ACA COMPLIANCE BULLETIN

WHITE HOUSE ANNOUNCES SOME ACA SUBSIDIES WILL END

OVERVIEW

On Oct. 12, 2017, the White House announced that it will **no longer reimburse insurers for cost-sharing reductions** made available to low-income individuals through the Exchanges under the Affordable Care Act (ACA), **effective immediately**. Because Congress did not pass an appropriation for this expense, the Trump administration has taken the position that it cannot lawfully make the cost-sharing reduction payments.

This decision follows the U.S. House of Representatives' lawsuit filed against the Obama administration in 2014 challenging the federal government's authority to fund cost-sharing reductions.

ACTION STEPS

While the immediate impact of this announcement is unclear, it may significantly affect individuals who enroll through the Exchange during the upcoming Nov. 1 open enrollment period. Some states have indicated their intention to sue the federal government to force these subsidies to be paid. Also, some U.S. Senators have proposed a bipartisan deal to fund these payments, but that deal has not yet been approved by Congress. Until a federal court intervenes or Congress enacts an appropriation for these payments, it is possible that these cost-sharing reductions will no longer be paid.

HIGHLIGHTS

- The White House announced that it will end cost-sharing reduction payments through the Exchange.
- The administration asserted that it does not have legal authority to make these payments.
- Premium tax credits continue to be available.
- Several states plan to sue to force these subsidies to be paid.

IMPORTANT DATES

October 12, 2017
The White House announced that it will no longer make cost-sharing reduction payments to insurers, effective immediately.

November 1, 2017
Open enrollment for 2018 coverage through the Exchanges begins.

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ACA Subsidies

The ACA created two federal health insurance subsidies—**premium tax credits** and **cost-sharing reductions**—to help eligible individuals and families purchase health insurance through an Exchange. Cost-sharing reductions are available for individuals who have incomes of up to 250 percent of the federal poverty level and are also eligible for the premium tax credit.

Individuals who receive cost-sharing reductions will have lower out-of-pocket costs at the point of service (for example, lower deductibles and copayments).

The ACA requires insurers that offer Exchange health plans to reduce cost sharing for eligible individuals, and requires the federal government to reimburse insurers for the cost of that reduction on a monthly basis.

Because Congress did not pass an appropriation for the ACA's cost-sharing reductions, the Trump administration has taken the position that it cannot lawfully make these payments.

House of Representatives v. Burwell (now House v. Price)

On May 12, 2016, a federal district court judge for the District of Columbia ruled that the federal government did not have constitutional authority to reimburse insurers for the ACA's cost-sharing reductions. However, the ruling was put on hold pending an appeal. As a result, **cost-sharing reductions have continued to be paid, until a higher court could make a final determination on this issue**. This appeal is still pending.

White House Announcement

The White House's announcement is the latest action the Trump administration has taken in its efforts to dismantle the ACA. According to the administration, the federal government cannot lawfully make the cost-sharing reduction payments to insurance companies under the ACA because there is no congressional appropriation for those expenses. **As a result, the federal government plans to end these payments effective immediately**. However, premium tax credits—the other type of federal subsidy available through the Exchanges—will continue to be available.

Practical Impact

Several states, including New York and California, have indicated that they will sue the federal government to force the cost-sharing reduction payments to be made. In addition, some members of Congress have stated that they would support a measure enacting an appropriation for these payments. However, until a federal court intervenes or Congress enacts an appropriation, the cost-sharing reductions may no longer be paid.

While the immediate impact of this announcement is unclear, it could have a significant impact on individuals who enroll through the Exchange during the upcoming open enrollment period, which begins on Nov. 1. Insurers that offer plans through the Exchange likely will not have enough time to make significant changes before open enrollment begins. This may cause a lot of confusion and uncertainty in the Exchanges, both for insurers and for consumers enrolling in Exchange coverage for 2018.

Proposed Senate Deal

On Oct. 17, 2017, two Senators—Lamar Alexander (R-TN) and Patty Murray (D-WA)—proposed a bipartisan deal that would **authorize cost-sharing reduction payments for two years**, and provide additional flexibility to states in regulating health insurance under the ACA. If enacted, this proposal would temporarily end the debate on whether the cost-sharing reduction payments are constitutional, by providing a Congressional appropriation for the payments for two years.

However, the proposal must be approved by both the full Senate and the House of Representatives before being enacted. In addition, there is some concern that the proposal would be too late to impact the 2018 open enrollment period in the Exchanges, which ends on Dec. 15, 2017.