# PUBLICATION

## President Trump Issues Far-Reaching Changes to the Affordable Care Act

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## Trump Administration Terminates Payments for Cost-Sharing Reductions

On October 12, the Trump Administration announced that it would immediately terminate payments for Cost-Sharing Reductions (CSRs), which subsidize health coverage for low-income enrollees in the Affordable Care Act's (ACA) insurance exchanges. The Administration claimed that "the Government cannot lawfully make the cost-sharing reduction payments" without an appropriation and called on Congress again to repeal and replace the ACA. The Congressional Budget Office (CBO) previously estimated that terminating CSR payments would cause health insurance premiums for Silver plans purchased on the insurance exchanges to rise by an average of 20 percent next year and the federal deficit to increase by $194 billion from 2017 to 2026. The abrupt change is expected to exacerbate ongoing instability in the individual market and may prompt additional insurers to exit the marketplace in 2018 to reduce their financial losses. However, the specific impacts will vary by state, as some states allowed insurers to file a second set of premiums for 2018 in case CSR payments were discontinued, but other states did not. The Administration's decision and the potential for further turmoil in the individual market will likely add pressure to ongoing negotiations between Senate Health, Education, Labor and Pensions Committee Chair Lamar Alexander (R-TN) and Ranking Member Patty Murray (D-WA) to find consensus on a limited bipartisan market stabilization package.

The ACA requires insurers to offer certain Silver health insurance plans with reduced deductibles, copayments, and coinsurance to enrollees who earn less than 250 percent of the Federal Poverty Level (FPL). For these plans, the out-of-pocket costs paid by the enrollee are discounted based on their given income level. In turn, insurers are reimbursed for the costs of these required discounts through federal payments arranged by the Department of Health and Human Services (HHS). According to previous CBO estimates, these payments are expected to total approximately $7 billion for 2017. If the federal government follows through in halting these reimbursements, insurers would still be required to provide these subsidized insurance plans to low-income enrollees by law under the ACA, but would not receive payments from the federal government to offset the required discounts.

In an August 15 report, the CBO analyzed what would happen if the Trump Administration were to discontinue CSR payments in 2018. CBO expects that participating insurers would raise the premiums of Silver plans to cover the costs of providing the CSR discounts – by an average of about 20 percent in 2018 and 25 percent by 2020. CBO also estimates that the federal deficit would increase by $194 billion from 2017 to 2026. Overall deficits would increase even though CSR payments would be eliminated for two reasons: 1) the average premium subsidy per person eligible for a subsidized plan would be greater, as average Silver plan premiums would increase, and 2) more people would receive subsidies in most years moving forward, as Silver plan premiums would end up costing a greater share of their income.

Lawmakers from both parties had previously urged President Trump to continue paying the CSR subsidies. Following the Administration's announcement, Senate Minority Leader Chuck Schumer (D-NY) and House Minority Leader Nancy Pelosi (D-CA) issued a joint statement calling the decision "a spiteful act of vast, pointless sabotage leveled at working families in the middle class." However, House Speaker Paul Ryan issued a statement praising the decision, stating that the Obama Administration had usurped the authority of

Congress by making the CSR payments. The Administration's decision is expected to put the pressure back on Congress to address ACA issues.

## President Trump Signs Health Care Executive Order

On October 12, President Trump signed an executive order intended to expand access to Association Health Plans (AHPs), short-term limited duration insurance (STLDI), and Health Reimbursement Accounts (HRAs). The executive order aligns with the Administration's priority to create greater flexibility for individuals to purchase health insurance and promote greater market competition. However, critics have already asserted that the executive order will have the opposite effect.

Of note, the executive order does not enact immediate policy changes and will not directly affect open enrollment for plan year 2018, which begins November 1. Instead, the executive order directs federal government agencies to consider making policy changes through the public notice and comment process to encourage greater use of AHPs, STDLI, and HRAs.

## Summary of Policy Changes

### Association Health Plans

Within 60 days, the executive order directs the Secretary of Labor to consider expanding access to AHPs, which would allow employers to form groups to collectively purchase health coverage for their employees. The order suggests that under a broader interpretation of the Employee Retirement Income Security Act (ERISA), employers could potentially be allowed to form AHPs across state lines. These AHPs would still be subject to several ACA consumer protections, including prohibiting pre-existing conditions exclusions, annual or lifetime limits, cost sharing for preventive services, and setting premiums based on health status. However, despite these protections, the primary concern is the risk of plan cherry-picking and adverse selection, which would increase premiums for the sick and more expensive individuals in need of more comprehensive coverage in the individual and small group markets.

Several questions remain for the Department of Labor to address regarding implementation. For example, the executive order does not explicitly address whether these AHPs would be subject to the ACA's Essential Health Benefit (EHB) coverage requirements. In addition, if AHPs are sold across state lines, it remains unclear whether and to what extent they would be subject to state insurance regulations and consumer protection laws. Finally, it is unclear whether self-employed individuals would be allowed to form AHPs, which would have further implications for the individual market.

### Short-Term Limited Duration Insurance

Within 60 days, the executive order directs the Departments of the Treasury, Labor, and Health and Human Services (HHS) to consider expanding coverage of STLDI. These plans are not subject to the ACA's guaranteed issue and coverage requirements, which allows for significantly lower premiums and less generous coverage than more comprehensive plans on the individual market. The Obama Administration limited the duration of coverage under STLDI to 90 days, and it is expected that the Trump Administration will likely allow these plans to be purchased for up to a year.

Like the AHP proposal, Democrats and some insurers have criticized this proposal because of its potential to further destabilize the individual market. These plans would create a bifurcated insurance market whereby young and healthy individuals opt for less costly, less benefit plans, driving up premiums for sicker and more costly individuals. Further, the executive order is unclear as to whether the agencies should exempt individuals in STDLI plans from the individual mandate penalty, which would have significant implications for the individual market.

### Health Reimbursement Accounts

Within 120 days, the executive order directs the Departments of the Treasury, Labor, and HHS to consider changes to expand HRAs, which are employer-funded accounts that allow employers to use pre-tax dollars to reimburse employees for their health care expenses. While not explicitly stated, it is expected that the Trump Administration may allow employees to use HRA funding towards premiums for health coverage on the individual market.

## Outlook

These two actions represent the most significant changes to the ACA enacted under the Trump Administration, indicating President Trump's willingness to act unilaterally after Congress failed to repeal the law this year. Taken together, these policy changes are expected to contribute to further destabilization in the individual market, increasing the pressure on Congress to act. Of note, while the Administration's CSR decision is effective immediately, stakeholders will have an opportunity to weigh in on the executive order through the notice-and-comment process for forthcoming regulations.