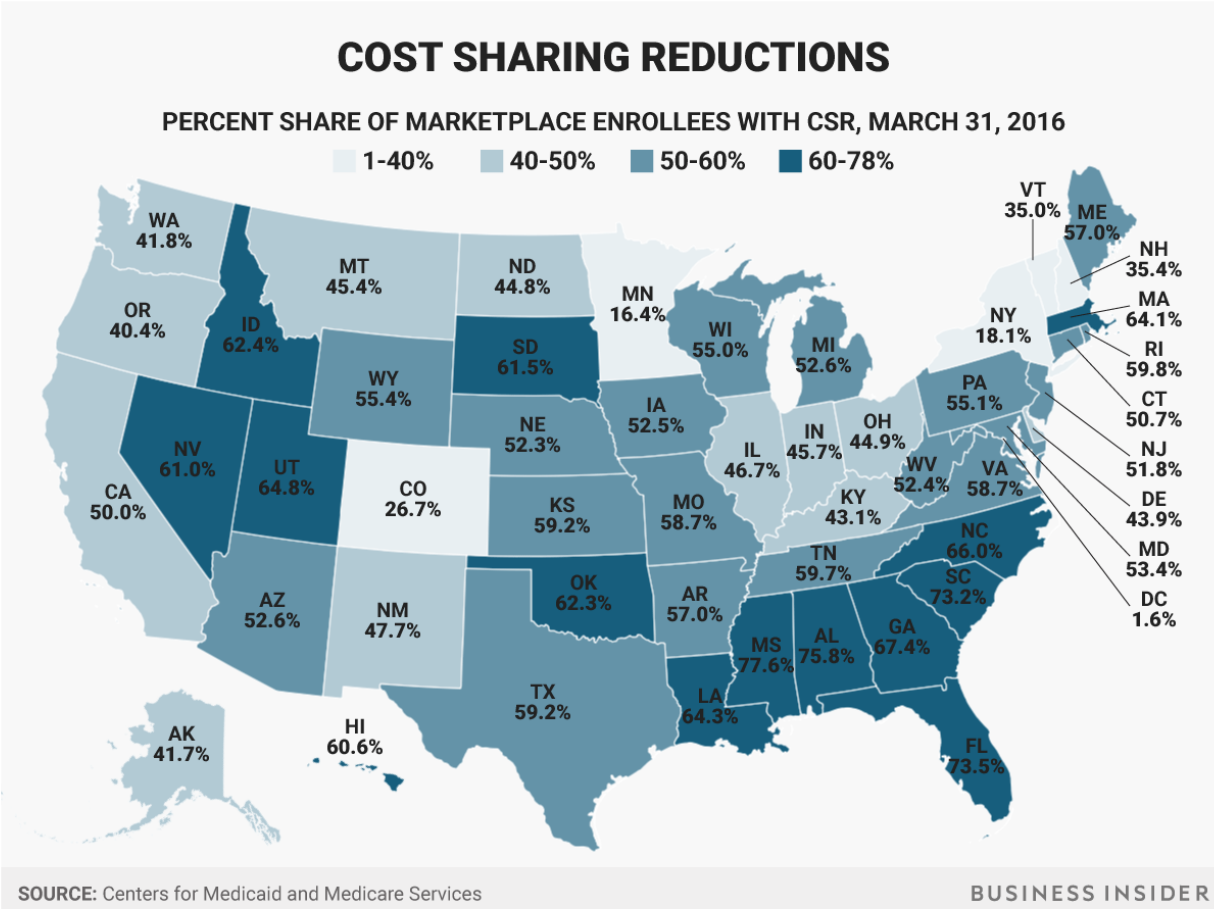
Advocates should:

- **Stay informed on how their state officials are working with insurers to stabilize the Marketplace;**
- **Encourage potential enrollees to meet with Navigators and find out what financial help they may qualify for on the Marketplace; and**
- **Use the Center for Health Law and Policy Innovation's handout and reassure consumers that plans on the Marketplace will likely remain affordable due to the ACA's Advanced Premium Tax Credit.**

Impact of Cost Sharing Reductions

For several years now, cost sharing reductions have made insurance affordable on the Marketplaces by lowering out of pocket costs for millions of middle- to low-income Americans each year. For the 2017 plan year, approximately 58% of total Marketplace enrollees (or 7 million consumers) used CSRs. These subsidies have been particularly helpful for Southerners who have enrolled through the Marketplace. (Click on the chart below for more state-specific details.)

[1] The directive to end CSR reimbursements cites a 2014 lawsuit brought by the House of Representatives against the Obama administration. In 2016, a federal judge determined that federal CSR reimbursements were unconstitutional due to a lack of congressional appropriation. The Obama Administration appealed this decision, but it has since been repeatedly stayed by both the House and Trump Administration. For more on the legal background, click here.



Cost sharing reductions are important for consumers who actively use their health plans and whose health care costs extend beyond the monthly premiums. These reductions are applied upfront to out of pocket costs, including co-pays and deductibles, which generally and historically have been key cost drivers for individuals and families.

Impact of Ending Cost Sharing Reductions

For some time, President Donald Trump had been vocal about his disapproval of Cost Sharing Reductions. He did, however, continue reimbursing insurers during the first eight months of his presidency and until recently had made no indication as to whether or when CSR reimbursements would end. In response to this uncertainty, states found multiple ways to proactively protect consumers in their jurisdictions from any sudden changes if the payments did stop.

For example, some states asked insurers to file two sets of premium rates for approval: one, assuming CSRs would continue to be reimbursed; one, assuming they would not. Massachusetts, for example, asked insurers to file regular rates along with the increases insurers would seek if the government stopped reimbursing CSRs. Following the Administration's directive to end CSR reimbursements (the Directive) and a lack of congressional movement on a bi-partisan market stabilization bill, Massachusetts decided to use the increased rates for the 2018 Open Enrollment period.

Other states had asked insurers to file a single set of rates assuming an end of federal reimbursements. These states were able to proceed with the as-filed rates for open enrollment. States that did not ask insurers to make the assumption have generally shown flexibility. For example, Oregon allowed insurers to increase silver-level premiums by 7.1% after the Directive. (This tactic is commonly referred to as a Silver Load.) Others states opted to spread the increase among all metal-levels (referred to as a Broad Load), and allowed insurers to apply a lower increase evenly among all plans. Other states like North Dakota have taken a harder line and refused to allow insurers to increase prices, calling the problem "an issue that is between insurance carriers and the federal government."

Generally, premium increases to Marketplace plans do not affect consumers. Approximately 84% of all Marketplace enrollees receive Advanced Premium Tax Credits (Tax Credits). The amount of this Tax Credit adjusts according to an enrollee's income and the price of the second lowest silver level plan sold on the Marketplace. Thus if silver level plan's premiums increase, Tax Credits will grow as well. Thus, even though reports show that premiums are increasing drastically as a result of the Directive, most consumers will not see a significant increase in cost.

Helping Consumers Who Are Affected

Premium increases will affect enrollees who do not receive financial help. Consumers who do not qualify for a Tax Credit (or for CSRs) will face inflated premiums with no additional help. To protect these consumers from unaffordable premiums, some states have introduced an innovative workaround, commonly referred to as the **Silver Switcheroo**.

States like Pennsylvania have acknowledged that while most consumers will be able to use an increased Tax Credit to pay for the higher premiums, consumers who do not qualify for financial help may find premiums on the Marketplace unaffordable. To counter this, state officials have worked with insurers so that every silver level plan sold *on* the Marketplace, is also offered *off* the Marketplace. The silver plans sold off the Marketplace would not include the inflated premium increase.

The Silver Switcheroo thus allows consumers to access nearly identical health care plans at affordable costs. For those who qualify for financial help, they are able to use Tax Credits to buy silver plans on the Marketplace. For those who do not qualify for financial help but want to enroll in a silver level plan, they are able to avoid these artificial increases, and pay the regular premium rates off the Marketplace. In the end, consumers who want silver level plans will be able to enroll in them, and insurers are able to adjust their pricing to accommodate the HHS' decision.

Explaining the Impact on Consumers

Admittedly, these state reactions and workarounds to the Directive are complicated. Navigators and enrollment assistors face the daunting task of explaining these issues to consumers, many of whom are already find it challenging to pick a health care plan that best fits the needs of their family.

To help advocates better explain these issues to enrollees, the Center for Health Law and Policy Innovation has produced a simple, customizable handout on how the Directive may affect a consumer. Advocates should become informed on how their specific state is handling 2018 rates, and encourage potential enrollees to meet with navigators. **Plans on the Marketplace are affordable with financial help, and many people do not realize how much help they qualify for until they talk with a Navigator.** Advocates can help by directing consumers to a navigator here.

Consumers who are at the edge of qualifying for a Tax Credit should take extra care when selecting a plan. People enrolled in Marketplace plans have the option of applying their Tax Credit to each month's premium, lowering their upfront costs. The Tax Credit is reconciled when a consumer files their taxes. If the consumer saw an increase in salary or decrease in household size, he or she may be responsible for returning the Credit and thus paying the full premium of their selected plan.

Holding States Accountable for Blocking Access to Hepatitis C Cures

Hepatitis C can be cured, yet many state Medicaid programs are imposing discriminatory restrictions and withholding this lifesaving treatment. CHLPI and the National Viral Hepatitis Roundtable recently released "Hepatitis C: The State of Medicaid Access" report and state report cards. Find out how your state matches up at www.stateofhepc.org. CHLPI and NVHR will be hosting a webinar on November 9 at 3PM discussing the report and how advocates can use this new resource to eliminate restrictions in their states. Register here.

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