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Key Legislative Developments Affecting Your Human Resources US

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Will Congress Address CHIP and ACA Cost-Sharing Reduction Funding?

During this new session of Congress, members are set to address the Children’s Health Insurance Program and ACA marketplace stabilization, including cost-sharing reduction payment funding, but with the current continuing resolution set to expire on January 19, lawmakers continue to focus on keeping the government operating. Whether CHIP and ACA funding will be addressed by the 19th, when Congress must at least tackle short-term government funding, is unclear.

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Recent Highlights

Unable to reach an agreement before the holiday recess, members returned to the new session needing to address the federal government’s operating budget. The government has been operating via a series of short-term extensions (i.e., continuing resolutions, or CRs) since the start of the 2018 fiscal year (October 1, 2017). With the deadline of January 19 looming, it’s not clear if members will come to an agreement on a long-term budget or pass another CR. Whether either the Children’s Health Insurance Program (CHIP) and/or ACA cost-sharing reduction funding will be included in the package is also uncertain.

Children’s Health Insurance Program

CHIP provides health coverage to eligible children (and in some states pregnant women) through both Medicaid and separate CHIP programs. CHIP is administered by states, according to federal requirements. (For information on CHIP, see our [March 4, 2009 For Your Information.](#)) Those covered either have coverage directly through the CHIP program or receive premium assistance (e.g., government funds to help pay for an employer’s group health plan). The fear is that funding for the program could run out sooner than expected in some states (e.g., in January), despite spending approved by Congress to the end of March. If not renewed, many individuals under the CHIP program could lose their health coverage.



Previously, the House passed the Championing Healthy Kids Act ([H.R. 3922](#)), which included reauthorization of the program for five years. The Senate considered its own legislation including the KIDS Act of 2017 ([S. 1827](#)). (See our [November 15, 2017](#) *Legislate*.)

This week, members appear to be coming together and compromising over issues like the Deferred Action for Childhood Arrivals program (DACA). Additionally, since the passage of tax reform (and the revocation of the individual mandate), the Congressional Budget Office (CBO) dramatically lowered its estimate of the cost to renew CHIP. In the spirit of cooperation and with regard to spending, this makes it easier for Congress to include this program, which has bipartisan support, in its funding package.

Comment. While this program may not significantly impact employers and their group health plans, there are indirect and subtle implications, particularly for employers with low-wage work forces. For example, under the cafeteria plan change of election rules, individuals losing (or gaining) coverage under CHIP may be entitled to change their cafeteria plan election. Additionally, employers will not be exposed to the ACA shared responsibility assessment risk for employees (e.g., mothers in the states that cover pregnant women under CHIP) receiving coverage or premium assistance through the program. So on a limited basis, lack of funding for this program might impact an employer's exposure to such an assessment.

ACA Marketplace Stabilization

Congress is looking at legislation poised to help stabilize the individual marketplace. Under the ACA, insurers are required to reduce cost-sharing (e.g., deductibles, copayments, coinsurance) for qualified lower-income individuals who enroll in ACA marketplace plans. Until recently, the federal government reimbursed insurers for the cost of this through cost-sharing reduction (CSR) payments. (Note these payments are not the same as the “premium tax credit” subsidies.) Late last year, the Trump administration stopped making CSR payments, and with the tax reform law putting an end to the individual mandate, some members of Congress are concerned that the ACA marketplaces will quickly become destabilized. While there have been bipartisan efforts to re-fund these CSR payments and bolster the ACA marketplace, negotiations may have stalled. Senators Patty Murray, D-Wash., and Lamar Alexander, R-Tenn., had been working on a bill to lower healthcare costs and stabilize markets (the [Bipartisan Health Care Stabilization Act of 2017](#)) and Susan Collins, R-Maine, and Bill Nelson, D-Fla., had worked on a reinsurance bill (the [Lower Premiums Through Reinsurance Act of 2017](#)). Find out more about both these bills [here](#). Some members of Congress have indicated that the loss of the individual mandate will require Congress to re-think the funding necessary to bolster the ACA marketplace and maintain affordable premiums. In discussing the Murray/Alexander bill, one aide said that the bill was written for a “different moment in the health-care system.” At this point, they argue, renewing CSR payments alone, with no other adjustments, could be counterproductive.

Comment. While any destabilization of the ACA marketplaces does not directly impact employers and their group health plans, it likely will increase the number of uninsured. Some speculate such destabilization could translate to increased costs for employers (e.g., state or local governments looking to private employers to financially shore up the marketplace through additional taxes and/or mandates).

Looking Ahead

Looking ahead on healthcare, Congress likely will address funding for CHIP in the next federal spending bill. Whether long-term CHIP funding will come through a short-term CR is unclear. It's also uncertain what will happen with CSR payments, but the tax reform vote was struck on an agreement in the Senate that Congress would focus

on these issues in the ACA marketplaces. On January 1, two ACA tax provisions previously suspended (for 2016 and 2017) were back in effect — taxes on health insurers and medical device manufacturers. Pressure may mount for lawmakers to continue to suspend these taxes, as well as delay or roll back the Cadillac tax and employer mandate. Congress also is set to address the opioid crisis. While some of these provisions do not directly impact employer group health plans, there's certainly an indirect effect that we'll be watching closely.

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