



Health Care Reform in Indian Country

Self-Governance Communication & Education

Self-Governance Tribes Striving Towards Excellence in Health Care

Republicans Take Step to Maintain Cost-Sharing Reduction Payments Under the Affordable Care Act, at Least Temporarily¹

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This brief provides an update to Tribes on a recent action by House Republicans to continue cost-sharing reduction (CSR) payments by the federal government to health insurance issuers under the Affordable Care Act (ACA) as a means of protecting the individual health insurance market. The move came as part of a lawsuit that House Republicans filed in 2014 in an effort to end the CSR payments. Now that Republicans are expected to “repeal” the ACA stemming from the November 2016 election results, Congressional Republicans and the Trump White House appear to want to hold the ACA together long enough to enact and implement a “replacement” in 2 – 3 years.

In November 2016, House Republicans filed a motion to delay temporarily the proceedings in the lawsuit, and a U.S. appeals court granted the motion on December 5, 2016. This latest development in the lawsuit maintains the current status of the CSR payments—at least temporarily—which have continued since the lower court issued its decision. But, the incoming Trump Administration will have an important decision to make. If the incoming Trump Administration drops the appeal to a lower-court ruling filed by the Obama Administration, the CSR payments likely would be halted immediately.

Background

Under the ACA, individuals who meet the definition of Indian and enroll in a qualified health plan (QHP) through the Marketplace qualify for comprehensive CSRs.² Non-Indians who have an income that does not exceed 250% of the federal poverty level (FPL) qualify for general CSRs, provided that they enroll in a silver-level plan.³ The federal government makes advance CSR payments to QHP issuers to reimburse them for the CSR amounts that they provide to eligible Marketplace enrollees. Currently, more than six million Marketplace enrollees receive general CSRs, and approximately 26,000 American Indians and Alaska Natives residing in 38 states for which data are available receive the comprehensive Indian-specific CSRs.⁴

¹ This brief is for informational purposes only and is not intended as legal advice. For questions on this brief, please contact Doneg McDonough, TSGAC Technical Advisor, at DonegMcD@Outlook.com.

² See 45 CFR 155.350(a) and (b) and 156.420(b). Individuals who meet the definition of Indian can enroll in either a zero or limited cost-sharing plan, depending on their income level. Eligible individuals who have an income of 100-300% FPL can enroll in a zero cost-sharing plan, and all others can enroll in a limited cost-sharing plan. Under both plan variations, enrollees pay no deductibles, coinsurance, or copayments when receiving essential health benefits (EHBs) from Indian health care providers (IHCPs) or through non-IHCPs.

³ See 45 CFR 155.305(g).

⁴ Center for Medicare and Medicaid Services, for Federally-Facilitated Marketplace enrollment as of May 23, 2016.

Potential Implications

House Republicans sought the delay in the lawsuit to allow the incoming Trump administration and new Republican Congress time to take action on their health care proposals without disrupting the individual health insurance market, and associated federal financial assistance, that was fashioned under the ACA. Although President-Elect Donald Trump and Republican congressional leaders have promised to “repeal and replace” the ACA, the sudden elimination of \$9 billion in CSR payments in 2017 likely would require health insurance to issuers to raise premiums dramatically or exit the Marketplace. According to one health policy expert, the “reasonable course for Congress at this time is to appropriate funds to cover the cost-sharing reduction payments for 2017 (and 2018 to avoid a collapse of the marketplaces at the end of 2017), and then to negotiate with the Trump administration the withdrawal of the appeal and the vacating of the district court’s order with the administration.”⁵

Lawsuit History

House Republicans initially filed the lawsuit in 2014, seeking to end the CSR payments on constitutional grounds. The lawsuit, *House v. Burwell*, argued that Congress authorized but never appropriated funding for the CSR payments and that the Obama administration improperly funded the payments without congressional approval. In May 2016, U.S. District Court Judge Rosemary Collyer ruled in favor of House Republicans but allowed the CSR payments to continue pending the resolution of an appeal filed by the Obama Administration.

House Republicans in November 2016 filed a motion to hold in abeyance all briefings in the appeal of the lawsuit. A three-judge panel of the U.S. Court of Appeals for the District of Columbia Circuit in early December 2016 granted the motion and ordered the parties to file motions governing further proceedings in the appeal by February 21, 2017. By that time, the incoming Trump administration will have become the defendant in the case and will decide next steps with the House Republican plaintiffs. The decision of the Trump Administration, in conjunction with Congressional Republicans, will indicate whether Republicans intend to maintain the functioning of the ACA insurance coverage options until a replacement can be enacted into law and implemented.⁶

⁵ Timothy Jost, “Court Stays Cost-Sharing Reduction Payment Case, Giving Control to New Administration and Congress (Updated),” *Health Affairs Blog* (Washington, DC), December 5, 2016. See <http://healthaffairs.org/blog/2016/12/05/court-stays-cost-sharing-reduction-payment-case-giving-control-to-new-administration-and-congress/>.

⁶ https://www.washingtonpost.com/national/health-science/trump-could-quickly-doom-aca-cost-sharing-subsidies-for-millions-of-americans/2016/12/21/05349066-c2fc-11e6-9a51-cd56ea1c2bb7_story.html?utm_term=.674c7fb665b2