



**SOCIETY OF  
ACTUARIES**

Article from

**Health Watch**

February 2018

Issue 85

# CSRs and Market Stabilization: What's the Real Story?

By Dean Ratzlaff

On October 12, 2017, President Trump announced that federal payments to insurers for cost-sharing reductions (CSR reimbursements) are no more. Now that this is the new normal, do we want to go back?

Many say yes. During the writing of this article, at least one senator agreed to support a bill that includes individual mandate repeal, provided two market stabilization bills, the Collins-Nelson and Alexander-Murray bills, also pass.<sup>1</sup> As the latter bill's centerpiece is reinstatement of CSR reimbursements,<sup>2</sup> the thinking appears to be that reinstating CSR reimbursements will have market stabilizing effects to offset the de-stabilizing effects predicted under individual mandate repeal.<sup>3</sup> Given the advice of experts prior to the official annulment of CSR reimbursement on October 12, 2017, such thinking is not surprising. Senators in the Senate Health, Education, Labor and Pensions Committee heard testimony last September from numerous experts who all said CSR reimbursement is the most potent policy with which to stabilize the individual health insurance market.<sup>4</sup> Knowledgeable lobby groups also joined together to hammer the same message.<sup>5</sup>

When I analyze the issue I conclude the opposite. I believe it is better that CSR reimbursements remain relegated to history than be reinstated. Join me as I recap how we got here, discuss the implications of reinstating CSR reimbursements, and conclude that if the goal is market stabilization, it is better that CSRs not be reimbursed.

## RECAPPING HOW WE GOT HERE

Effective beginning in 2014, U.S. law requires insurers to provide CSRs to members on the individual market exchanges whose income is between 100 percent and 250 percent of the federal poverty level (FPL).<sup>6</sup> Every insurer on the exchange must create special benefit structures where copays, coinsurance, deductibles and out-of-pocket limits are reduced to improve actuarial value according to Table 1. Thus the name "cost-sharing reductions," or CSRs.

Table 1  
Actuarial Value Improvement by Income Range

Income Range	Actuarial Value Improvement
100–150% FPL	24%
150–200% FPL	17%
200–250% FPL	3%

The law stipulates that the richer benefits cannot raise premiums for the benefitting members, leaving insurers in need of a revenue source to cover these richer benefits. Prior to October 12, 2017, the federal government, through the Department of Health and Human Services (HHS), reimbursed insurers dollar-for-dollar for these extra benefits (i.e., CSR reimbursements).

The law explicitly directs HHS to make CSR reimbursements but does not declare that Congress appropriated them.<sup>7</sup> In a move to check the executive branch's powers, the House of Representatives sued HHS on the grounds that, because Congress did not appropriate CSR reimbursements, it is illegal for HHS (i.e., the executive branch) to make them. It was the first time in U.S. history that a legislative body brought a lawsuit against a president over enforcement of law.<sup>8</sup> In a ruling made May 12, 2016, a district court judge agreed with the House.<sup>9</sup> Yet the ruling was made in such a way as to allow reimbursements to continue during appeal, which the Obama administration filed soon after.

When the Trump administration replaced the prior administration as the defendant in the suit, it gained the right to drop the appeal and let existing CSR reimbursements stop. As insurers were preparing for the 2018 individual market year, President Trump repeatedly threatened to terminate CSR reimbursements but never followed through, raising uncertainty to market-destabilizing levels. The writing was on the wall that CSR reimbursements were going away, but when?

Throughout 2017 the appeal was held in abeyance, with both the House and executive branch repeatedly filing motions suggesting legislation negating the need for a decision on the matter to be imminent. The deadline for insurers to sign agreements to offer exchange plans in 2018—September 27, 2017—passed by. By then, premiums were final and insurers were locked in for 2018.

Two weeks later, on October 11, U.S. Attorney General Jeff Sessions delivered a three-page letter arguing that the ACA does not appropriate funds for CSR reimbursement.<sup>10</sup> The next day President Trump publicly announced that CSR reimbursements were no more. The last CSR reimbursement payment to insurers, which had been made monthly since 2014, occurred in September 2017.

Nineteen State Attorneys General attempted an injunction to continue CSR reimbursements on the grounds the states would otherwise be harmed. Their argument failed. On October 25, 2017, Judge Vince Chhabria vanquished their argument with a 29-page decision that lucidly explained why states would not be harmed.<sup>11</sup> It is worth noting that footnote 22 of that decision suggests a legal pathway for insurers to recoup CSR reimbursements not paid during the 2017 plan year. I recommend consulting with your company’s legal counsel if you wish to learn more.

Now that CSR reimbursements are done, the lawsuit brought by the House of Representatives is likely to come to a close. On December 15, 2017, the involved parties filed a settlement with the court. Amazingly, they agreed to overturn the prior ruling by the district court. This means that if the courts agree to the settlement, a new administration or even President Trump could resume CSR reimbursements at any time. A party deeming the reimbursements illegal would have to file a new suit.<sup>12</sup>

Losing CSR reimbursements removed a significant source of funding for the individual market, valued at \$10 billion for 2018. For insurers, the only recourse was to load 2018 premiums to make up for the loss. This added 14 percent to premiums nationwide and 20 percent to silver premiums specifically.<sup>13</sup> States allowed insurers to load premiums according to the approaches described in Table 2.<sup>14</sup>

More states loaded CSRs to silver on-exchange plans (Silver Switcharoo) than any other approach. By providing maximum benefit to the roughly 70 percent subsidy-eligible members and no change in premium for ineligible members, it is the approach with the most upside.

Individual market regulations of import to health actuaries can be ephemeral, but for the rest of this article I ask you to think of them as frozen in place. Reinstating CSR reimbursements is a change to baseline. It is a baseline where premiums for on-exchange silver plans are used to give insurers revenue necessary for providing CSRs to members under 250 percent FPL.

### IMPLICATIONS OF REINSTATING CSR REIMBURSEMENTS

CSR loading allows insurers to add administrative costs and profit to CSR costs. Previously, CSRs were exempted from net premium calculations.<sup>15</sup> Because most insurers price individual business to the minimum loss ratio of 80 percent, about 20 percent of CSR premium load is additional revenue without additional cost. For 2018 this could be 2.8 percent of 2017 premiums (14 percent • 20 percent).

Insurers will lose this revenue if CSR reimbursements are reinstated. This is ironic because insurers will bear additional administrative costs under CSR reimbursements. In order to receive the correct amount of CSR reimbursement, insurers

Table 2  
Approaches Allowed by States for Insurers to Mitigate Loss of CSR Reimbursement

# States	Approach	What It Means
3	Eat It	Insurers not allowed to load premiums to cover loss of CSR reimbursement. They must eat whatever CSRs they provide.
5	Broad Load	Insurers load premiums to cover loss of CSR reimbursements; spread evenly across all plans.
17	Silver Load	Insurers load premiums to cover loss of CSR reimbursements; only on silver, on and off exchange.
20	Silver Switcharoo	Insurers load premiums to cover loss of CSR reimbursements; only on silver on exchange, exempting silver off-exchange members from the increase.
6	Insurer Choice	Insurers given latitude to decide what they will do.

Note: From “2018 CSR Load Type by State,” by Charles Gaba, Dave Anderson, Louise Norris and Andrew Sprung.<sup>14</sup> Used with permission from Charles Gaba.

must adjudicate claims as if there were no CSRs, determine the actual difference in claims, and submit that amount to the government in a process known as CSR reconciliation. CSR reconciliation is complicated, and many insurers will need to pay an external vendor to perform this for them in the event that CSR reimbursements are reinstated.

If we could travel back in time and reinstate CSR reimbursements in time for the 2018 plan year, silver premiums would decrease about 17 percent nationwide and all premiums about 12 percent. As much as 2.4 percent of the 12 percent is retention revenue that insurers would lose (12 percent • 20 percent).

To consider member impact, we must differentiate between members who are eligible for a subsidy and those who are not. The member's portion of premium for subsidy-eligible members is capped based on income relative to the federal poverty level. The maximum income eligible for subsidy is 400 percent FPL, at which the member portion is capped at 9.56 percent

of income.<sup>16</sup> If this is a family of four, the member portion is capped at \$784 in 2018. Assuming the second-lowest silver premium is \$1,200, the family's premium subsidy is \$416. Should CSR reimbursements be reinstated, the second-lowest-cost silver premium will decrease an average of 17 percent, making the family's new subsidy \$212 ( $\$1,200 \cdot (1-17\%) - \$784$ ). The lower subsidy gives them less purchasing power for any plan other than the second-lowest silver. Essentially, their options will not be as good should CSR reimbursements be reinstated.

Now consider an illustration where premiums are \$400, \$600, \$600 and \$700 for bronze, silver, gold and platinum benefits, respectively. The on-exchange silver premium would have been \$500 with CSR reimbursements, which are \$80. Pricing for 80 percent loss ratio with no CSR reimbursements resulted in \$600 ( $\$500 + \$80/80$  percent). Subsidy-eligible members have a member portion of \$50 for silver plans. Table 3 presents the impact of reinstating the CSR reimbursement under these parameters.

Table 3  
Impact of Reinstating CSR Reimbursement, by Stakeholder

No CSR Reimbursement (Baseline)	Metal	Subsidy-Eligible			Subsidy-Ineligible			CSR Reimbursement (Taxpayer)
		Mbr	Prem Subsidy (Taxpayer)	Total Premium (Insurer)	Mbr	Prem Subsidy (Taxpayer)	Total Premium (Insurer)	
	Platinum	\$150	\$550	\$700	\$700	\$0	\$700	\$0
	Gold	\$50	\$550	\$600	\$600	\$0	\$600	
	Silver	\$50	\$550	\$600	\$500	\$0	\$500	
	Bronze	\$0	\$550	\$400	\$400	\$0	\$400	

  

CSR Reimbursement	Metal	Subsidy-Eligible			Subsidy-Ineligible			CSR Reimbursement (Taxpayer)
		Mbr	Prem Subsidy (Taxpayer)	Total Premium (Insurer)	Mbr	Prem Subsidy (Taxpayer)	Total Premium (Insurer)	
	Platinum	\$250	\$450	\$700	\$700	\$0	\$700	\$80
	Gold	\$150	\$450	\$600	\$600	\$0	\$600	
	Silver	\$50	\$450	\$500	\$500	\$0	\$500	
	Bronze	\$0	\$450	\$400	\$400	\$0	\$400	

  

Impact of Reinstating CSR Reimbursements	Metal	Subsidy-Eligible			Subsidy-Ineligible			CSR Reimbursement (Taxpayer)
		Mbr	Prem Subsidy (Taxpayer)	Total Premium (Insurer)	Mbr	Prem Subsidy (Taxpayer)	Total Premium (Insurer)	
	Platinum	\$100	-\$100	\$0	\$0	\$0	\$0	\$80
	Gold	\$100	-\$100	\$0	\$0	\$0	\$0	
	Silver	\$0	-\$100	-\$100	\$0	\$0	\$0	
	Bronze	\$0	-\$100	\$0	\$0	\$0	\$0	

Abbreviations: CSR, cost-sharing reductions; Mbr, member.

The impact to various parties of reinstating CSR reimbursements are as follows:

- **Subsidy members.** Must pay \$0 to \$100 more depending on plan selection.
- **Nonsubsidy members.** \$0. No CSR load is on their premium, so they are unaffected.
- **Insurer.** Net loss of \$20 for subsidy-eligible silver members (\$100 of premium is lost, while only \$80 of CSR reimbursement is gained).
- **Taxpayer.** Net gain of \$20 for subsidy-eligible silver members (CSR reimbursements cost \$80 but \$100 is saved due to smaller premium subsidies).

While this is illustrative, the only difference a real-world scenario will have is the magnitude of impact. Directionality remains unchanged. Taxpayers benefit, nonsubsidy members are unaffected, while subsidy members and insurers lose.

Last August the Congressional Budget Office (CBO) estimated taxpayer impact from terminating CSR reimbursements.<sup>17</sup> Acknowledging that it is not truly a 1:1 endeavor, we can reverse their figure to get an initial estimate of taxpayer impact to reinstate CSR reimbursements. For 2017–2026, reinstating CSR reimbursements will reduce taxpayer burden by approximately \$194 billion. I encourage you to consider how much weight this should receive in the overall calculus.

Reversing CBO's coverage estimate indicates that reinstating CSR reimbursements will add about one million people to the uninsured ranks. Because reinstating CSR reimbursements decreases premium subsidies, purchasing non-group insurance becomes less attractive for subsidy-eligible members. As a general rule, individuals with lower-than-average risk are the first to go uninsured. As a result, premiums rise for individuals who remain insured.

How will reinstating CSR reimbursements impact insurer participation in the individual market? An amicus brief on the CSR lawsuit by America's Health Insurance Plans (AHIP) and Blue Cross Blue Shield Association (BCBSA) said it well:

It is imperative from an operational and business-planning perspective to know whether [CSR reimbursements] will be covered by the federal government . . . ahead of filing premiums for state approval, committing to participate in the Exchanges, and making off-Exchange individual market decisions.<sup>18</sup>



The bottom line here is that insurers can play when they know what the rules are, but when rules are uncertain they are more likely to exit. Uncertainty is a killer to insurance markets, but whatever damage we can expect from CSR reimbursement uncertainty has already been done. It is water over the dam. The federal government does not reimburse insurers for CSRs, so any policy proposals must be evaluated against this reality.

Insurers will enter and exit the individual market for many reasons. Absent a tiny number of insurers whose 2018 premiums did not prepare them, no further exits will come as a result of the annulment of CSR reimbursements last October. If CSR reimbursements are reinstated with enough lead time for insurers to adjust, one can predict an effect in the direction of insurer exit, although the effect size will probably be small. The effect results from insurers losing a few percent of revenue by losing the retention added to premium when CSRs are loaded. It also entails a slightly smaller market, by about 1 million according to the CBO.

## CONCLUSION

Reinstating CSR reimbursements has one pro, which is reducing taxpayer commitments. The cons are all related to market stabilization. Premium subsidies shrink, making policies less attractive to many members, some of whom—probably the healthiest—exit the market. The number of uninsured people increases. Insurers lose as much as 2.4 percent of revenue *and* have the administrative burden of performing CSR reconciliation.

In sum, reinstating CSR reimbursements will not have a single market-stabilizing effect, but many destabilizing effects. Our national debt is a legitimate concern, and such a policy makes advances toward the goal of reducing it. However, if the goal is to stabilize individual health insurance markets, reinstating CSR reimbursements is misguided.

## PENDING LEGISLATION AND APPEAL

The only path presently available for reinstating CSR reimbursements is the Alexander-Murray market stabilization bill. It appropriates CSR reimbursement for a mere two years: 2018 and 2019! If passed, when insurers prepare for the 2020 plan year they will face the same CSR uncertainty experienced during preparations for 2018.

Also important, it will not give insurers CSR reimbursement on top of CSR premium loads. The bill requires states to submit

a provision for how insurers will rebate excess CSR revenues within 60 days of enactment.<sup>19</sup> Chief Architect Lamar Alexander said, “we have a page-and-a-half to make it clear that insurance companies cannot ‘double dip.’”<sup>20</sup> ■



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### ENDNOTES

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