**MEMORANDUM**

TO: Director Anita G. Fox, Chair of the Health Insurance and Managed Care (B) Committee

FROM: Kevin Dyke, Chair of the Health Actuarial (B) Task Force

DATE: June 3, 2024

RE: Cost Sharing Reduction (CSR) Referral to the Health Actuarial (B) Task Force Made at the 2023 Summer National Meeting

In a September 15, 2023 memo, the Health Insurance and Managed Care (B) Committee asked the Health Actuarial (B) Task Force (HATF) to advise the Committee on how the impact of changes in CSR silver-loading policies or the elimination of enhanced subsidies could impact consumer choices and affordability. The Committee asked the HATF to review the issue and report its findings to the Committee.

## Impact of Changes to CSR Loading Policies

Under the Affordable Care Act (ACA), cost sharing reductions are available for individuals (and families) purchasing health coverage on the Marketplace with annual incomes below 250% of the federal poverty level (FPL). The cost of offering the CSRs was funded by the federal government until 2017 when it was determined by the Attorney General that funding was not appropriated by Congress. When funding was stopped, the federal Center for Consumer Information and Insurer Oversight (CCIIO) instructed or permitted states to increase plan premiums to address the CSR shortfall. A variety of methods emerged to address the funding shortfall.

The effect on consumer choices and affordability can vary based on the CSR funding methodology due to its resulting impact on premium subsidies, or advanced premium tax credits (“APTCs”). Methods that result in higher silver, on-marketplace premiums produce higher premium subsidies as the subsidies are determined based on the relationship of the second-lowest priced silver plan to the individual’s income. With greater subsidies, subsidy-eligible individuals may have a broader range of affordable plans, including low- or zero-cost plans. For example, when the CSR shortfall is applied only to silver, on-marketplace plans, the subsidies will be higher than if the CSR shortfall is recovered across all plans, or all silver on- and off-marketplace plans. The choice of method for determining the amount of CSR shortfall, such as those identified below in the Academy and Fann/Cruz discussions, can also affect the corresponding premiums and subsidies.

To understand the different CSR methodologies, HATF collected reports from interested parties and conducted conversations with regulators. This included guidance and feedback from the federal CCIIO, the American Academy of Actuaries (Academy), and Greg Fann and Daniel Cruz, interested actuaries, as well as an updated state survey of CSR-loading approaches.

*CCIIO*

Since the loss of Federal funding, states have routinely asked CCIIO for specific or general guidance in determining the CSR load. In August 2018, CCIIO issued a [bulletin](https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/offering-plans-not-QHPs-without-CSR-loading.pdf) encouraging states to consider offering plans outside of the Marketplace that do not include a CSR load. While the guidance focused on offering off-Marketplace plans without a load, it affirmed that CSR loads are permitted plan level variations for the actuarial value and cost-sharing design of the plan under 45 CFR 156.80(d)(2)(i). Over the years, HATF regulators have asked CCIIO if further guidance would be provided, and representatives indicated only that issuers can and should load for CSR amounts that the federal government will not reimburse and can do so by spreading all of the load across all plans within the single risk pool or applying the load only to the plans that generate CSR deficiencies. Further, they said whichever loading methodology is chosen, the total amount of the load should be actuarially justified, reasonable, and recover any deficiencies.”[[1]](#footnote-1)

*American Academy of Actuaries*

In the fall of 2022, the Academy sent a [letter](https://www.actuary.org/sites/default/files/2022-09/Academy_CSR_Load_Letter_09.08.22.pdf) to CCIIO offering comments and considerations relating to the CSR load. While the Academy did not advocate for a particular approach, they emphasized the importance of actuarial sound rates and suggested that CSR loads be “calibrated against actual experience to produce results consistent with anticipated incurred costs.” They indicated other loading approaches not based on anticipated costs may not be actuarially sound and could produce cross-subsidies between plans not intended by federal regulations. Further, they explained that the choice of approach used in developing the CSR load could potentially lead to over- or under-accounting for the actual unfunded CSRs and recommended avoiding use of a method based on the federal AV calculator as outlined “whenever appropriate data for an actuarially sound methodology is available.”

*Fann/Cruz*

Two actuaries, Greg Fann and Daniel Cruz, have advocated a different approach determining the CSR load on silver Marketplace plans and more broadly, the actuarial value and cost-sharing design plan level adjustments to rates. They suggest that with the elimination of Federal funding, silver level plans cover more paid claims than gold plans and significantly more than bronze plans and should be priced accordingly. Specifically, they believe silver plan level pricing should reflect maximum enrollment in 87 and 94 percent CSR plans as they believe all CSR-eligible individuals on the Marketplace would enroll in a CSR plan and that anyone who is not eligible for a CSR plan would not enroll in silver plans and instead enroll in gold or bronze plans. Fann and Cruz have shared their approach in various forums, including an April 2022 [Families USA](https://familiesusa.org/wp-content/uploads/2021/04/COV-2021-31_Gold-and-Silver-Report_4-9-21-002.final_.pdf) report and various posts on social media.

*State Survey*

To understand the various state approaches, HATF updated and enhanced a 2017 survey on CSR-loading guidance. Requested information included whether CSR loading occurs and certain characteristics of state guidance, such as requiring silver loading on or off the Marketplace and/or prescribing a factor for the CSR load. We also asked for a range of CSR factors if no factor was prescribed. Full or partial responses were received from 33 states. The survey showed that majority of states either require or expect funding to occur on silver level policies, either on or off the Marketplace. Nearly all responding states allow issuers to determine an appropriate CSR load, with a few states prescribing the CSR load. A summary of results and selected states who shared their public guidance separately are included in Appendix A. Due to the inclusion of informal guidance from several states in the survey, we will provide under separate cover the complete results of the survey in a regulator-only format.

## Impact of Elimination of Enhanced Subsidies

Under the Affordable Care Act (ACA), premium tax credits are available to people purchasing health coverage on the Marketplaces with annual incomes between 100% and 400% of the federal poverty level (FPL). The American Rescue Plan Act of 2021 (ARPA) expands premium tax credits to those who are above 400% FPL and also increases subsidies for those making between 100% and 400% FPL for the 2021 and 2022 plan years. The enhanced subsidies were then extended for an additional three years, through the 2025 plan year, by the Inflation Reduction Act of 2022 (IRA).

As a result of these enhanced subsidies, enrollment in the ACA Marketplaces has increased substantially. According to the Florida Office of Insurance Regulation, enrollment increased by 51.4% overall from 2021 to 2023. The increase was 67.3% for those with incomes between 100% and 150% FPL, and by 86.9% for those over 400% FPL during the same period. The dramatic increases for these groups are attributed to the availability of $0 silver plans for those in the 100% to 150% FPL range, and to the provision of some subsidy to those over 400% FPL where previously there was none. As the silver loading for unfunded CSRs increases the premium for silver plans, and therefore the benchmark plan, the impact of the subsidy is greater in states with higher CSR loads.

If these subsidies are not extended beyond the 2025 plan year it will result in increased costs and reduced choices for consumers, including the return of the so-called “subsidy cliff” for those over 400% FPL. The Kaiser Family Foundation published an article in 2022 which analyzed the impact of the removal of the enhanced subsidies prior to the IRA being signed into law. This article highlights that the removal of the enhanced subsidies will have the greatest impact on older members, especially those over 400% FPL.

## Appendix A - Survey Results and Selected State Guidance

*Summary of Survey Results*

50 states and the District of Columbia were surveyed, 33 responded with the following results:

* All 33 respondents indicated CSR loading occurs
* With respect to requiring CSR loading on silver plans:

Required 14 states (42%)

Not Required but Expected 9 states (27%)

Not Required 9 states (27%)

*Selected State Guidance and Reports*

(1) Nebraska

**Nebraska Department of Insurance Guidance Document IGD - - B5**

Title: Filing Guidance for Individual and Small Employer Major Medical Plans and Stand-Alone Dental Plans in Nebraska.

Sections: Guidelines for the Development of AV and Cost Share Design of each plan.  
Additional Requirement for What Needs to Be Provided as Rate Filing Support.

Issue Date: April 20, 2023

The following two sections were added to the final NE DOI Bulletin for filing 2024 ACA Plans.

These contain directions on developing CSR loads and benefit factors, as well as instructions on what should be reported in the SERFF rate filing.

**Guidelines for the Development of “Actuarial Value and Cost Sharing Design” of Each Plan:**

URRT Wksh 2, Sec. 3, line 3.3: “AV and Cost Sharing Design of the Plan”

* Each specific Plan has an “AV and Cost Sharing Design of the Plan” associated with it, more informally referred to as the plan’s “Benefit Factor”. This factor is one of the 5 Plan Level Adjustments allowed in CMS 45 CFR 156.80 rating development to adjust an issuer’s MAIR (Market Adjusted Index Rate) to reflect the impact of the specific cost sharing of the plan, including Unit Cost and Utilization adjustments.
* The Benefit Factor for each plan must be developed to meet the “Single Risk Pool” rating requirements of the ACA. Benefit Factors must not reflect the differences in morbidity between members expected to enroll in each plan, and each Benefit Factor should be developed assuming that the same standard population of members is enrolled on every Plan design.
* CMS has delegated to each state’s effective rate review function the responsibility for determining how the Cost Sharing Reduction (CSR) benefit costs should be applied in ACA Individual rate setting within that state. The following guidelines are being posted to inform issuers as to what would be considered the acceptable standard for developing and filing Benefit Factors in plan year 2024 Nebraska ACA Individual rate filings.
  + Issuers may set their own CSR rating adjustments as long as they do not deviate from the standards below. The NDOI will no longer enforce the minimum 1.15 CSR load factor standard used in prior years and will not set a uniform CSR load factor for all issuers to use as some states have done. The NDOI has determined that applying such a uniform factor will likely never accurately reflect the correct value for any specific issuer. Issuers should utilize their own experience or other credible data when setting benefit factors, CSR Loads, Induced Demand Factors or other unit cost and utilization adjustments.
  + Issuers may apply formal Induced Demand Factors, or make appropriate utilization adjustments, as long as they meet the ACA Single Risk Pool rating requirements. Expected utilization differences due to member’s health status, income levels, or other member case characteristics may NOT be reflected in Induced Demand Factors or other utilization adjustments used to develop the benefit factors.
  + Issuers may maintain **Actuarial Soundness** of their Index Rate by adjusting for the impacts of morbidity, reduced utilizations due to low-income members, and other causes by using the index rate adjustments listed below. As such, Silver Plan rates should not be adjusted independently to reflect lower utilizations due to more low-income members enrolling on 87% and 94% Silver Plan variants.
    - URRT Wksh 1, Sec. 2: “Morbidity Adjustment”.
    - URRT Wksh 1, Sec. 2: “Other” Adjustment.
  + Issuers should assume expected distributions of members among their Silver Plan variants that reflects the most likely distribution that will occur. Simply assuming that all members will be enrolled on the 87% and 94% Silver Plan variants is not accepted as the standard method, though may be accepted if the issuer demonstrates it is the most likely distribution to occur. Utilizing Nebraska PUF enrollment data from the recent plan year’s enrollment among the standard Silver Plan, and the 73%, 87% and 94% variants, may provide a realistic distribution of membership to assume, given that the environment has not changed from the current year to the projected year (ARPA subsidies remain in place, etc.).

**Additional Requirement for What Needs to Be Provided as Rate Filing Support:**

Transparency of Benefit Factors.

The NDOI is requiring a Public Summary sheet of CSR Loads and Benefit Factors as outlined below. Additionally, the NDOI is requiring CSR Load and Benefit Factor development to be included in issuer’s Individual Market rate filings.

(1) Required Individual Market Public Summary Sheet for CSR Loads and Benefit Factors.

This requirement applies to Individual On-Exchange Plans excluding Catastrophic Plans.  
  
Issuers should provide a single Excel sheet in their annual SERFF rate filing containing the following columns of information which will be made Public when NE SERFF rate filings become Public on November 1st, 2023.

* HIOS Plan ID Number
* Metal Level
* AV Factor
* Benefit Factor (The AV Pricing & Cost Sharing Factor)
* Provider Network Adjustment
* CSR Load for Silver Plans, or 1.0 for all Non-Silver Plans
* Induced Demand Factor (plan aggregate for all services)

(2) Required Supporting Development of Benefit Factors and CSR Loads:

This requirement applies to Individual On-Exchange Plans and is not required to be made Public if the issuer submits a valid Trade-Secret Request within the rate filing.

(a) Issuers should provide a high-level summary of the data used for setting Benefit

Factors, including:

* + - Incurred claim dates
    - Paid claim dates
    - Lines of business, States, other Geographic factors
    - Incurred Claims and Member Months by Calendar Year, summarized by each major service category (Similar to those used in URRT Worksheet 1, section 1).

Note this should summarize the data actually used to set benefit factors, whether it was from the company’s own ACA Individual business, a consultant’s health cost guidelines, National Group Business, etc…

(b) At the time of submitting the rate filing, Issuers should provide their complete detailed development of Benefit Factors for each of the following:   
Plans with the lowest and highest Benefit Factor within each of the following Metal Levels:

* + - Bronze & Enhanced Bronze Plans
    - Silver Plans
    - Gold Plans
    - Platinum Plans

(c) For each of the Plans indicated in (2b) above, the complete detailed Benefit Factor development should be included, showing the development from the underlying base experience by service category, including all adjustments or modeling applied to arrive at the final benefit factors. The level of service category included in the supporting development should reflect the level at which benefit factors are developed. This may be at a High-Level Service Category (Inpatient, Outpatient, Physician, Pharmacy,…) or at more refined levels if utilization and unit cost adjustments are applied at a more granular level.

(d) Identify all utilization and unit cost adjustments that have been applied at any step in the process to obtain the final estimated benefit cost factor in the new benefit period. A description and quantitative support should be provided for each adjustment.   
  
Demonstrate how Induced Demand Factors (IDF) or other specific Utilization adjustments were determined and show how they are applied.   
  
For provider contracting changes in the new plan year that result in adjustments to your unit cost assumptions, those adjustments should be documented and quantified.

(e) For On-Exchange Silver Plans the complete development of the CSR Load should be provided, and should include at least the following:

* + - Membership distribution assumptions used for enrollment in Base Silver, 73%, 87% and 94% Silver plan variants
    - Data source used to determine the distribution (i.e. NE PUF Enrollment Data, Issuer’s own experience, or other source)
    - Membership adjustments made to the source data
    - Utilization adjustments, including a description of any adjustments

(f) Issuers utilizing predictive models, such as GLMs, GAMs or other such predictive models, must provide the required support contained on the [NDOI L&H](https://doi.nebraska.gov/insurers/life-and-health) webpage. Any other simulation models, or other models used in the process of setting benefit factors, need to be fully documented.

(2)Texas

[Texas Association of Health Plans (axioshq.com)](https://tahp.read.axioshq.com/p/complete-coverage/4030622c-8aaa-43d3-b394-d3dbde8a5c20?utm_source=email&utm_medium=email&utm_location=email_view_in_browser)

(3) Washington

[**https://content.naic.org/sites/default/files/inline-files/cmte\_b\_ha\_tf\_related\_state\_cost\_sharing\_washington.pdf**](https://content.naic.org/sites/default/files/inline-files/cmte_b_ha_tf_related_state_cost_sharing_washington.pdf)

1. CCIIO comments from the March 21, 2023 meeting of the Health Actuarial (B) Task Force [↑](#footnote-ref-1)