

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
Center for Consumer Information & Insurance Oversight
200 Independence Avenue SW
Washington, DC 20201



July 27, 2018

Subject: Update on the HHS-operated Risk Adjustment Program for the 2017 Benefit Year

The Centers for Medicare & Medicaid Services (CMS), on behalf of the Department of Health and Human Services (HHS), operates a risk adjustment program pursuant to section 1343 of the Patient Protection and Affordable Care Act (PPACA) on behalf of any state which does not elect to operate their own risk adjustment program. For the 2017 benefit year, HHS operated risk adjustment on behalf of all states and the District of Columbia.

On February 28, 2018, the United States District Court for the District of New Mexico issued a decision vacating the use of statewide average premium in the HHS-operated risk adjustment transfer formula for the 2014 – 2018 benefit years.¹ Following this decision, CMS announced the suspension of risk adjustment payments and charges² and published a *Summary Report on Permanent Risk Adjustment Transfers for the 2017 Benefit Year*.³ CMS also released a guidance document with additional details on the implications of this court decision.⁴

In order to resume risk adjustment operations for the 2017 benefit year as quickly as possible, CMS released the Adoption of the Methodology for the HHS-operated Permanent Risk Adjustment Program under the Patient Protection and Affordable Care Act for the 2017 Benefit Year final rule. On July 25, 2018, this final rule went on display on the Federal Register website⁵ and it is scheduled to be published on July 30, 2018. The final rule adopted the HHS-operated risk adjustment methodology that utilizes statewide average premium for the 2017 benefit year as set forth in the rules published on March 23, 2012 (77 FR 17220 through 17252) and March 8, 2016 (81 FR 12204 through 12352). This administrative action allows HHS to resume 2017 benefit year risk adjustment operations.

¹ *New Mexico Health Connections v. United States Department of Health and Human Services et al*, No. CIV 16-0878 JB/JHR (D.NM. 2018).

² *United States District Court Ruling Puts Risk Adjustment On Hold Press Release* available at: <https://www.cms.gov/Newsroom/MediaReleaseDatabase/Press-releases/2018-Press-releases-items/2018-07-07.html>.

³ Available at: <https://downloads.cms.gov/ccio/Summary-Report-Risk-Adjustment-2017.pdf>.

⁴ Available at: <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Implications-of-the-Decision-by-United-States-District-Court-for-the-District-of-New-Mexico-on-the-Risk-Adjustment-and-Related-Programs.pdf>.

⁵ Available at: https://s3.amazonaws.com/public-inspection.federalregister.gov/2018-16190.pdf?utm_campaign=pi%20subscription%20mailing%20list&utm_source=federalregister.gov&utm_medium=email

This document provides updated guidance as to the operation of the HHS-operated risk adjustment program for the 2017 benefit year in light of publication of this final rule, as described below:

- **Collection of 2017 Benefit Year Risk Adjustment Charges:**⁶ CMS will begin collection of the 2017 benefit year risk adjustment charge amounts announced in the *Summary Report on Permanent Risk Adjustment Transfers for the 2017 Benefit Year*⁷ through netting pursuant to 45 C.F.R. § 156.1215(b) and subsequently issuing invoices if an amount remains outstanding in the September 2018 monthly payment cycle. Under this timeline, issuers would receive 2017 benefit year invoices between September 11-13, 2018.
- **Distribution of 2017 Benefit Year Risk Adjustment Payments:** CMS will begin making the 2017 benefit year risk adjustment payments outlined in the *Summary Report on Permanent Risk Adjustment Transfers for the 2017 Benefit Year*⁸ as part of the October 2018 monthly payment cycle, continuing on a monthly basis as collections are received. Under this timeline, issuers would receive 2017 benefit year payments beginning around October 22, 2018.
- **2017 Benefit Year EDGE/Risk Adjustment Discrepancies:** CMS will resume issuing discrepancy resolution decisions immediately.
- **2017 Benefit Year Risk Adjustment Administrative Appeals:** CMS will open the 30-day administrative appeals period for matters related to the calculation of 2017 benefit year transfer amounts (including calculation of risk adjustment default charges) on Wednesday, August 8, 2018. The window to appeal matters related to the calculation of 2017 benefit year risk adjustment transfer amounts will close on Friday, September 7, 2018. As noted in prior guidance,⁹ CMS did not delay the administrative appeals process for matters related to the 2017 benefit year risk adjustment user fees. Issuers have until August 10, 2018, to request reconsideration of the 2017 benefit year user fee amounts. CMS will hold a training webinar on the administrative appeals process under 45 C.F.R. § 156.1220 in the near future. Please register for this training through <https://www.regtap.info/>. For questions related to the administrative appeals process, please email ACAfinancialappeals@cms.hhs.gov.
- **Medical Loss Ratio (MLR) Reporting:** For purposes of the 2017 MLR and rebate calculations, issuers should follow the MLR Form Instructions for the 2017 reporting year¹⁰ and should report the 2017 benefit year risk adjustment transfer amounts as shown on the *Summary Report on Permanent Risk Adjustment Transfers for the 2017 Benefit Year*¹¹ (unless instructed otherwise by CMS). Issuers who believe that they will not be

⁶ References to risk adjustment charges in this document include risk adjustment default charges.

⁷ Available at: <https://downloads.cms.gov/ccio/Summary-Report-Risk-Adjustment-2017.pdf>.

⁸ *Id.*

⁹ See the July 12, 2018 *Implications of the Decision by United States District Court for the District of New Mexico on the Risk Adjustment and Related Programs* available at: <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Implications-of-the-Decision-by-United-States-District-Court-for-the-District-of-New-Mexico-on-the-Risk-Adjustment-and-Related-Programs.pdf>.

¹⁰ Available at: <https://www.cms.gov/CCIIO/Resources/Forms-Reports-and-Other-Resources/Downloads/2017-MLR-Form-Instructions.pdf>

¹¹ Available at: <https://downloads.cms.gov/ccio/Summary-Report-Risk-Adjustment-2017.pdf>.

able to file their MLR reports by the July 31, 2018 deadline or have other questions related to MLR reporting may contact MLRQuestions@cms.hhs.gov.

CMS will communicate any other updates as soon as they are available. For questions, please contact CMS at RARIPaymentOperations@cms.hhs.gov.