

# Defunding CSRs: Challenges and Options in the Reconciliation Process

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## Defunding Cost Sharing Reduction Plans Questions & Considerations

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On Friday, October 13, 2017, with less than three months left in 2017 and just a few weeks until 2018 open enrollment begins, issuers received notice from Centers for Medicare & Medicaid Services (CMS) indicating that payments for the cost sharing subsidies would be ending immediately. This change overturns a funding source that issuers offering individual plans on Health Insurance Exchanges had been receiving since 2014. While this change has many downstream impacts on rating and risk adjustment, this summary focuses on the considerations for Cost Sharing Reduction (CSR) plan reconciliations.

With the start of the Health Insurance Exchanges under the Affordable Care Act (ACA) in 2014 came CSR plans. CSRs are variations of plans that offer lower cost sharing to eligible individuals who obtain their health plans through the exchange. For enrollees in silver plans, those with income levels at or below 250% of the Federal Poverty Level (FPL) are enrolled in these plans. For all metal levels except for catastrophic, enrollees who are American Indian or Alaska Natives could also be enrolled in plans with lower or no cost sharing depending on their income.

We refer to all of the cost sharing reduction variations generally as CSR plans in this paper.

Subsidies are created when eligible enrollees pay less cost sharing for medical services they receive (e.g., lower deductibles, lower copays, or lower coinsurance) than they would have paid in the standard benefit plan. The cost of these subsidies was anticipated to be paid by the federal government, although no official funds were appropriated to cover the costs. From January 2014 through September 2017, the federal government made advance payments to issuers to cover the subsidies created by the CSR plans.

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*At the end of Open Enrollment 2017, more than 5.8 million people, 57% of the on exchange marketplace selected a CSR plan.*<sup>1</sup>

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### Periodic Reconciliation

The ACA requires<sup>2</sup> that issuers periodically submit a reconciliation of the cost sharing subsidies to the advance payments that were paid to the issuers for enrollees in CSR plans during the benefit year. The advance payments for benefit years 2014 through 2016 have been reconciled to the actual calculated amount of subsidies based on the claims incurred by enrollees. These reconciliations resulted in issuers

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<sup>1</sup> CMS 2017 Effectuated Enrollment Report: <https://downloads.cms.gov/files/effectuated-enrollment-snapshot-report-06-12-17.pdf>

<sup>2</sup> § 156.430 (c) Payment for cost-sharing reductions

either receiving additional funds from CMS or paying back some of the advance payments. The reconciliation process leaves issuers in a revenue neutral position where the ultimate payments received from CMS equal the reduced cost sharing to low income enrollees.

### [CMS's October Notice](#)

The notice received by issuers from CMS contained three key elements in the notification for issuers.

1. No further funding for CSR subsidies is to be provided to issuers. Issuers have received funding through September 2017.
2. Issuers will continue to receive CSR subsidy reports indicating the withheld amounts that they would have been eligible for based on their enrollment and retrospective changes in plan variation eligibility.
3. CMS will not pay additional subsidies claimed through the discrepancy reporting and appeals process for the 2016 benefit year, but will collect any reconciliation amounts still due to them.

While there is broad guidance and information in the notice sent by CMS, there are many outstanding questions that issuers may have. There will likely be additional guidance provided by CMS. In the meantime, we offer our interpretation of these issues and some insights based on the current regulations around CSRs.

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*Cost sharing subsidies are a revenue neutral proposition for issuers. Reconciliation returns any excess subsidies over benefits provided to low income enrollees back to CMS.*

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### [The Reconciliation Timeline](#)

The first few submissions of data to CMS for reconciliations, in 2016 and 2017, have taken place in early June. The process used to date has included a restatement of the prior benefit period in addition to the current benefit period. Although no timetable is specified in legislation, Section §156.430(d) requires HHS to perform periodic reconciliations of advance payments of cost-sharing reductions provided to a QHP issuer.

Issuers should anticipate that reconciliations will take place for 2017 since there were advance payments paid for the benefit year, although no specific timing – either periodicity or dates – are noted. This implies that CMS could change the timing of the reconciliations to be different than the historical timelines, or potentially put it off indefinitely. The regulations note that issuers must submit the information to HHS when required, so issuers should proactively anticipate that there will be a reconciliation at some point of the advance payments that have been paid in 2017.

### [What may be used in the reconciliation?](#)

The current regulations note that issuers will need to submit costs for essential health benefits (EHB) charged for the benefit year. This implies that the full benefit year of claims experience will be able to be reflected in the calculation of the cost sharing subsidies that are due to an issuer. We expect that the reconciliation will compare the actual cost sharing reductions incurred in the complete 2017 benefit year to the advance payments that have been paid to issuers from January through September (up to the point that the payments were discontinued). This should greatly reduce the potential for payables to CMS.

Which enrollees would have their claims included in the cost sharing subsidy calculation is not specifically

addressed and may be clarified in future guidance. A broad approach may include all enrollees that were in a CSR variation during the benefit year. A more narrow approach may restrict the cost sharing subsidy calculation to only include claims for enrollees whose advance payments were paid, and for the variations in which they were enrolled. In prior reconciliation submissions for states with Federally Facilitated Marketplaces (FFMs), CMS compares the submitted Health Exchange Assigned Subscriber IDs with internal sources and only accepts subsidies submitted for subscribers who align with their records. This could be a method for restricting the cost sharing subsidies in those states.

During the Spring 2017 reconciliation submissions, which included initial submissions of the cost sharing subsidies calculated for the 2016 benefit year, issuers were also allowed to resubmit updated cost sharing subsidies for the 2015 benefit year. These resubmissions were based on additional claims runout and retroactivity in enrollee eligibility that changed cost sharing subsidies that were claimed in the initial submission. CMS stated rather clearly in the notice to issuers that there will not be any reconciliation payments for the 2016 benefit year from the appeals process. Issuers will not be able to collect any additional amounts for subsidies incurred in the 2016 benefit year, even if discrepancy reports for 2016 were developed and submitted to CMS. The reinstatement of the 2016 reconciliation with additional claim runout through 2017 is unlikely as there is no legislative guidance requiring HHS to revisit prior benefit years. However, the CSR Reconciliation Manual for the 2016 benefit year indicates that claims incurred in the 2016 benefit year that were not able to be submitted in time for

the June submission deadline may be submitted in the following year cycle (2017 benefit year cycle).<sup>3</sup>

*Is it a one-sided reconciliation?*

The cost sharing subsidies are designed to be revenue neutral to issuers as the reconciliation process ensures they are only reimbursed for the cost sharing benefits provided to low income enrollees. CMS’s notice indicating that they are discontinuing payments of CSRs could include any payments to issuers due based on reconciliation analyses. §156.430(e)(1) and (2) of the regulation state that “HHS will reimburse the QHP issuer for the difference” for any shortfall in advance payments. This would be a one sided risk for issuers as they will not be able to benefit from additional payments due to them.

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*Although there is no specific penalty, not submitting reconciliation information once the timeline and process is defined by CMS would result in forfeiting advance payments received.*

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*Reconciliation Penalties*

Based on information provided by CMS<sup>4</sup> during prior reconciliation analysis periods, they have indicated that it is not required to submit information on the cost sharing subsidies incurred. If issuers choose not to submit information for low income enrollees, CMS automatically assumes a cost sharing benefit of zero, resulting in a return of all advance payments that were received for the QHP for that enrollee. So although there is no specific penalty, not submitting reconciliation information once the timeline and

<sup>3</sup> <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Final-Manual-for-Reconciliation-of-the-Cost-Sharing-Reduction->

Component-of-Advance-Payments-for-the-2016-Benefit-Year.pdf

<sup>4</sup> FAQ 15109 Q9

process is defined by CMS would result in forfeiting advance payments received.

Issuers therefore have a strong incentive to participate in the reconciliation process. An additional challenge for 2017 is that all issuers will be required to use the standard reconciliation<sup>5</sup> method in reporting their information to HHS. The method necessitates more complicated reporting models and advance preparation. For those issuers who have not yet submitted under the standard method, preparations should begin now, however current uncertainty may delay this work.

### Future

Issuers are already reacting to rating implications with the end of CSR funding. We addressed some of the operational questions that may come up as issuers try to understand what it means to the actual reconciliation process. There are many unknowns at the time of this writing, and we expect that CMS will provide additional guidance.

There are multiple court cases underway as well as potential future lawsuits that may affect the funding and reconciliation process for CSRs. The controversy initially started with a House suit against the Secretary of Health and Human Services, citing that the government cannot constitutionally reimburse insurers for the costs they incur in providing CSR plans under the ACA because Congress had not appropriated money for this purpose. On May 12, 2016, the federal district court for the District of Columbia ruled in the House's favor, however the case is under appeal and will likely take years to work through the appellate system.

As of the writing of this paper, there has also been a new bipartisan legislation proposed by Senators Alexander and Murray that would reinstate the funding for CSR subsidies, among other changes. The

bill provides for immediate funding of CSRs for 2017 and for funding through the end of the 2019 benefit year. The bill involves the States in the decision process. States must decide within 60 days of the bill's passage whether to decline the funding in 2018 if they provided for CSR defunding in premiums. If they don't decline the funding they must provide for premium reductions and/or rebates to consumers and the federal government. Even with the immediate reinstatement of CSR funding, there may be some months without CSR advance payments in 2017, depending on how long it would take for the bill to make its way through both Houses and to be signed into law if there is no retroactive funding.

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<sup>5</sup> § 156.430 (c) (3)