Affordable Care Act

Impact of Eliminating Cost-Sharing Subsidy Payments, Individual Mandate Penalty

The purpose of the Affordable Care Act (ACA) was to reduce the number of individuals without health insurance and increase access to health care. The individual mandate, which requires everyone to obtain health insurance or pay a penalty, was one way of achieving that goal and the cost-sharing reduction (CSR) subsidy was another. Will the elimination of the CSR subsidy payments and the elimination of the individual mandate penalty in 2019 lead to destabilization and possibly collapse of the ACA?

Cost-Sharing Reduction Subsidy

Since the majority of uninsured individuals in the U.S. were lower-income, the ACA implemented two subsidies to make health insurance more affordable for those with low to moderate incomes.

• One of the subsidies is the premium tax credit (PTC), which provides financial assistance for the cost of health insurance premiums to individuals who purchase plans on the health insurance marketplace. The PTC subsidy can be used on a plan in any of the four metal categories under the ACA.

• Comparatively, the CSR subsidy lowers out-of-pocket costs, such as deductibles and copays for individuals buying marketplace silver plans with incomes from 100% to 250% of the poverty level.

Whereas the PTC subsidy is provided in the form of an advance tax credit to individuals, the federal government pays the CSR subsidy directly to health insurers, which in turn reduce the deductibles, copays and other out-of-pocket charges when the eligible health consumer uses the benefits covered by the health plan.

The controversy that has surrounded the CSR subsidy is that health insurers are mandated by law to offer reduced cost sharing through silver plans to qualifying individuals, but unlike the PTC subsidy, no congressional appropriation was made under the ACA to pay for the CSR subsidy. So, even though insurers are required to provide the reduced costs under the CSR subsidy to individuals, the federal government is not mandated to continue CSR subsidy payments to insurers.

For this reason, the CSR subsidy payments have been the subject of an ongoing legal battle. In 2014, when the ACA took effect, Republicans in the U.S. House of Representatives filed a lawsuit challenging the CSR subsidy payments. They argued that the payments were illegal because Congress had never appropriated the money for these payments. The district court judge ruled in favor of the House Republicans, but stayed her decision, which allowed the Obama administration to pursue an appeal.

Payments for the CSR subsidy continued to be made by the Trump administration while the appeal was pending. In October 2017, however, President Donald J. Trump announced that the government could not continue to legally make the payments without an appropriation by Congress. A day after this announcement, the California and New York attorneys general, leading 18 states and D.C., filed suit, asking for an order compelling the Trump administration to continue making the CSR subsidy payments. The attorneys general argued that the immediate loss of funds to insurers and in turn to individuals would increase health insurance costs, and lead insurers to abandon the individual health insurance market, ultimately resulting once again in an increased number of uninsured. The attorneys general further argued that eliminating the CSR subsidy payments was an attempt to sabotage the ACA in its entirety since the recent repeal and replace efforts were not successful.

Regardless of the intent behind the action, there is no doubt that eliminating the CSR payments will increase health care premiums. In 2017, approximately 7.1 million of the 12.2 million individuals who selected an ACA marketplace plan received the CSR subsidy. The estimated total for CSR subsidy payments to insurers for these 7.1 million individuals was $7 billion. Health insurers were counting on those payments when they set their premiums in 2016. Yet, an approximate $1 billion in payments was not made to insurers for the remainder of 2017 even though insurers still had to make the corresponding CSR subsidy to individuals. Although elimination of the CSR subsidy payment was troublesome for 2017, the bigger concern is the impact eliminating the payment will have on health care premiums for 2018 and the overall effect on the ACA.

In order to recoup the money they will spend on CSR subsidies in 2018, insurers had to reset their premium rates for 2018 once elimination of the CSR payments was announced. In California alone, 11 insurers increased their silver plan premium for 2018 because of the elimination of the CSR subsidy payments, with the lowest surcharge at 10% and the highest at 27%. A Kaiser Family Foundation analysis found that the average premium for a benchmark silver plan in ACA marketplaces nationwide would need to increase by an estimated 19% for insurers to make up for the loss of government funding for the CSR subsidy.

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In mid-October 2017, the "Bipartisan Health Care Stabilization Act of 2017" was introduced by Senators Lamar Alexander (R-Tennessee) and Patty Murray (D-Washington) to amend the ACA to fund CSR subsidies for the remainder of 2017, as well as 2018 and 2019. Although the bill had 24 co-sponsors, it failed to gain momentum in the U.S. Senate. Even if the bill does move in the future, insurers have already set premiums for 2018. The insurers have assumed the CSR subsidy payments will be eliminated and therefore have increased premiums to compensate for the loss of funding.

If the goal of eliminating CSR payments was to reduce federal spending, the action will likely backfire because the federal government and ultimately taxpayers are on the hook for the increased premiums resulting from elimination of the CSR payments. According to an Urban Institute analysis, the increased premiums next year will cost the federal government an estimated $7.2 billion more than this year because the federal government is obligated to cover the higher premiums when paying for PTC subsidies. In California, insurers have limited the increase in premiums to the silver plans since those are the only plans accompanied by cost-sharing reductions.

The elimination of the CSR subsidy payments, the resulting increase in premiums in the silver plans, the uncertainty of proposed legislation, as well as the pending lawsuits, will continue to cause uncertainty for both insurers and health consumers, likely resulting in the weakening of the ACA and its impact on the nation's uninsured rate.

Individual Mandate

The individual mandate, enacted as part of the ACA and in effect since 2014, was intended to reduce the number of uninsured and increase the risk pool, thus lowering premiums for everyone. It required all U.S. citizens and legal residents (unless they quality for an exemption) to purchase health insurance for themselves and their family members through the health insurance marketplace, which in California is Covered California, if they didn't obtain it through other means, such as their employer. If they didn't comply with the individual mandate, they would have to pay a noncompliance tax penalty. That penalty in 2017 was the greater of 2.5% of household income or $695 per adult.

The individual mandate penalty was a way to ensure compliance with the ACA and get as many individuals insured as possible, including healthy individuals who might forego purchasing insurance until they were sick. Since the ACA prohibits insurers from denying coverage based on current or prior health status, the individual mandate penalty was a way to balance the risk pool and ensure that both healthy and sick individuals purchased insurance.

The Tax Cuts and Jobs Act, passed by both the U.S. Senate and U.S. House of Representatives and signed by President Trump, essentially eliminates the individual mandate by reducing the mandate penalty to $0, effective in 2019 and thereafter. This means fewer individuals will buy insurance because the penalty forced many who were not purchasing insurance before the enactment of the ACA to do so after. The Congressional Budget Office (CBO) has estimated that eliminating the individual mandate penalty will result in 13 million fewer people obtaining health insurance, which will save the federal government approximately $318 billion in government subsidies that would have been paid out if the individual mandate was in effect. The elimination of the penalty and the resulting smaller risk pool also will cause an increase in premiums. The CBO has estimated a 10% increase in premiums as a result of eliminating the individual mandate penalty. Although lower-income individuals may not be affected because they will continue to receive PTC subsidies, which will cover the increase in cost, premiums for others will rise.

Elimination of the individual mandate penalty has left many states concerned about the future of health care for their residents. Covered California and the California Legislature are considering different options to avoid destabilizing the health insurance market before it occurs. One of those options is a state individual mandate. The executive director of Covered California raised the idea of a state-level individual mandate at a recent board meeting. He also brought up other options for consideration, such as a continuous coverage requirement, wherein all Californians would be required to remain enrolled in health insurance or pay higher premiums later, as well as automatic enrollment in insurance plans.

Ultimately, with the elimination of the CSR subsidy payments and the individual mandate penalty in 2019, there is little doubt that, at the very least, there will be some destabilization of the health insurance market. What California will ultimately do to counteract the destabilization is yet to be seen.

CalChamber Position

CalChamber will continue to promote efforts to contain health care costs and improve access to high-quality health care by supporting a health care system that is affordable and improves the overall health of California citizens.

CalChamber will continue to work to avoid unnecessary, expensive regulatory controls and the imposition of new coverage mandates and allow market forces to continue playing a predominant role in driving innovation and transforming health care delivery.

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