Insurers' High Court Win Could Lead to Bigger Obamacare Refunds

By Lydia Wheeler | April 29, 2020 5:33AM ET

Health insurers could see a surge of cash following a Supreme Court ruling that the federal government must pay the $12 billion it promised them under Obamacare.

But that money could come in and go right back out.

Under the law, insurers that cover individuals and small businesses must spend at least 80% of their revenue on health-care costs or write rebate checks to their enrollees. Large-market insurers with more enrollees must spend at least 85% of their revenue on health costs.

Even without the $12 billion payout from the government, insurers are on track to issue an estimated $2.7 billion in rebates to their enrollees for 2020, according to data from the Kaiser Family Foundation.

An influx of cash because of the Supreme Court decision means the insurers will have even more revenue, leading to even bigger rebates despite the coronavirus pandemic. Fewer people are going to the doctor and having elective surgeries because of Covid-19, so insurers have paid less in claims this year than expected.

"Even though we're in the midst of this health crisis, it seems like issuers are probably in a pretty strong financial position and already have a ton of cash on hand," said Christen Linke Young, a fellow at USC-Brookings Schaeffer Initiative for Health Policy.

The rebates under the Affordable Care Act's medical loss ratio are calculated based on a three-year rolling average, so the rebate checks that policy holders receive in 2021 will be calculated using their insurer's financial data in 2018, 2019, and 2020.

Making Up Losses

The Supreme Court on Monday ruled 8-1 that Congress must pay $12 billion to individual and small group health insurers under the ACA's risk corridor program, which was designed to defray their costs of covering sicker people between 2014 and 2016.

As Obamacare was ramping up, insurers were taking on enrollees with costly health issues. The risk corridor program was intended to discourage insurers from raising premiums too high to combat the uncertainty. Those that had the highest risk, and thus costliest patients, would be reimbursed for their losses under the program.

Insurers sued the government after Congress passed appropriations riders limiting the sources of funds available to the Department of Health and Human Services to pay them what they were owed. The high court ruled the government had a legal duty to pay insurers under the program.

“It’s important to remember that these payments were owed to health insurance providers for substantial losses they already incurred from 2014-2016—so this decision makes them whole for past losses,” Kristine Grow, a spokeswoman for America’s Health Insurance Plans, said in an email.

But health insurers figured out a way to recoup their losses in a different way. In 2017, they changed their prices to adjust for their added costs and in 2018 raised some rates more than they needed to, said Cynthia Cox, vice president at the Kaiser Family Foundation and director for the program on the ACA.

“Long story short, at this point insurers are doing quite well on the individual market,” she said. “They’ve even had to issue rebates to consumers in the last couple of years.”

Last year, insurers in the individual, small group, and large group markets issued $1.4 billion in rebates, which was a record high, Cox said. The 2020 rebates are expected to be twice as large, she said.

The individual market is expected to issue almost $2 billion in rebates, while the small group market —i.e., small employers—is predicted to issue $348 million, according to the Kaiser Family Foundation.

How and When?

The $12 billion owed to insurers for offering health-care coverage between 2014 and 2016 could be treated as revenue in 2020 under the government’s medical loss ratio regulations. That “could generate very big rebate checks by the insurance companies to their current subscribers,” Young said.

It’s not known yet how the HHS will tell insurers to calculate these payments, she cautioned. The agency didn’t immediately respond to a request for comment on that issue.

The impact on insurers will also depend on when the money is paid out. The money will eventually come from the Treasury Department’s “Judgment Fund” after the Court of Federal Claims issues a judgment for each insurer and ruling against the HHS.

If that happens in the next several months, it could affect how well insurers end up doing this year, Young added.

In an April 14 report, S&P Global Ratings said it expects most health insurers’ underwriting earnings will be better than expected this quarter because a significant number of elective or discretionary medical services were postponed due to Covid-19.

However, Covid-19-related claims will rise further in the second quarter, the report said.

“It’s not clear how many of those elected procedures are going to still be done later this year versus being pushed into next year,” Cox said.

But insurers' solid balance sheets for the previous two years could put them on the hook for 2020 rebates.

"It's possible they will have to pay rebates next year anyway because the rebates are based on three-year rolling averages, and 2018 and 2019 were such good years for insurance companies," Cox said. "Even if individual market insurers experience small losses in 2020, those insurers could still owe rebates to consumers who were enrolled in 2020."

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