

Cost Sharing Reduction (CSR) Subsidies

A “Solution” in Search of a Problem and the Costly Danger of Double-Dipping

ACTION ITEM: Congress should not authorize appropriations for CSR payments

Background:

On October 12, 2017, President Trump announced the immediate termination of Cost-Sharing Reduction (CSR) payments. The White House stated, “Based on guidance from the Department of Justice, the Department of Health and Human Services has concluded that there is no appropriation for cost-sharing reduction payments to insurance companies under Obamacare. In light of this analysis, the Government cannot lawfully make the cost-sharing payments.” In response, several States and the District of Columbia challenged this decision in court and requested an injunction requiring the CSR payments to be made. The U.S. District Court for the Northern District of California heard oral arguments for and against the injunction request on October 23, 2017. Obama appointee Judge Vince Chhabria heard the case.

State of California v. Donald J. Trump (10/23/2017). Courtroom video:
<http://www.uscourts.gov/cameras-courts/state-california-v-donald-j-trump>

“The State of California, 17 other states, and the District of Columbia challenge executive branch action terminating reimbursements to insurance companies for subsidizing co-payments and deductibles for low-income people.”

Key Findings:

1. States have devised an innovative response to the Trump decision. According to Judge Chhabria, approximately 40 states have created a mechanism that is actually **better for consumers than access to CSR payments**.
2. By increasing silver plan premiums on the exchange, **there is virtually no net impact to consumers or insurance companies**. The Affordable Care Act (ACA) ties advance premium tax credits (APTCs/ ‘premium subsidies’) to the second-least expensive silver tier plan. Since these premiums have increased, premium subsidies for all metal levels (bronze, silver, gold and platinum) have also increased. Thus, many lower-income consumers will be able to get a *better* plan for less money.
3. Covered California press release (10/11/17) on increased premiums (surcharge) and exchange’s plan to not require payment of the surcharge:

- a. “However, because the surcharge will only be applied to Silver-tier plans, **nearly four out of five consumers will see their premiums stay the same or decrease**, since the amount of financial help they receive will also rise. Those who do not get financial help will not have to pay a surcharge.
 - b. “Financial help means that in 2018, nearly 60 percent of subsidy-eligible enrollees will have access to Silver coverage for less than \$100 per month — the same as it was in 2017 — and 74 percent can purchase Bronze coverage for less than \$10 per month”
4. The other 20% of California consumers who are not eligible for tax credits, can purchase bronze, gold, or platinum plans on the exchange for no net increase from last year, or buy an off-exchange silver plan that has not been subjected to exchange rate increases.
5. Judge Chhabria: “There are a couple states who are plaintiffs in this case – Delaware and Kentucky – who for some reason have not chosen to respond to the termination of the CSR payments in this way. **And it seems to me that the states, by choosing to respond in a different way, are the ones who are responsible for depriving their citizens of the opportunity to get higher tax credits to buy insurance on the exchanges.**”
6. Judge Chhabria: “If I order the Administration to resume these CSR payments, the insurance companies will be able to **both collect** the higher premiums that were established in anticipation of termination of the CSR payments **and collect** the CSR payments from the federal government. Is that the result you want?”
7. Judge Chhabria: “That’s sort of a complicated way of saying what you want to happen now and for 2018 is for the insurance companies to **double collect.**”
8. Plaintiff Attorney Gregory Brown: “If we are able to **double collect** temporarily, certainly down the road we will be able to look into going back and adjusting rates appropriately.”
9. Judge Chhabria: “Do you know why the CBO report predicted that a million more people would go without insurance? Do you know what the basis of that prediction was? It was that insurance companies would withdraw from the markets. And that hasn’t happened. **And the reason that hasn’t happened is because States like California have found this innovative way to respond to the termination of the payments.** And so, the CBO prediction that a million more people would go without insurance is outdated. And it’s based on an assumption that has not come to fruition.”