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Deputy Administrator and Director
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Centers for Medicare & Medicaid Services (CMS)
200 Independence Avenue SW, Room 739H-02
Washington, DC 20201

Re: Cost-Sharing Reduction Premium Load Factors

Dear Dr. Montz:

On behalf of the Individual and Small Group Markets Committee and Risk Sharing Subcommittee of the American Academy of Actuaries,[1] we offer the following comments and considerations related to calculating the premium loading factor to account for the lack of federal funding for cost-sharing reduction (CSR) subsidies.[2] CSRs result in silver tier plan variants, as opposed to being distinct plans, and the goal of the CSR loading is to estimate the CSR subsidies that would have been paid by the federal government. Since CSR loads were first introduced in 2018, there have been several approaches advocated and implemented by various issuers and states. The choice of approach in developing the CSR load can have significant implications for the actuarial soundness of the load, the amount of the federal premium tax credits, consumer subsidies, plan pricing, and the financial performance of issuers in the individual marketplaces.

This letter discusses two approaches that estimate the CSR loads—the first uses actual experience data / issuer pricing models, while the second uses federal actuarial value (AV) levels. An actuarially sound CSR load is one that ensures that premiums are increased by an appropriate amount to offset the specific additional costs insured for these plans. An approach using federal AV levels does not take into consideration various factors that can affect the load, such as allowable AV de minimis ranges, provider reimbursement levels, induced utilization, and socioeconomic considerations that can affect demand. Actuarially unsound rates produce cross-subsidies from enrollees in one group of plans to those in another group of plans beyond that

[1] The American Academy of Actuaries is a 19,500-member professional association whose mission is to serve the public and the U.S. actuarial profession. For more than 50 years, the Academy has assisted public policymakers on all levels by providing leadership, objective expertise, and actuarial advice on risk and financial security issues. The Academy also sets qualification, practice, and professionalism standards for actuaries in the United States.
[2] This letter does not address other cost-sharing subsidies, such as state-specific CSRs or coverage of Medicaid expansion individuals in Arkansas where additional cost-sharing amounts are paid for by the state.

intended by the Affordable Care Act (ACA) and its related regulations. In the sections below, we provide more background on this issue, detailed information regarding the different methodologies for calculating CSR loads, the different loads those different approaches can produce, and the implication of CSR loads that are either too high or too low relative to actual experience.

Background

The ACA significantly reshaped major medical health insurance coverage offered to individuals in the private individual market. Of importance for this discussion are four elements. First, plans can be offered only at four distinct levels of plan generosity referred to as metal tiers (i.e., platinum, gold, silver, and bronze).[3] Second, depending on income and access to other coverage sources, individuals have access to sliding-scale premium subsidies tied to the silver benchmark plan in their marketplace, intended to make those premiums affordable. Third, premium-subsidy-eligible individuals with incomes between 100% and 250% of the federal poverty level (FPL) are eligible for additional sliding-scale cost-sharing reductions for the silver metal tier of coverage, intended to ensure that cost-sharing for those plans is also affordable.[4] Fourth, all plans offered by an issuer in a given market are part of a single risk pool, so that the health status of plan-specific enrollees cannot be reflected in a plan's premium rates.

From a structural perspective, members receiving CSRs are enrolled in a plan at the silver metal tier. These members receive an additional benefit (the cost-sharing reduction) when enrolled in a silver plan. Though the amount of the CSR subsidy is tied to the total plan obligation for the member, the concept of "plan variation" is never mentioned in statute. Rather, regulatory text refers to "plan variation" that describes a *separate member-facing plan design*; notably this distinction does not create a *separate plan*.[5] The member is still enrolled in the base silver plan and receives the supplemental cost-sharing reduction for which they are eligible, consistent with statute.

Initially, the federal government reimbursed issuers for CSRs provided to eligible members. In October 2017, the federal government ceased these CSR reimbursements. Nevertheless, issuers were still required by law to provide CSRs to eligible low-income individuals. In response, beginning in 2018, issuers increased premium rates to account for the additional liability associated with providing reduced cost-sharing that the federal government would have otherwise funded.[6] The premium increase has been termed the "CSR load" (or "silver load" when the load is applied to only silver tier premiums). For the remainder of this comment letter, we use the term "CSR load" to describe the premium increases attributed to the estimated value of unfunded CSR subsidies.

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[3] We deliberately ignore catastrophic plans in this discussion, as individuals in these plans are not eligible for premium or cost-sharing subsidies.

[4] American Indians and Alaska Natives also received specific cost-sharing reductions. While we do not address these specifically, most of the same regulatory dynamics exist.

[5] https://www.federalregister.gov/d/2013-04902/p-943

[6] The District of Columbia, North Dakota, and Vermont didn't allow issuers to add the cost of CSRs to their premiums for 2018. Thereafter, only the District of Columbia has prohibited a CSR premium load, due to the low number of CSRs provided in that market.

There are several potential approaches to allocate the CSR load (e.g., broadly across all plans, across all plans offered on the exchange, silver plans only, silver on-exchange plans only). CMS has deferred to state regulators on the allocation. Most states have allowed either a silver load or a silver on-exchange load, both of which tend to be referred to as "silver loading" due to the focus on the income-based silver CSR plan variations, with silver on-exchange loading being predominant in current practice. For the remainder of this letter, we focus our discussion on this silver on-exchange loading. The dynamics of other allocation approaches are similar to those described here, though additional enrollment and/or metal tiers may be reflected in the calculation. And although plan variations for American Indians and Alaska Natives should be reflected in these calculations, we ignore this aspect for the sake of simplicity.

Actuarial considerations are generally more focused around cost estimation methodologies, as opposed to the allocation of those costs, which is driven more by federal and state regulation. Therefore, this comment letter discusses the methodologies for estimating the CSR load in issuer pricing and the assumptions used to develop this load.

Using Experience Data to Develop an Actuarially Sound CSR Load

An actuarially sound CSR load would cover the anticipated costs of the unfunded CSR subsidy—more specifically, the difference in cost-sharing between the base silver plan variation and the CSR plan variant given the population expected to enroll. There are multiple approaches to this estimation, with the primary common characteristic being that they aim to recoup the actual unfunded amount. A "first principles" approach would be to directly calculate the difference in per member per month (PMPM) claims expected at each CSR variant level and apply this additional, composited PMPM cost to the base silver claims cost to arrive at the expected claims cost under the CSR plan variant.

Issuers with large, credible blocks of business can estimate PMPM CSR subsidy costs directly using their historical experience. Actuaries could calculate the difference between the actual claims experience under a CSR variant plan and the cost of the same population and claims experience re-adjudicated under the standard plan (i.e., a double-adjudication approach). This analysis could be performed at the age-bracket (because utilization varies by age) and CSR variant level if data credibility allows. These estimates would then be projected forward to account for changes in plan design for both the underlying standard plan and the CSR plans in the rating period. The final overall CSR load would then be calculated as the weighted average across the anticipated mix of business by age and CSR variant in the pricing period, as shown in Table 1.

Table 1. Sample Calculation of CSR Load Using First Principles

Plan Variation	Projected Base Silver Adjudicated Claims	Projected CSR Plan Variation Adjudicated Claims	Projected Unfunded CSR Subsidy	Projected % of Silver Membership
Base Silver	$370.00	$370.00	$0.00	10%
73% CSR Variant	$360.00	$369.70	$9.70	10%
87% CSR Variant	$350.00	$398.50	$48.50	20%
94% CSR Variant	$345.00	$412.90	$67.90	60%
Base Plan Composite	$350.00			A
Unfunded CSR Subsidy Composite	$51.41			B
Final CSR Load	**14.7%**			**=B/A**

If membership volume by age and CSR variant is too low to obtain credible estimates, the analysis could be performed one-dimensionally (e.g., at the CSR variant level). Actuarial adjustments could be made for changes in utilization of the underlying population due to delivery systems or to changes in population mix by age or silver variant. The adjustments could be incorporated into the initial double adjudication and/or applied after the calculation of the load as produced in Table 1.

We emphasize that the estimation of a CSR load based on the membership enrolled in CSR plan variant does not in and of itself violate the single risk pool requirement that underpins the ACA's community rating provisions. **The specific plan being provided to the member under the framework of the ACA is the base metallic plan, and the methodology being discussed neither suggests nor requires the reflection of any specific characteristics of the silver CSR population in the pricing of the underlying plan.** The unfunded subsidy is, in essence, an expense borne by the plan. As long as the expense is spread in a manner that regulators deem compliant with the single risk pool requirement (i.e., using any of the allocation methodologies discussed previously), then this method remains compliant. Issuer data is used to estimate the total amount of costs that are to be spread, not to assign those costs to specific plans, much like issuer data for each plan is used to estimate the index rate but is not used to directly price the plan itself. Issuers could still violate the single risk pool requirement while using this approach by allocating amounts to plans in a way that state or federal regulators determine to be inappropriate.

Not all issuers with CSR experience data have sufficient membership volume or technical capacity to perform a full double adjudication. In this case, the value of the actual CSR subsidy can be estimated using the actual pricing benefit relativities of the plan and each of its plan design variations. This approach would leverage each issuer's pricing model (as opposed to statutory AVs produced by the federal AV Calculator), a reasonable projection of membership distribution among the silver variants, and calibration of continuance tables, costs, and other benefit relativity model inputs against historical results. An actuarial benefit relativity approach generally involves the steps specified in Table 2.

Table 2. Steps for Calculating CSR Loads Using Pricing Models for Benefit Relativity

Step 1	Calculate AV and Cost-Sharing Factors	• Determine the AV and cost-sharing factor for the base silver exchange plan and the corresponding CSR variants • The AV and cost-sharing factors would be based on the issuer's pricing model, including the impact of induced utilization
Step 2	Develop Membership Projections	• Develop membership projections for each base silver exchange plan and the corresponding CSR variants • This is typically informed by historical experience, to the extent it is credible; adjustments may be needed to reflect changes in market dynamics (e.g., regulatory changes)
Step 3	Calculate CSR Load	• Calculate the weighted average AV and cost-sharing factor using the distribution of projected membership in the base silver exchange plan and CSR variants • The CSR load is the difference between the weighted average AV and cost-sharing factor and the AV and cost-sharing factor for the base silver exchange plan • Additional adjustments may include aligning the projected load with historical experience

Table 3 illustrates a sample calculation using this method, using the same underlying data as shown in Table 2.

Table 3. Sample Calculation of CSR Load Using Pricing Models for Benefit Relativity

Plan Variation	Base Silver Benefit Factor, Calibrated*	Base CSR Benefit Factor, Calibrated	Projected Unfunded CSR Subsidy	Projected % of Silver Membership
Base Silver	0.762	0.762	0.000	10%
73% CSR Variant	0.742	0.762	0.020	10%
87% CSR Variant	0.721	0.811	0.090	20%
94% CSR Variant	0.711	0.851	0.140	60%
Base Plan Composite	0.721			A
Unfunded CSR Subsidy Composite	0.104			B
Final CSR Load	**14.4%**			**=B/A**

***** Each CSR plan variation would be calibrated against expected enrollment, but benefit relativities would be with respect to a common baseline. In this example, 1.0 reflects the issuer's composite allowed claims, but this convention is not required. Benefit relativities could be measured with respect to the base silver plan or some other fixed benchmark, so long as the normalized 1.0 amount is consistent for all plans included in the calculation.

The AV and cost-sharing factor for the silver plan and each variant would be based on the issuer's pricing model, which reflects its underlying cost structure and expected induced utilization. An issuer's pricing model will generally provide more flexibility in terms of plan design modeling compared to the "first principles" method, which would require some level of

claims repricing. However, the greater flexibility would come at the expense of additional complication in the calibration of the pricing model. Like the "first principles" method, the pricing model method would much more accurately reflect the expected costs, utilization patterns, and other issuer-specific characteristics than would be reflected through use of a federal metal AV.

It is important to note that the benefit relativity approach method by itself may not accurately reflect the true cost of CSRs due to the unique population characteristics of CSR enrollees relative to a standard population (e.g., utilization patterns may differ relative to a standard population). As a result, it is important to verify the reasonability of the CSR load produced using the benefit relativity approach against historical adjudicated CSR experience. Such a verification can determine whether there are areas where the benefit relativity does not accurately reflect the overall utilization and service mix associated with CSR enrollees. Table 4 illustrates how this might be done.

Table 4. Sample Calculation of CSR Load Experience Adjustment Factor Using Pricing Models for Benefit Relativity

	Experience Period Subsidies		
Plan Variation	**Benefit Relativity Prediction**	**Actual**	**Projected % of Silver Membership**
Base Silver	$0.00	$0.00	10%
73% CSR Variant	$9.00	$9.33	10%
87% CSR Variant	$45.00	$46.63	20%
94% CSR Variant	$63.00	$65.29	60%
Composite prediction using projected mix	$47.70		A
Actual, adjusted for projected mix	$49.43		B
Adjustment Factor	**103.6%**		**=B / A**

The example shown in Table 4 is simplified for illustrative purposes, as it only reflects experience period CSR subsidies and the projection period enrollment for which the load is developed. In practice, the development of this adjustment should also consider anticipated changes in demographic mix, provider contracts, and any other factors that may impact claim costs differently for enrollees receiving CSRs and enrollees in the base plan. Without this adjustment, the benefit relativity approach is less likely to produce an actuarially sound CSR load that aligns the additional premiums collected with the anticipated unfunded subsidies. Issuers may also consider additional adjustments to the resulting CSR load to account for including anticipated changes in risk adjustment transfers as a result of changes in the statewide average premium or risk adjustment model changes and changes in taxes and fees (e.g., exchange fees), among other items.

In our opinion, the projected distribution of membership among the silver variants should reflect state-specific population and market characteristics as well as the impact of federal and state

legislative/regulatory actions. As noted below in Table 6, there is a significant variation in the distribution of silver plan variants among states. Because silver CSRs are linked to income, total enrollment levels and enrollment as a percent of the individual market are intertwined with state programs for low-income individuals, such as Medicaid eligibility levels and availability of a Basic Health Plan.

There is also some potential circularity surrounding the estimation of the actual amount of the load. If an issuer assumes that premiums will be too high to attract CSR enrollees, the resulting silver load would be lower than it might be otherwise. If competitor premiums are higher than expected, the issuer could gain significantly higher CSR enrollment than anticipated, and the load may be insufficient to offset the amount of unfunded subsidies. Conversely, if an issuer anticipates high CSR enrollment, then the CSR load may be higher than its competitors, resulting in lower CSR enrollment than anticipated and higher premiums than required for the enrolled population. Regulators may seek to offset this risk by requiring a specific CSR enrollment mix be used to determine the CSR load or compare filings and CSR enrollment assumptions across qualified health plan (QHP) issuers to ensure that inadequate or excessive premium situations are less likely to occur. Requiring a specific CSR load among all issuers is less likely to be actuarially sound than requiring a specific enrollment mix assumption, as a uniform load does not reflect differences in provider contracting, benefit designs, or other issuer-specific characteristics that can influence the amount of unfunded subsidies. However, this approach may be desirable to state legislators and regulators despite any increased subsidization as it more explicitly maintains premium alignment between metal tiers for all issuers.

Using Federal AV Levels Is Unlikely to Result in an Actuarially Sound CSR Load

Performing cost projections and determining the relative costs of plan designs are core actuarial functions. However, cost projections typically require a data source from which to begin. In addition, the relative cost methodologies used by each issuer participating in the market can vary. The existence of statutory actuarial values as measured by the federal AV Calculator used for classifying plans into metal tiers has been used by some issuers to approximate the value of the CSR load. Table 5 below provides an illustration. In this example, the CSR load would be calculated as the membership-weighted average of the CSR AV divided by the standard silver AV of 70%.

Table 5. Federal AV Calculator Approach to CSR loading

	% of Silver Membership	Standard AV	CSR AV
Plan Variation	(1)	(2)	(3)
Standard (70%)	15%	70%	70%
73% Silver	15%	70%	73%
87% Silver	35%	70%	87%
94% Silver	35%	70%	94%
Membership-Weighted Average		70%	84.8%
Implied CSR Load (as % of paid claims) = Weighted Average (3)/Weighted Average (2) - 1 = 21.1%			

Because the federal actuarial values are prescribed by statute, the only variable in this approach is the allocation of membership. Even in this approach using the federal AVs, however, assumptions regarding the distribution of membership across the CSR plan design variations are important. Different enrollment distributions can result in vastly different CSR loads. Using the 2022 open enrollment information published by CMS, we have calculated the CSR load using the federal AV approach for three states.[7] As shown below in Table 6, the CSR load ranges from 0.4% in State 3 to 30.2% in State 1, due to the different enrollment distributions.

Table 6. Illustrative CSR Loads Using Federal AV Calculator Approach

	State 1	State 2	State 3
Medicaid Expansion/Basic Health Plan (BHP) Status	Did not expand Medicaid/No BHP	Expanded Medicaid/No BHP	Expanded Medicaid/BHP
Silver Plan Variation	% of Silver Membership	% of Silver Membership	% of Silver Membership
Standard (70%)	2.7%	28.0%	91.5%
73% Silver	4.2%	19.0%	8.5%
87% Silver	18.7%	29.4%	0.0%
94% Silver	74.3%	23.5%	0.0%
Membership-Weighted AV	91.2%	81.2%	70.3%
Implied CSR Load	30.2%	16.0%	0.4%

Source: 2022 OEP State-Level Public Use Files
Notes: State 1 is modeled after Florida, State 2 is modeled after Ohio, and State 3 is modeled after Minnesota. Membership reflects on exchange enrollment only and the implied CSR load is applicable only to on-exchange silver tier plans. Data for Minnesota include the total number of CSR enrollees, but not enrollee distribution across CSR variants. Because Minnesota's BHP covers individuals up to 205% FPL, we assume that all CSR enrollees in Minnesota are in a 73% CSR variant.

[7] 2022 Marketplace Open Enrollment Period Public Use Files; CMS.

As suggested by the results for states 1 and 2, it is possible to have CSR loads derived via the federal AV approach that would produce silver premiums in excess of gold or even platinum premiums. In other words, their weighted-average silver AVs would exceed 80% (or even 90%). The distribution of membership across CSR variants would suggest that numerous states should have silver tier premiums that exceed gold tier premiums, but there are several reasons why that may happen less frequently in practice. And although the federal AV approach is intuitively satisfactory and generally aligns with the idea of the single risk pool—that is, plans should be priced in the absence of any plan-specific enrollment characteristics—other factors need to be considered that may result in a lower (or higher) load than using only membership distributions would imply for the following reasons. The actuarial values produced by the federal AV Calculator do not represent actual costs by metal tier. For example, these AVs do not consider higher utilization of services for platinum plans and lower utilization of services for bronze plans (i.e., induced demand). Also, these AVs do not consider the population profile of enrollees within each metallic tier. For example, high utilizers of care might be enrolled in platinum plans and subsidized enrollees may use less health care services due to barriers to care or other factors. For reasons such as these, estimating the CSR load using the federal AV Calculator will most likely result in an inaccurate load. Additional limitations of this approach and other important factors include:

- **Reimbursement levels**
  In practice, most CSR enrollees are enrolled in the lowest- or second-lowest-cost silver plan. These plans are more likely to have narrow networks with more favorable (lower) reimbursement structures, resulting in a higher concentration of CSR members in plans in which care is less expensive for the health plan. This would generally serve to reduce the anticipated CSR load for issuers that have significant non-CSR enrollment in other silver plans with a more expensive/broad network. In other words, the presence of other silver plans with higher premiums due to more expensive networks results in a higher claims base over which the estimated CSR payments are spread. This higher base leads to a lower load as a percentage of the average base silver premium.

- **Induced utilization**
  Information provided verbally from CMS during presentations to market participants in 2013 and 2014 noted that the appropriateness of spreading the effects of additional induced utilization associated with CSR plan designs on *allowed charges* across all metal tiers. The federal AV Calculator incorporates the additional utilization in its determination of AV, so usage of these AVs without adjustment also spreads the additional CSR utilization across all metal tiers. This is also consistent with the handling of induced demand in the "without risk" factor of the risk adjustment transfer formula. However, actual CSRs provided would be affected by any difference in utilization between enrollees in CSR plan variations and those in standard plans. To reflect this utilization more explicitly, it could be tempting to reflect the additional 12% utilization assumed in the HHS risk adjustment model for the 87% and 94% CSR plan variations (in other words, inflate the projected subsidy amount by 12%). This would have the effect of giving extra weight to the subsidy AV in those rows in Table 6, adding about 2.5 percentage points to the CSR load for State 1 and 1.3 percentage points to

the load for State 2.[8] However, this practice would likely be inconsistent with any actual utilization differential and could materially overstate or understate the modeled CSR load.

Moreover, as discussed below, the induced demand factors applied to reflect increased utilization as a result of lower cost-sharing may not actually apply to the typical income-based CSR population.

- **Socioeconomic considerations**
  By design, CSRs are limited to individuals in households with income between 100% and 250% of the FPL. Lower-income individuals may generally face many financial and nonfinancial barriers to care. As such, they generally utilize less care than individuals with higher incomes. These utilization differences would serve to reduce the amount of CSRs provided.

  Results from a CMS 2021 risk adjustment technical paper[9] show that income-based CSR enrollees use significantly less care on a risk-adjusted basis than individuals in standard plans. In the technical paper, CMS noted that this result runs counter to the assumption that the more generous plan designs of CSR plan variations should drive higher utilization.[10] If nonfinancial barriers are limiting access to care, then estimates of CSRs would be lower for non-CSR enrollees at the same AV. This factor should result in lower CSR loads, but such reductions wouldn't be captured in the federal AV CSR calculation approach.

- **Age and morbidity**
  The presence of more generous premium tax credits for enrollees eligible for CSRs likely affects the level of anti-selection and demographic mix for these enrollees relative to unsubsidized enrollees. This factor results in relative utilization for CSR enrollees that is meaningfully different, which could affect the actuarial value of services for CSR enrollees relative to members enrolled in standard plans.

- **Implications of price sensitivity on enrollment distributions**
  Low-income enrollees are sensitive to the net premium after application of tax credits. As a result, issuers should generally develop CSR loads consistent with enrollment in the benchmark plan rather than their own plan-specific enrollments. An issuer that anticipates low silver uptake as a result of not offering the benchmark plan could anticipate limited CSR enrollment. If the issuer prices using this anticipated enrollment, the lower resulting CSR load could shift its competitive position, inadvertently resulting in significantly higher-than-anticipated CSR enrollment. By virtue of the lower CSR load, the issuer could then be exposed to significant risk if actual CSR costs exceed those allowed for by the load. At the same time, issuers may have limited data with regards to the CSR distribution for the

[8] This calculation spreads the effects of induced utilization on allowed claims across all plans as part of the single risk pool requirement. If only the total plan design variation AV is increased (so that the subsidy AV for the 94% silver plan variation is 35.28% = 94% * 1.12 – 70%) so that the total effect of induced utilization is nominally isolated to the CSR plans themselves, then the load increases about 50%, to 45% for State 1. However, this is not an appropriate actuarial representation of the underlying costs—it suggests that the actuarial value of the base plan is actually 70% / 1.12, or about 62.5%.

[9] *HHS-Operated Risk Adjustment Technical Paper on Possible Model Changes*; CMS; October 26, 2021

[10] The Academy submitted comments on this technical paper in November 2021.

benchmark plan, which adds an additional layer of uncertainty to the potential distribution of CSR enrollees and resulting CSR loads.

This situation could create some subsidization for non-benchmark plan issuers as the resulting CSR load is likely to be too high relative to enrollment. However, the higher silver premiums are likely to alter behavior of non-CSR enrollees as well, as these individuals may be more likely to select a plan in another metal tier or—in states with a silver QHP-only load—a silver plan off the exchange that provides a better value, limiting the overall effect of the excessively high CSR load on plan revenues.

- **Actuarial value de minimis ranges**
  A limitation of the federal AV approach is that actuarial values of plans in the metal tiers can vary significantly from the statutorily-defined base value, due to allowable de minimis variations in AV. These de minimis ranges can affect the premium relativities between metal tiers as well as the CSR load. For instance, in 2022, the allowable de minimis range for silver tier plans is -4/+2 percentage points, meaning silver tier plans could have had an actuarial value as low as 66% and as high as 72%. The allowable de minimis range for CSR plan variations is -1/+1 percentage points relative to the statutory CSR plan variation AVs shown in Table 5.[11]

  Issuers that wish to compete for subsidy-eligible individuals generally target lower prices for their silver plan offerings on exchange. This strategy creates an incentive for issuers to have lower-cost plans, which can translate to offering plans with lower actuarial values within the de minimis range. If issuers offer a standard silver tier plan at the lowest end (66%) of the metal AV de minimis range, the theoretical CSR load would be 4 percentage points higher than that modeled in Table 5. However, that load would be applied to a standard silver plan with a lower AV. In addition, the same incentive for issuers to have lower costs plans also creates an incentive for lower CSR loads, which could drive plans to use leaner CSR plan variations. In this case, using a standard silver AV at the lowest end of the de minimis range along with the CSR plan variations at the lowest end of the de minimis range would increase the CSR loads modeled in Table 5 by 2 percentage points for 2022. Actuaries are aware of their plans' statutory AVs and, if using the federal AV approach, would be able to incorporate the effects of de minimis range variations into their CSR loads.

- **Actuarial considerations**

  From the perspective of actuarial soundness, the purpose of a CSR load is to ensure that premiums for silver plans are increased by an appropriate amount to offset the specific additional costs incurred for these plans as a result of the federal decision to cease

[11] In the HHS Notice of Benefit and Payment Parameters for 2023, the lowest possible actuarial value for an on-exchange silver plan will be 70%, with CSR variations only permitted be as low as the statutory values, in line with the presentation in Table 5 and Table 6. This reduces but does not eliminate the potential influence of CSR AV de minimis variation on projected CSR loads, though it does make them more likely to line up with the statutory presentation.

reimbursements for CSR subsidies.[12] CSR loads that produce projected revenue that materially exceeds expected subsidy amounts and related administrative costs in order to increase premium subsidies would almost certainly result in overinflated silver premiums that are actuarially unsound. In turn, an overall reduction in the projected index rate of the pool would be required, thereby favoring non-silver plans and producing a subsidization between silver plans and other metal tiers. Such a result would be a failure for the CSR load to perform its stated purpose and rendering the load actuarially unsound in this regard.

Actuarial methods for projecting costs are typically designed to estimate expected experience for the modeled population. In the context of the individual market, this can be the entire single risk pool (for example, when setting the index rate), but it also can be a subset of plans (for example, costs for non-essential health benefits [non-EHBs] must be pooled only across plans that offer those non-EHBs). However, estimating these aggregated values typically involves plan-level calculations. For example, the overall level of allowed EHB claims across the single risk pool is the composite of the specific plan level expectations of EHB allowed. Failure to incorporate selection differences among plans in setting the index rate may lead to an index rate that is too low or too high depending on assumed enrollment mix. Calculating the index rate as the composite of the actual expected EHB allowed amounts by plan clearly does not violate the single risk pool requirement, and failure to do this may lead to actuarially unsound premium rates, because premiums would be based on actuarially unsound pool-wide claims expectations. The single risk pool requirement is only violated when the issuer reflects any prohibited plan-specific elements in the market-wide adjustments or in the allowable rating factors. Similarly, using specific experience to calculate the amount of unfunded CSRs is not in violation of the single risk pool requirement, and an actuarially sound CSR load remains compliant as long as the methodology used to spread that amount across all plans is deemed appropriate by federal and state regulators.

We note there may be policy-driven reasons to create this subsidization, such as a state's desire to increase silver premiums and thus increase premium tax credits available to individuals. There may be a desire to produce these effects via a justification that appears to be actuarial in nature. However, using an amount known to be inaccurate and inconsistent with reasonable expectations of consumer behavior is not an actuarial assumption, even when this assumption is made by an actuary. While differences between actual and projected experience are to be expected, actuaries typically incorporate known sources of variation into these projections to minimize the expected error. In the case of a CSR load, these variations are fundamentally driven by the difference in specific experience for CSR enrollees and for non-CSR enrollees. Capturing the magnitude of these variations can be done in an actuarially sound way without violating the single risk pool requirement. Regulators are currently permitted to prescribe that the load be calculated in an actuarially unsound way, but actuaries must remain aware of and address any interaction between state directives and the actuarial soundness of the rate filing in accordance with actuarial standards of practice (ASOPs).

[12] In this letter, we do not address implications of any risk adjustment inaccuracy that could result from the socioeconomic data observed by CMS. We note that CMS is currently evaluating modifications to risk adjustment that may address unfunded CSR subsidies, but formal rulemaking on this topic has yet to occur. In practice, a CSR load could be developed with regards to risk-adjusted revenue rather than paid claims as illustrated in this section, and any changes to the risk adjustment model could have significant implications for any such approach.

Different Approaches to Calculating CSR Loads Can Result in Significant Differences in Estimates

In this letter, we have outlined two ways of using experience data to develop a CSR load ("first principles" and a pricing model), as well as a federal AV approach. The experience data approaches are more likely to result in actuarially sound CSR loads, whereas the federal AV approach is not likely to be actuarially sound. The approach used to develop a CSR load can significantly impact the resulting load factors. Only the actuarially sound approaches are consistent with plan experience and expectations. Table 7 summarizes the difference of the methodologies discussed in the prior sections.

Table 7. Variation of CSR Subsidy by Approach

	Experience Approach			
CSR Variant	**First Principles**	**Pricing Model**	**Federal AV Approach**	**% of Silver Membership**
Base Silver	$0.00	0.0%	0.0%	10%
73% CSR Variant	$9.70	2.0%	3.0%	10%
87% CSR Variant	$48.50	9.0%	17.0%	20%
94% CSR Variant	$67.90	14.0%	24.0%	60%
Weighted Average	**$51.41**	**10.4%**	**18.1%**	
Base Plan	**$350.00**	**72.1%**	**70.0%**	
Implied CSR Load (no adjustments)	**14.7%**	**14.4%**	**25.9%**	
Implied CSR Load (adjusted)		***14.9%***		

Source: 2022 OEP Public Use File, rounded to the nearest 10%.
Note: The distribution of silver membership is based open enrollment plan selections for 2022 in states using healthcare.gov.

The development of a CSR load is also heavily influenced by the projected enrollment by CSR variant. Issuers should develop enrollment projections that are supportable, whether using historical experience or publicly available data. Table 8 shows the impact that different enrollment assumptions by CSR variant may be expected to have on a CSR load, using relative cost factors from the "first principles" approach shown in Table 1. The first two distributions shown represent two states in 2022 open enrollment data, while the third represents a theoretical enrollment distribution that assumes anyone not in a silver 94% variation chooses a more favorable plan (e.g., gold) at a lower premium. This is considered by some to be the end result of rational consumer decisions assuming optimal choices. However, these choices are unlikely to be the result of current consumer purchasing patterns, and would not represent an actuarially sound projection of enrollment. However, it clearly produces the largest CSR load of the scenarios outlined in Table 8.

Table 8. Impact on CSR Load of Varying Enrollment Assumptions Using 'First Principles' Approach

	Costs		% of Silver Membership		
CSR Variant	**Base Plan**	**CSR Subsidy**	**State A**	**State B**	**State C**
Base Silver	$370.00	$0.00	28%	3%	0%
73% CSR Variant	$360.00	$9.70	19%	4%	0%
87% CSR Variant	$350.00	$48.50	29%	19%	0%
94% CSR Variant	$345.00	$67.90	24%	74%	100%
Base Plan			$356.30	$347.30	$345.00
Weighted-Average Factor			$32.20	$59.85	$67.90
Implied CSR Load			9.0%	17.2%	19.7%

Note: State A is modeled after Ohio. State B is modeled after Florida. State C is meant to reflect a hypothetical state in which all silver plan enrollees are enrolled in a 94% CSR variant. Membership reflects on exchange enrollment only and the implied silver load is applicable only to on exchange silver tier plans.

The implied CSR loads for states B and C are 8.2 and 10.7 percentage points higher, respectively, than the implied CSR load for State A. As suggested by Table 7, these results are also highly dependent on the actual costs / plan actuarial value factors used to develop this load.

The enrollment scenarios are intended to provide an understanding of the variation in the CSR load that may be expected based on different enrollment assumptions. Additional factors contribute to the variation in the distribution of enrollees by CSR variant by geography in addition to whether a state chose to expand Medicaid or implement a Basic Health Plan. For instance, enrollment education and outreach activities, urban vs. rural status, any additional state provided premium or CSR subsidies, and local market dynamics can affect the distribution of silver tier enrollment.

It's also important to recognize that consumers do not choose a plan based solely on price. Other factors—such as provider network, formulary, and service-specific cost-sharing—may influence the plan choice. Additionally, many consumers auto-renew coverage, and they may not be aware of new, lower-cost options available to them. These factors may help explain why consumers choose to enroll in base silver plans even if gold plans are available on the exchange at a lower cost relative to the lowest-cost silver plan or second-lowest-cost silver plan. These factors generally would not support an assumption that the only consumers expected to enroll in silver plans on the exchange would be those eligible for the 94% CSR variant.

Conclusion

The choice of approach used when developing a CSR load factor can significantly affect the size of the load factor—which in turn means that CSR-loaded premiums have the potential to over- or under-account for the actual unfunded CSRs. Although we recommend that any method used be actuarially sound, this letter is not intended to prescribe any specific methodology for the development of CSR loads. There are multiple actuarially sound approaches beyond those described above. These approaches all share the characteristic that they are calibrated against actual experience to produce results consistent with the anticipated incurred costs. If factors and enrollment used in developing the CSR load are not aligned with issuer experience, the resulting CSR load and premium will not be actuarially sound.

Actuarially unsound rates produce cross-subsidies from enrollees in one group of plans to those in another group of plans beyond that intended by federal regulation of premium development. If the premium for the second-lowest-cost silver plan is excessive, then the subsidized consumer may not be impacted because the federal premium tax credit insulates the enrollee from changes in the benchmark premium rate. However, the inflated federal premium tax credit increases the cost to the federal government. In addition, if the premium is excessive relative to actual costs, a medical loss ratio (MLR) rebate may be required. In effect, this rebate would transfer federal dollars for premium subsidies to enrollees, including unsubsidized enrollees. If the excessive CSR load results in higher non-silver premium rates, non-subsidized consumers will experience higher premiums.

State regulators may have non-actuarial policy-driven reasons for higher CSR loads. This could include increasing benchmark plan silver premiums in order to increase federal premium tax credits available to individuals. In pursuit of these goals, state laws or regulations may prescribe the use of methods that are not actuarially sound, and ASOPs typically require compliance with regulatory directives. When the actual costs of CSRs are not aligned with the amount of the CSR load, then premium rates may not be actuarially sound, and actuaries must acknowledge any actuarial unsoundness in the rate filings as part of the actuarial certification in accordance with applicable ASOPs.

If CSR loads and therefore premiums are insufficient, the issuers' solvency could be negatively impacted, particularly if the insufficient CSR load results in an issuer obtaining the increased enrollment associated with offering a silver plan at or below the benchmark premium. Should the issuer sustain any losses, this situation is likely to result in higher future rate increases as CSR loads and/or premiums for other plans are increased to reflect more accurate estimates of CSR costs and maintain the issuer's financial viability.

Actuaries are typically required to follow laws, regulations, and guidance provided by government authorities. However, as financial stewards of our public and private insurance systems, actuaries aim to produce accurate estimates of revenues and liabilities associated with various risks. With regard to CSR loads, this obligation requires actuaries to use actuarially sound methods when such methods are available. As such, in our opinion, actuaries should avoid use of the federal AV method outlined in this letter when projecting estimates of actual cost whenever appropriate data for an actuarially sound methodology is available.

Finally, the sensitivity of the CSR load to the method chosen and more generally the concerns regarding how CSRs are calculated serve to highlight the problems arising from the federal government's decision to cease reimbursing issuers for the CSRs. Resuming reimbursement for those issuer costs would alleviate the need to calculate and apply a CSR load. An indirect effect of resuming federal funding of CSRs would be a decrease in premium subsidies available to eligible enrollees. However, if federal funding of CSRs were resumed, federal policymakers could choose to restore premium subsidies to current levels directly, avoiding the negative impact on eligible enrollees.

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We appreciate the opportunity to provide comments on CSR premium load factors. We would welcome the opportunity to speak with you to provide more detail and answer any questions you might have regarding these comments or on other issues. If you have any questions or would like to discuss further, please contact Matthew Williams, the American Academy of Actuaries senior health policy analyst, at williams@actuary.org.

Sincerely,

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cc: National Association of Insurance Commissioners (NAIC)
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