



Date: April 9, 2018

Subject: Exemption from HHS-Operated Risk Adjustment Data Validation (HHS-RADV) for Issuers in Liquidation or Entering Liquidation

The Centers for Medicare & Medicaid Services (CMS), on behalf of the Department of Health and Human Services (HHS), conducts risk adjustment data validation under 45 C.F.R. §153.630 in any State where HHS is operating risk adjustment on a State's behalf.¹ The purpose of the HHS-RADV program is to ensure issuers are providing accurate high-quality information to HHS, which is crucial for the proper functioning of the HHS-operated risk adjustment program. The HHS-RADV program consists of an initial validation audit and a second validation audit. In response to the experience and feedback from issuers during the first pilot year of HHS-RADV, we finalized several amendments and clarifications to the risk adjustment data validation program as part of the HHS Notice of Benefit and Payment Parameters for 2019 final rule. This included an exemption for issuers with 500 billable member months or fewer beginning with HHS-RADV for the 2017 benefit year.

CMS continues to explore ways to ensure the integrity of the results of risk adjustment while alleviating issuer burden associated with participating in HHS-RADV. Some issuers and State regulators have expressed concern regarding the regulatory burden and cost associated with complying with HHS-RADV requirements for issuers in liquidation or who are entering liquidation. We have previously considered these concerns and provided relief where possible during the pilot years of HHS-RADV.

CMS intends to propose in future rulemaking an exemption from the requirement to hire an initial validation auditor and submit initial validation audit results for issuers in liquidation or entering liquidation. We believe exempting this small subset of issuers who are in (or entering) liquidation from the HHS-RADV requirements is appropriate because of the issuers' extremely limited financial and staff resources. Under the approach CMS intends to propose, issuers in liquidation or who provide an attestation, from an individual who can legally and financially bind the issuer, that the issuer will enter liquidation no later than April 30, 2019, would be exempt from the 2017 benefit year HHS-RADV. We are considering the April 30, 2019 date because it is prior to when payment adjustments as a result of the 2017 benefit year of HHS-RADV would be implemented. Under this approach, issuers in liquidation or who are entering liquidation that would be exempt from 2017 benefit year HHS-RADV would not be required to hire an initial validation audit entity or submit initial validation audit results and would not be subject to enforcement actions or assessed the default risk adjustment data validation charge set forth at 45 C.F.R. § 153.630(b)(10). Similar criteria would be proposed for issuers in liquidation or entering liquidation for the 2018 benefit year HHS-RADV and beyond with one caveat. For the 2018 benefit year and beyond, if

¹ Starting with the 2017 benefit year, no State has elected to operate a risk adjustment program. Therefore, HHS operates risk adjustment in all States.

the issuer is an outlier in prior year's HHS-RADV, we would not permit the issuer to be exempt from the subsequent benefit year's HHS-RADV if the issuer enters liquidation. We would propose that these issuers would be required to participate in HHS-RADV or receive the default charge under 45 C.F.R. § 153.630(b)(10). We are not considering extending the same outlier criteria to the 2017 benefit year exemption proposal because the 2016 benefit year HHS RADV is a pilot year.