



ACA COMPLIANCE BULLETIN

HIGHLIGHTS

- CMS halted payments under the ACA's risk adjustment program due to ongoing litigation.
- As a result, no collections or payments will be made under the program, including amounts for the 2017 benefit year, until the litigation is resolved.
- CMS has asked the federal court to reconsider its ruling.

IMPORTANT DATES

February 28, 2018

A federal court invalidated CMS' risk adjustment formula, in conflict with an earlier federal court ruling.

July 7, 2018

CMS halted collections or payments under the risk adjustment program until the litigation is resolved.

HHS SUSPENDS ACA RISK ADJUSTMENT PAYMENTS

OVERVIEW

On July 7, 2018, the Department of Health and Human Services (HHS) Centers for Medicare & Medicaid Services (CMS) [halted payments to insurers](#) under the risk adjustment program as a result of ongoing litigation. Risk adjustment is a permanent program under the Affordable Care Act (ACA) that provides payments to insurers that attract higher risk populations by transferring funds from plans that enroll the lowest risk individuals to those plans that enroll the highest risk individuals.

According to CMS, conflicting federal court rulings currently prevent the federal government from collecting or disbursing funds under the risk adjustment program. **As a result, no collections or payments will be made under the program, including amounts for the 2017 benefit year, until the litigation is resolved.**

ACTION STEPS

CMS has asked one federal court to reconsider its decision and is currently awaiting the court's ruling. CMS will provide additional information and updates to the status of collections or payments under the risk adjustment program as necessary.

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Overview

Risk adjustment is a permanent program under the ACA that applies to all non-grandfathered plans in the individual and small group markets both inside and outside of the Exchanges. According to HHS, the primary goal of the risk adjustment program is to better spread the financial risk carried by health insurance issuers to make sure premiums remain stable. The program is intended to provide payments to issuers that attract higher risk populations by transferring funds from plans that enroll the lowest risk individuals to those plans that enroll the highest risk individuals.

The ACA requires each state to have a risk adjustment program. States that operate their own Exchanges could establish their own risk adjustment program, but were not required to do so. States that operate a SHOP-only Exchange could establish their own risk adjustment program for 2015 and later years if they use a methodology that addresses risk selection in both the individual and small group markets.

If a state did not establish its own risk adjustment program, HHS performs the risk adjustment functions for that state. HHS collects a user fee to support the administration of HHS-operated risk adjustment. This fee applies to issuers in states in which HHS is operating the risk adjustment program.

Ongoing Litigation

On July 29, 2016, a New Mexico health insurance co-op sued the federal government over the formula used to determine collections and payments under the risk adjustment program. On the same day, a health insurance issuer in Massachusetts filed a similar lawsuit. The primary focus of these lawsuits is whether CMS acted within its authority in using the statewide average premium to determine its risk adjustment formula.

On Jan. 30, 2018, the U.S. District Court for the District of Massachusetts ruled in favor of the federal government, finding that CMS acted within its authority in using the statewide average premium. However, on Feb. 28, 2018, the U.S. District Court for the District of New Mexico invalidated CMS' use of the statewide average premium in the risk adjustment transfer formula for the 2014-2018 benefit years, pending further explanation of CMS' reasons for operating the risk adjustment program in a budget neutral manner in those years.

Practical Impact

According to CMS, the U.S. District Court for the District of New Mexico's ruling prevents CMS from making further collections or payments under the risk adjustment program until the litigation is resolved. Following the decision, CMS filed a motion for reconsideration with the U.S. District Court for the District of New Mexico.

CMS will provide additional guidance shortly on how it will handle other issues relating to risk adjustment payments, including EDGE server data collection operations, appeals of 2017 risk adjustment amounts and how issuers should treat risk adjustment amounts in the calculation of medical loss ratios.