Health Affairs Blog

CMS Details Open Enrollment Strategy (With Risk Corridor Litigation Update)

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October 17 Update: House Seeks To File Amicus Brief In Risk Corridor Case

On October 13, 2016, the United States House of Representatives requested permission of the Court of Claims to file an amicus brief in *Health Republic v. United States*. *Health Republic* was the first of at least eight cases that have now been filed by insurers challenging the failure of the government to pay the full amount they claimed under the risk corridor formula contained in the ACA. The risk corridor program is one of the three premium stabilization programs created by the ACA. It collects contributions from participating insurers that make profits that exceed certain statutory "risk corridors" and make payments to insurers whose losses fall outside those risk corridors.

Although the risk corridor statute seems to require payments to insurers with excessive losses regardless of the amount actually collected under the program from profitable insurers, Congress adopted appropriations riders in 2015 and 2016 making the program budget neutral—that is, limiting the administration to paying out only as much as it collected under the program. In fact, HHS paid out only 12.6 cents on the dollar for claims for 2014 and has announced that all 2015 collections will go to 2014 claims.

The administration moved to dismiss the *Health Republic* case in June, but argued only that the case was premature because the risk corridor program was still ongoing and more money might be paid later. In guidance released in September, HHS suggested that the full amount due insurers under the program would have to be paid and that it was open to settling the cases against it. This provoked a furious outcry from Republicans in Congress, who accused the administration of trying to make an end run around the appropriations rider. In late September, the administration filed motions and briefs in other risk corridor cases arguing that in fact the appropriations rider cut off any further risk corridor funding for 2014.

In its proposed amicus brief, the House of Representatives maintains that the same arguments that were made in the other cases apply to and should have been made in *Health Republic*. It contends that the appropriations riders cut off any sources of additional funding to cover claims under the risk corridor program, and therefore *Health Republic* should be dismissed. It pointedly rejects the earlier assertion of HHS that full payment under the program is owing to the insurers.

It is not wholly clear at this time whether or not the administration is pursuing settlement talks with the insurers in the risk corridor cases. What is clear is that if the administration does try to settle the cases for additional risk corridor payments, congressional Republicans will be very angry.

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The marketplaces (and indeed the entire individual market) opens for the fourth open enrollment (OE4) period on November 1, 2016. A recent Commonwealth Fund survey found that nearly 40 percent of the uninsured did not know about the marketplaces and nearly 50 percent did not know about the financial assistance they offer. The Department of Health and Human Services (HHS) believes that 10.7 million uninsured individuals are eligible for marketplace coverage, and 9 million of them for tax credits.

Given the extensive coverage the media has been giving to premium increases in the individual market for 2017, it is important that consumers understand that affordable alternatives remain available, particularly for those who qualify for financial assistance. It is important to get this message out not just to get the uninsured covered, but also because HHS believes that the population that remains uninsured is younger and healthier than the population currently insured through the marketplace, and thus enrolling more of the uninsured could contribute to marketplace stability.

To reach this population, CMS is ramping up its outreach strategy for 2017. HHS has earlier released information about its OE4 outreach to young people and outreach to off-marketplace individual market enrollees. On October 13, 2016 CMS issued a press release offering further details on its overall OE4 outreach strategy. CMS will be increasing the scope of its direct outreach to the uninsured, improving and better targeting its messages, using more media channels, and timing its messages most effectively.

First, CMS will be dramatically increasing its use of direct mail—from 800,000 pieces last year to 10 million this year—to reach those who still rely primarily on paper mail for communication. These mailings will target those who began signups with Healthcare.gov or a state Medicaid program but did not complete the process and those who lost or failed to qualify for Medicaid or CHIP coverage. The IRS is also reaching out to uninsured people who have paid the penalty or claimed an exemption from it to notify them of the availability of coverage.

CMS will also expand its email outreach. It will contact 20 million people who have come to Healthcare.gov in the past, including those who started an application but failed to complete it. Email is particularly important for outreach to younger consumers, who are twice as likely as older consumers to respond to email by enrolling.

CMS' outreach will focus on three messages. First, it will inform consumers that even though premiums are going up dramatically in many parts of the country, almost three quarters of consumers will still be able to afford plans, after financial assistance is applied, for $75 or less a month. HHS found last year that notifying returning consumers of increased costs in their current plan and encouraging them to review their options increased active shopping by 279 percent.

Second, messaging will mention deadlines, which previous experience shows increases responses by 14 percent. The most important deadlines will be December 15, 2016 by which time consumers must be enrolled to have January 1 coverage, and January 31, 2017, when open enrollment ends.

Third, the messages will remind consumers of the penalty for failing to have coverage. Experience has shown that mentioning the penalty increases enrollment response by 13 percent, while prominently displaying information on the penalty lifts enrollment by 97 percent. For 2016 the penalty reached the greater of $695 for adults or 2.5 percent of modified adjustable gross income above the tax filing threshold. The dollar penalty will increase further for 2017.

CMS will also be expanding its outreach with new media that are particularly effective in reaching young people. It will increase its current outreach efforts using YouTube and Facebook and add Instagram and Twitch for OE4. CMS is also continuing to enhance its search advertising program to find search terms that will drive consumers to Healthcare.gov to enroll.

CMS will focus the timing of its outreach on deadlines to optimize its effectiveness. It will more than double over last year the number of impressions a consumer sees through TV advertising in the week leading up to the December 15 deadline for enrolling for January 1 coverage. It will also be sending consumers near-real-time email reminders if they open an account, start up, and application, or select a plan explaining to them what step they have to take next to complete the process of enrollment.

CMS is conducting an independent campaign to reach out to consumers whose 2016 insurer is leaving the marketplace for 2017. CMS will contact these consumers multiple times to encourage them to return to the marketplace to shop for coverage, but will put them in contact with an alternate plan in which they can enroll by making a binder payment if they fail to otherwise shop for coverage.

Finally, CMS is improving its mobile device shopping experience to make shopping for coverage easier. Healthcare.gov will open for window shopping a week or so before OE4 begins. CMS will also continue to focus on the privacy and security of consumer information. This year Healthcare.gov was rated second only to Twitter in the Online Trust Alliance's audit of almost 1,000 consumer-facing websites for excellence in consumer data protection and security practices.

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