750 EAST PRATT STREET
BALTIMORE, MD 21202
marylandhbe.com

MARYLAND
HEALTHBENEFIT
EXCHANGE

December 19, 2017

The Honorable Edward J. Kasemeyer
Chairman
Senate Budget and Taxation Committee
Miller Senate Office Building, 3 West Wing
11 Bladen St.
Annapolis, MD 21401

The Honorable Maggie McIntosh
Chairman
House Appropriations Committee
House Office Building, Room 121
6 Bladen St.
Annapolis, MD 21401

Re: Joint Chairmen's Report (D78Y01.01) – Federal Enactment of Health Care Reform

Dear Chairman Kasemeyer and Chairman McIntosh:

Pursuant to page 32 of the Joint Chairmen's Report for the 2017 Session, the Maryland Health Benefit Exchange (MHBE) submits this report on the recent cessation of federal cost-sharing reduction payments. Specifically, the JCR requires the MHBE to report on the enactment of any legislation at the federal level that impacts the operation of the MHBE or qualified health plans. Although this recent federal policy modification was implemented without legislation, the MHBE understands that the intent of the JCR requirement is to report on federal policy changes that impact the MHBE and qualified health plans.

If you have any questions regarding this report, please contact John-Pierre Cardenas at 410-412-9671 or at jcardenas@maryland.gov.

Sincerely,

Michele Eberle

Michele Eberle
Executive Director

cc: Dennis Schrader, Secretary, Maryland Department of Health
Chair, MHBE Board of Trustees

MARYLAND HEALTH BENEFIT EXCHANGE

Joint Chairmen's Report:
Impact of Cessation of Cost-Sharing Reduction Payments

Maryland Health Benefit Exchange
November 22, 2017

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I. Introduction

The 2017 Joint Chairmen's *Report on the Fiscal 2018 State Operating Budget (HB 150) and the State Capital Budget (HB 151) and Related Recommendations* requests that the Maryland Health Benefit Exchange (MHBE) provide a report on federal legislation that impacts the operation of the MHBE or qualified health plans (QHPs).[1] Specifically, the MHBE must:

> Submit a report 60 days after the enactment of any legislation at the federal level that impacts the operation of the MHBE or qualified health plans. The report should include the impact of the legislation on qualified health plans, review potential changes that need to be made to plans as a result of those changes, and also establish a timeline for the implementation of any necessary changes.

On October 12, 2017, the U.S. Department of Health and Human Services (HHS) announced that it would end cost-sharing reduction (CSR) payments effective immediately. Although this policy modification was implemented without legislation, the MHBE understands that the intent of the Joint Chairmen's requirement is to report on federal policy changes that impact the MHBE and QHPs. In accordance with this requirement, the MHBE submits this report to the Chairmen of the Senate Budget and Taxation Committee and House Appropriations Committee.

II. Background on Cost-Sharing Reductions

The Affordable Care Act (ACA) requires insurers to reduce cost sharing for QHP enrollees with incomes up to 250 percent of the federal poverty level (FPL).[2] To be eligible, an individual must be enrolled in a silver-level plan. The reduced cost sharing is calculated based on a plan's actuarial value, which is the amount of an enrollee's covered costs paid by the plan. For example, a silver plan typically has an actuarial value of 70 percent, which means that the plan will pay 70 percent of an enrollee's costs, and the enrollee is responsible for the remainder through deductibles, copayments, and coinsurance. Under the ACA, insurers must increase the actuarial value for enrollees who qualify for certain CSR tiers based on income.[3]

Insurers satisfy this requirement by offering variants of their silver-level plans, called CSR plans, which lower the cost sharing to meet the required actuarial value. Insurers received periodic payments from the federal government equal to the increased actuarial value of the CSR.[4] The Congressional Budget Office (CBO) estimated that the CSR payments will cost $7 billion in 2017, $10 billion in 2018, and $16 billion by 2027.[5]

In November 2014, the U.S. House of Representatives filed a lawsuit against the Obama administration challenging the legality of making CSR payments to insurers without an explicit

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[1] Chairmen of the Senate Budget and Taxation Committee and House Appropriations Committee (. *Report on the Fiscal 2018 State Operating Budget (HB 150) and the State Capital Budget (HB 151) and Related Recommendations*. Retrieved from http://mgaleg.maryland.gov/pubs/budgetfiscal/2017rs-budget-docs-jcr.pdf.
[2] 42 USC § 18071(c)(1)(B).
[3] *Id.*
[4] 42 USC § 18071(c)(3)
[5] Congressional Budget Office. *Federal Subsidies Under the Affordable Care Act for Health Insurance Coverage Related to the Expansion of Medicaid and Nongroup Health Insurance: Tables from CBO's January 2017 Baseline.* Retrieved from https://www.cbo.gov/sites/default/files/recurringdata/51298-2017-01-healthinsurance.pdf.

appropriation.[6] The Obama administration claimed that Congress had appropriated money for the CSR, along with the appropriations for the advanced premium tax credits (APTCs). This claim was disputed by the House of Representatives. In May 2016, the district court ruled in favor of the House, finding that section 1402 of the ACA did not contain a provision providing permanent appropriations for the CSR payments, unlike section 1401, which did include permanent appropriations for APTCs. The judge enjoined future payments until an appropriation for the CSR is made; the injunction has been on hold pending the administration's appeal, which was filed in the fall of 2016. In February 2017, the Trump administration and the House of Representatives filed a joint motion asking the district court to continue to keep the case on hold with status reports every three months starting on May 22, 2017. The motion explained that the "purpose of the abeyance is to allow time for a resolution that would obviate the need for judicial determination of this appeal, including potential legislative action."[7]

On October 11, 2017, the Attorney General of the United States gave a legal opinion regarding CSR payments QHP issuers.[8] The opinion noted that the previous administration believed that an appropriation was not necessary for CSR payments because the CSR program could be funded through a permanent appropriation, found at 31 U.S.C. §1324, instead of through the annual appropriations process. Attorney General Sessions concluded that section 1324 does not appropriate funds for the CSR program. Based on that opinion, and in the absence of any other appropriation that could be used to fund CSR payments, the Secretary of HHS issued an announcement on October 12, 2017, that CSR payments to issuers must end, effective immediately.[9]

III. Impact in Maryland

Under federal law, insurance carriers are still legally required to provide CSRs, even without federal payment. Under Maryland law, premium rates must be adequate and cannot be discriminatory or excessive.[10] Rates are considered inadequate if they are unreasonably low in relation to the benefits provided and the underlying risks, and if the continued use of the rates endanger the solvency of the insurer.[11]

The Maryland Insurance Administration (MIA) regulates health insurance premium rates in the state. The MIA originally approved individual market health insurance premium rates for the 2018 benefit year in August 2017. These approved rates presumed that CSR reimbursements would continue for 2018, consistent with federal law. As a result of the recent HHS decision to end CSR payments, the MIA's rate approvals from August were no longer consistent with Maryland law, which requires that rates be adequate and neither excessive or unfairly discriminatory. Therefore, the MIA reopened rates for individual health insurance market plans

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[6] *United States House of Representatives v. Burwell*, 185 F. Supp. 3d 165, 2016 U.S. Dist. (D.D.C., May 12, 2016).
[7] http://premiumtaxcredits.wikispaces.com/file/view/joint%20motion%20for%20continued%20abeyance.pdf/606725953/joint%20motion%20for%20continued%20abeyance.pdf
[8] Sessions, Jefferson (2017, October 11). *Payments to issuers for cost-sharing reductions (CSRs).* Retrieved from https://www.hhs.gov/sites/default/files/csr-payment-memo.pdf.
[9] Hargan, Eric (2017, October 12). Payments to Issuers for Cost-Sharing Reductions (CSRs). Retrieved from https://www.hhs.gov/sites/default/files/csr-payment-memo.pdf.
[10] Ins. Art. § 11-205(d), Ann. Code of MD.
[11] Ins. Art. § 11-306(b)(3), Ann. Code of MD.

on October 16, 2017, and issued amended rates on October 25, 2017. Only silver-level plans in the individual health insurance market are affected by these increased rates; approximately 96,000 Marylanders are projected to be enrolled in silver-level plans offered through the MHBE.[12] Table 1 displays the rate increases originally approved in August and the amended rates approved in October for silver-level plans offered through the MHBE.

Table 1. Premium Rate Increases for Silver-Level Exchange Plans

Carrier	Original Rate	Amended Rate
CareFirst Blue Choice, Inc.	31.4%	58.2%
First of Maryland, Inc. and Group Hospitalization and Medical Services, Inc.	52.1%	76.0%
Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc.	22.7%	43.4%

Source: Maryland Insurance Administration. (2017). *The Maryland Insurance Administration Approves Amended 2018 Premium Rates for Silver On-Exchange Plans Sold in the Individual Market* [Press Release].

To minimize the impact of the higher premiums on consumers, the MIA "CSR loaded" premium increases onto silver plans offered through the MHBE to maximize APTCs.[13] APTCs will increase due to the increased premium rates, which will largely offset the impact of this rate increase for many APTC-eligible consumers. However, consumers who are ineligible for APTCs in silver-level plans will be responsible for the entire increased premium. Therefore, the MIA and MHBE are encouraging these consumers to enroll in silver-level plans off the exchange to avoid the rate increases. Consumers who receive APTCs but either minimal or no CSRs are also encouraged to consider plans in other metal tiers, or silver-level plans outside the exchange If federal CSR payments are reinstated in the future, the MIA expects consumers who pay more in premiums as a result of the amended rate increases will be made whole by the carriers. Open enrollment is still scheduled to run from November 1, 2017, through December 15, 2017, as originally planned.

IV. Conclusion

As described above, the recent decision to end federal CSR payments to insurance carriers has led to premium increases for silver-level individual health insurance market plans offered through the MHBE. The state's approach has minimized consumer impact by "silver loading" plans sold through the MHBE, where APTC increases will offset premium increases for many consumers, and consumers who are ineligible for APTCs will be encouraged to shop for a different metal level or buy an off-exchange silver level plan.

It should be highlighted that the decision to end CSR payments was made roughly two weeks before open enrollment was set to begin on November 1. Through tremendous efforts by MIA and MHBE staff, the MIA had to quickly re-approve rates for the 2018 plan year and MHBE's Maryland Health Connection system and website had to be updated accordingly these activities

[12] Maryland Insurance Administration. (2017). *The Maryland Insurance Administration Approves Amended 2018 Premium Rates for Silver On-Exchange Plans Sold in the Individual Market* [Press Release]. Retrieved from http://www.insurance.maryland.gov/Pages/newscenter/NewsDetails.aspx?NR=2017172.
[13] *Id.*

were completed prior to open enrollment. MHBE is experiencing a successful open enrollment, with QHP enrollments just shy of 149,000 as of December 19th.