

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
Center for Consumer Information and Insurance
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Title: Insurance Standards Bulletin Series -- INFORMATION
Subject: Offering of plans that are not QHPs without CSR “loading”

I. Purpose

To address increases in premiums of qualified health plans (QHPs) on account of the cessation of federal funding for cost-sharing reduction (CSR) payment to issuers, or “loading,” and its effect on unsubsidized enrollees, the Centers for Medicare & Medicaid Services (CMS) is encouraging states to allow Exchange issuers to offer individual market plans that do not include this load, and that will only be available outside the Exchange. Thus, CMS encourages the offering of unloaded silver plans outside the Exchange in states where the issuer has placed the load on silver QHPs on the Exchange, and encourages the offering of unloaded plans of all AV levels outside the Exchange in states where the issuer has placed the load on all AV level plans.¹

II. Background

On October 11, 2017, the Attorney General of the United States provided the U.S. Department of Health & Human Services (HHS) and the U.S. Department of the Treasury with a legal opinion regarding CSR payments made to issuers of QHPs.² In light of that opinion, and the absence of any other appropriation that could be used to fund CSR payments, CSR payments to issuers were stopped, and CSR payments are prohibited unless and until a valid appropriation exists.³ Following the cessation of CSR payments, many issuers were instructed or permitted by states to increase plan-specific premiums on silver-level QHPs to compensate for the lack of federal reimbursement of CSRs.

A plan-level variation for the actuarial value and cost-sharing design of a plan is permitted under

¹ Issuers that have elected to distribute the CSR load on silver level plans only can make a plan level adjustment based on actuarial value and cost-sharing design of the plan related to loading. Issuers opting to spread the load across all AV levels can do so by loading the market adjusted index rate and would not be eligible to make additional plan level adjustments.

² See Op. Att’y Gen. (October 11, 2017), discussing *US. House of Reps. v. Burwell*, 185 F. Supp. 3d 165 (D.D.C. 2016)

³ See <https://www.hhs.gov/sites/default/files/csr-payment-memo.pdf>.

45 CFR §156.80(d)(2)(i). A health insurance issuer that offers a QHP may vary premium rates for the QHP based on the impact of the loss of anticipated federal funding for CSR payments. The exercise of this flexibility to vary premium rates has resulted in some consumers not eligible for premium tax credit or CSRs being enrolled in a QHP for which the issuer applied a load to account for a cessation of federal funding for CSR payments. Those consumers absorb the full impact of the load, despite not being eligible for these forms of subsidy.

III. Off-Exchange-Only Option

Given that issuers may likely continue to load plans to account for the cessation of federal CSR payments, CMS encourages states to allow issuers to offer and market plans that will be available exclusively off-Exchange and will not include any CSR load. Because plan level variations to the market-wide index rate are permitted, but not required, an issuer may choose not to apply any CSR load to plans that are sold exclusively off-Exchange since such plans will not include enrollees who receive CSRs.

Allowing issuers to offer and market plans that are available exclusively off-Exchange that do not include the CSR load would provide unsubsidized enrollees the opportunity to purchase a plan at a lower premium. Because 45 CFR §156.255 requires an issuer to charge the same premium rate without regard to whether a plan is offered through an Exchange, or whether the plan is offered directly from the issuer or through an agent the issuer would need to offer a unique plan sold exclusively off-Exchange without the CSR load. In this scenario, such an off-Exchange plan could be similar, but not identical to a loaded Exchange QHP. For example, an issuer could offer a different cost sharing structure for a plan similar to a loaded QHP silver plan available through the Exchange. The definition of “plan” at 45 CFR §144.103 explains when a plan is considered the same or a different plan.

Where to get more information

If you have any questions regarding this bulletin, please contact the Center for Consumer Information & Insurance Oversight at marketreform@cms.hhs.gov.