

Health Exchanges

HHS Discourages Third-Party Subsidies On Exchanges - ALERT

Contrary to indirect indications made last week, HHS issued explicit guidance yesterday discouraging providers from subsidizing patient premiums on health exchanges and encouraging issuers to reject such payments. In an FAQ, (see text below or direct [link](#)), HHS says it has significant concerns about third-parties supporting premium payments or cost-sharing obligations, due to potential adverse selection in the exchange risk pool. The guidance is not an absolute legal prohibition, HHS now says it "discourages" the practice and intends to monitor it; so, we are not sure how hospitals will react here. The HHS directive will likely moderate the interest level of hospitals to pursue direct subsidies versus the previous AHA legal advisory on the topic (note link [here](#) – call for copy of previous AHA advisory). We contacted the AHA, and they are working on a new legal advisory in response to the latest HHS guidance which will likely be out this week. We think the HHS guidance is positive for managed care (hospitals helping patients already seeking care get covered could negatively skew the risk pool on exchanges) and a modest negative for hospitals versus previous. However, we note that our modeling of hospital benefits from coverage expansion does not include any upside from hospitals' ability to subsidize patient premiums.

- **Text of HHS Guidance:** <Q> Are third party payors permitted to make premium payments to health insurance issuers for qualified health plans on behalf of enrolled individuals? <A> The Department of Health and Human Services (HHS) has broad authority to regulate the Federal and State Marketplaces (e.g., section 1321(a) of the Affordable Care Act). It has been suggested that hospitals, other healthcare providers, and other commercial entities may be considering supporting premium payments and cost-sharing obligations with respect to qualified health plans purchased by patients in the Marketplaces. HHS has significant concerns with this practice because it could skew the insurance risk pool and create an unlevel field in the Marketplaces. HHS discourages this practice and encourages issuers to reject such third party payments. HHS intends to monitor this practice and to take appropriate action, if necessary.
- **Last week HHS said exchanges weren't covered by anti-kickback statute,** which was viewed as the main legal barrier for hospitals to provide subsidies. Although this was initially viewed as a potential green-light, there was no explicit authorization. This week's guidance is the first time a federal agency has directly addressed the third-party subsidy issue.
- **Hospital reform benefit not dependent on third-party subsidies.** Although it would certainly help, the significant benefits we project from coverage expansion for hospitals are not tied to the ability to subsidize patient premiums, with free or low-cost coverage available to millions from government subsidies alone. A Kaiser study released today indicates 17M people who are either uninsured or covered in the individual market have incomes that qualify for subsidies.

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