CMS Adopts the Methodology for the Permanent Risk Adjustment Program under the Patient Protection and Affordable Care Act for the 2017 Benefit Year

Date 2018-07-24
Contact press@cms.hhs.gov

CMS Adopts the Methodology for the Permanent Risk Adjustment Program under the Patient Protection and Affordable Care Act for the 2017 Benefit Year

Final rule addresses the collection of risk adjustment charges and making of payments for the 2017 benefit year

Today, the Centers for Medicare and Medicaid Services (CMS) posted a final rule that reissues, with additional explanation, the risk adjustment methodology that CMS previously established for transfers related to the 2017 benefit year. This important step fills a void created by a federal district court’s vacating of the previously issued methodology, and enables the agency to resume the CMS-operated risk adjustment program in the individual and small group markets.

The Patient Protection and Affordable Care Act (PPACA) established a permanent risk adjustment program to provide payments to health insurance issuers that enroll higher-risk populations, such as those with chronic conditions, funded by payments from those that enroll lower-risk populations, thereby reducing incentives for issuers to avoid higher-risk enrollees.

“This rule will restore operation of the risk adjustment program, and mitigate some of the uncertainty caused by the New Mexico litigation,” said CMS Administrator Seema Verma. “Issuers that had expressed concerns about having to withdraw from markets or becoming insolvent should be assured by our actions today. Alleviating concerns in the market helps to protect consumer choices.”

CMS has determined that taking immediate action to allow for the continued operation of the risk adjustment program is imperative to maintain stability and predictability in the individual and small group health insurance markets. Quick resolution also helps to preserve the significant investment made by states, issuers, and the federal government to stand up the program. This final rule reissues the risk adjustment methodology previously established for the 2017 benefit year.

Since its inception in 2014, the risk adjustment program has faced multiple federal court challenges. On February 28, 2018, the United States District Court for the District of New Mexico issued a decision finding CMS’ use of statewide average premium in the risk adjustment transfer formula governing the 2014-2018 benefit years to be arbitrary and capricious. The court vacated the rule, and remanded it to the agency for further explanation of CMS’ rationale for adopting the statewide average premium. Since this case was filed, CMS has vigorously defended its implementation of the risk adjustment program. CMS has sought relief from the court’s February order, and filed a motion for reconsideration.

A hearing on the motion for reconsideration was held on June 21, 2018 in which the judge suggested a final ruling may not come until Labor Day. Following that hearing, it was clear that the case would not be resolved through the normal process in time to for the agency to make scheduled risk adjustment payments and collections in August.

This circumstance provided good cause for CMS to issue a final rule that dispenses with the typical notice and comment period. This final rule provides a fuller explanation supporting the 2017 risk adjustment methodology, consistent with the judge’s request, and allows us to resume the risk adjustment program without delay.

Furthermore, today’s final rule announces the agency’s intention to issue a Notice of Proposed Rulemaking (NPRM) to propose and solicit comment on the CMS risk adjustment methodology that will apply to the 2018 benefit year, which was also vacated by the court. In the draft 2019 Payment Notice, we sought comment on our proposal to use the statewide average premium in the CMS risk adjustment methodology for the 2019 benefit year and beyond. We finalized that approach as proposed in the final 2019 Payment Notice published on April 17, 2018.

The final rule can be found at the federal register here: https://s3.amazonaws.com/public-inspection.federalregister.gov/2018-16190.pdf.

Get CMS news at cms.gov/newsroom, sign up for CMS news via email and follow CMS on Twitter CMS Administrator @SeemaCMS, @CMSgov

(format reduced for printing)