Covered California: Guidance on Rate Filing Instructions Related to the Cost-Sharing Reduction Program

May 31, 2017

The Cost-Sharing Reduction (CSR) program is an integral feature of the Affordable Care Act (ACA), which requires issuers participating in exchanges to offer reduced cost sharing plans to qualified low income consumers, and the federal government to reimburse those issuers for the cost of providing such plans to their enrollees. Covered California has done considerable research and analysis on the consequences if the federal government stops directly funding the CSR program.[1] The research finds that failing to directly fund the CSR program will negatively impact consumers, the federal budget, and the stability of the individual health insurance market. Covered California remains optimistic the federal government will resolve the continued uncertainty over the CSR program very soon. However, until that time, we must be prepared to move forward in a manner that is consistent with federal and state law and minimizes the negative impacts on consumers and the individual health insurance market.

With the potential that the federal government will no longer directly fund the CSR program, issuers need clarification on how to increase premium rates to offset the cost in the event they do not receive direct CSR reimbursement payments.[2] Because the ACA never envisioned this scenario, Covered California has considered two potential methods to build the cost of the CSR program into premium rates: (a) premiums could be increased only on Silver-level qualified health plans, including the mirrored Silver plan, since CSR plans are "variants" of the standard Silver plan; or (b) premiums could be increased on all metal levels, so that Bronze, Silver, Gold and Platinum products all had the same increase.

Covered California's interpretation of the ACA, as outlined below, is that any charge to support the costs of the CSR program should be loaded only on the Silver qualified health plan. Based on this interpretation, Covered California directs issuers to submit additional rates that they would charge if the CSR program is not funded, by loading the rate increase attributable to the CSR program only on the standard Silver qualified

[1] Evaluating the Potential Consequences of Terminating Direct Federal Cost- Sharing Reduction (CSR) Funding, (2017): http://www.coveredca.com/news/pdfs/CoveredCA_Consequences_of_Terminating_CSR.pdf

[2] Health Plans who chose to participate in exchanges are required to offer reduced cost sharing plans to qualified enrollees regardless of whether the federal government directly reimburses issuers for those payments.

health plan, including the mirrored Silver qualified health plan sold outside of Covered California. These rates are due no later than 5 pm on June 30, 2017.[3]

In addition, as a condition of participation in Covered California, Covered California staff intends to seek Board approval to amend its contracts with issuers to require them to offer an additional, separately rated, non-mirrored Silver plan outside of Covered California that is virtually identical to the Covered California Patient-Centered Benefit Plan Designs. This contractual requirement is based on Covered California's direct interest in fostering a good risk mix in the individual market. Two of the factors that have led to the positive experience in California has been: (1) the ability of consumers – both on and off-exchange – to make true "apples to apples" comparisons of issuers' offerings; and (2) Covered California's standard patient-centered designs, which allow all consumers selecting the Silver plan (or above) to receive any outpatient services without having to meet a deductible and clinicians to clearly communicate common cost-sharing arrangements to their patients. Since this non-mirrored Silver plan will not be a qualified health plan and will not have any CSR variants associated with it, issuers may not build any costs attributable to the CSR program into the premium for that plan. Covered California will engage our contracted issuers and our Plan Management Advisory Committee to get input on what de minimus changes may be appropriate for this non-mirrored Silver plan, which would be used in common across all issuers. As provided by law, issuers would continue to have the discretion to develop and promote alternative off-exchange products that comply with federal and state standards.

Covered California hopes it will not be necessary for issuers to implement this rate increase or the offering of an additional product off-exchange and will continue to work with issuers, regulators and federal partners to resolve the uncertainty before rates must be finalized. Covered California will provide additional direction to issuers if additional changes to premium rates are necessary after the rates for the 2018 plan year have been finalized.

<u>Applying CSR Costs to Silver Plans Only</u>

Federal and state law require issuers to consider all of their members to be part of a single risk pool, reflecting the claims experience of all enrollees in all health plans (other than grandfathered health plans) offered by such issuers in the individual market in a state, including those enrollees who do not enroll through the exchange.[4] Based on the single risk pool, issuers must establish an annual index rate for the individual market based on the total combined claims costs for providing essential health benefits within the single risk pool of the state.[5] The premium rate for an issuer's health plans must

[3] Any final rates with or without the CSR load will be subject to review by the applicable state regulator and are subject to change pending future guidance from the federal government.
[4] 45 C.F.R. § 156.80(a); Cal. Health & Saf. § 1399.849(h)(1); Cal Ins. Code § 10965.3(h)(1)
[5] 45 C.F.R. § 156.80(d); Cal. Health & Saf. § 1399.849(h)(2); Cal Ins. Code § 10965.3(h)(2)

use this annual index rate, subject only to expressly permitted, and actuarially justified, plan-specific factors.[6]

One such plan-specific factor is the actuarial value and the cost-sharing design of the health benefit plan.[7] This provision means that issuers should charge premium rates that are sufficient to cover the costs of the benefits included in a specific plan offered at a specific metal level. It is actuarially justified and appropriate for issuers to increase the premium rate for the Silver plans to receive premium revenue sufficient to cover the actual cost of providing Silver plans to their enrollees. This includes collecting enough premium revenue to cover the cost of the standard Silver plan, and to cover the costs of the three Cost-Sharing Reduction Silver variant plans (Silver 73%, Silver 87% and Silver 94%). Since only those enrollees in Silver plans receive the reduced cost sharing benefits, it is appropriate to load the cost of those benefits solely on the Silver plans.[8]

The ACA clearly intended for the cost of the CSR program to be paid by the federal government. The ACA says that "the Secretary shall make periodic and timely payments to the issuer equal to the value of the [cost-sharing] reductions."[9] There is nothing in the ACA or its implementing regulations that indicate the cost of the CSR program should be spread amongst all consumers – including those receiving subsidies and those who receive no subsidies.[10] However, this would be the result if the cost of the CSR program were spread across all metal levels. This result would be at odds with the clear intent of the ACA for this program to be paid for by the federal government. By loading the cost of the CSR program only on the Silver plans, a significant portion of the increased cost attributable to the CSR program would be offset by an increase in the Advanced Premium Tax Credits (APTC) paid to consumers.

While there has not been recent guidance from the federal government on this issue, it acknowledged that if the CSR program is not funded, premiums on Silver plans would bear the increase, resulting in an increase in APTC. This view was reflected in the government's filing in the CSR lawsuit related to the appropriation of funds, where it stated "if issuers were not reimbursed by the government for complying with the ACA's directive to reduce the cost-sharing requirements imposed on eligible individuals enrolled in silver plans, ***they would raise silver plan premiums to cover the additional health care costs*** the issuers themselves would incur as a result. Such premium increases, in turn, would increase the amount that Treasury would be required

[6] 45 C.F.R. § 156.80(d)(2); Cal. Health & Saf. § 1399.849(h)(3); Cal Ins. Code § 10965.3(h)(3)
[7] 45 C.F.R. § 156.80(d)(2)(i); Cal. Health & Saf. § 1399.849(h)(3)(A); Cal Ins. Code § 10965.3(h)(3)(A)
[8] It is important to note that consumers receiving even small amounts of APTC would be entirely shielded from the premium increase required to pay for the CSRs since the APTC is calculated based on the subsidy-eligible consumer's income.
[9] 42 U.S.C. § 18071(c)(3)(A)
[10] Covered California's direction to issuers to offer non-mirrored patient-centered designs off-exchange that do not include the premium load for the costs of the CSR seeks to minimize the potential that non-subsidized consumers would bear the premium increase required to fund the CSR payments. Covered California is considering how to encourage those unsubsidized enrollees who are on exchange and enrolled in Silver plans to consider those off-exchange non-mirrored products.

to pay in tax credits".[11] (emphasis added) Thus, the federal government clearly anticipated that the cost of the CSR program would be loaded only on the Silver plans, which would result in an increase in the amount of APTC paid to consumers.

The CSR load on the Silver plan will also be subject to review by the state regulators. In reviewing premium rate filings, the Department of Managed Health Care and the Department of Insurance determine whether the proposed rates are "unreasonable or not justified."[12] The regulators must ensure that the rate increase for a product is related to the likely health care spending for the product. With the CSR program, the premiums must support the health care spending for the standard Silver plan with a 70% actuarial value, as well as the Silver variant CSR plans. Even though consumers might qualify (under income restrictions) and enroll in the Silver plan CSR variants, they continue to pay only the standard Silver plan premium, while receiving the benefits of a plan with lower cost sharing.

If the CSR program is not funded directly, it would be necessary for issuers to increase the premiums for the Silver plan to offset the reimbursements they would have received from the federal government. Other metal levels (Catastrophic, Bronze, Gold and Platinum) are entirely unrelated to the standard Silver plan and its CSR variants, so a premium increase for any level other than Silver would be inappropriate.

[11] Defendants' Memorandum in Support of Their Motion for Summary Judgment, *United States House of Representatives v. Thomas E. Price, in his official capacity as Secretary of Health and Human Services; U.S. Department of Health and Human Services; Steven T. Mnuchin, in his official capacity as Secretary of the Treasury; U.S. Department of Treasury (formerly Burwell et. Al)*, No. 1:14-cv-01976 (D.D.C. filed Dec. 2, 2015) at 8

[12] In California, the Department of Managed Health Care or the Department of Insurance reviews rates to ensure they are justified and not unreasonable. In many other states, the Departments of Insurance use a nearly identical standard of "sufficient and necessary." (See California Health & Saf. Code § 1385.03 et seq.; Cal. Ins. Code § 10181.3 et seq.) Although the standards differ in terminology, the actuarial review of the rates conducted by each state is nearly identical.