

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



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Subject: Update on the HHS-Operated Risk Adjustment Program Transfers for the 2014-2016 Benefit Years

In light of the December 31, 2019 Tenth Circuit Court of Appeals decision in *New Mexico Health Connections v. United States Department of Health and Human Services (HHS)*¹, this document notifies issuers that the **Centers for Medicare & Medicaid Services (CMS) will resume the collection of risk adjustment charges (including overpayments) and distribution of risk adjustment payments for the 2014-2016 benefit years, beginning in the June 2020 payment cycle.**

CMS, on behalf of HHS, operates a risk adjustment program pursuant to section 1343 of the Patient Protection and Affordable Care Act (PPACA) in any State which does not elect to operate its own risk adjustment program. In the 2014-2016 benefit years, HHS operated risk adjustment on behalf of all States and the District of Columbia, except Massachusetts.²

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 risk adjustment state payment transfer formula for the 2014-2018 benefit years.³ The ruling prevented CMS from making further collections or payments under the risk adjustment program, including with respect to amounts for the 2014-2018 benefit years.

On July 12, 2018, CMS notified issuers of risk adjustment covered plans about the suspension of risk adjustment payments and charges and related issues in guidance entitled *Implications of the Decision by United States District Court for the District of New Mexico on the Risk Adjustment and Related Programs*.⁴ This guidance stated that CMS would inform stakeholders of the status of collections and payments for the impacted benefit years at a future date.

¹ *New Mexico Health Connections v. United States Department of Health and Human Services*, 946 F.3d 1138 (10th Cir. 2019).

² HHS began operating risk adjustment in all States and the District of Columbia in the 2017 benefit year.

³ *New Mexico Health Connections v. United States Department of Health and Human Services*, 312 F. Supp. 3d 1164 (D.N.M. 2018).

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>.

CMS then resumed operations for the 2017 and 2018 benefit years following the issuance of final rules on July 31, 2018 and December 10, 2018 for each of those benefit years respectively.⁵ These rules ratified and reissued the previously published risk adjustment methodology, with an additional explanation of the rationale for use of statewide average premium in the state payment transfer formula and the reasons for operating the HHS program in a budget-neutral manner. At the same time, CMS continued to actively litigate the New Mexico District Court case and pursue resolution of the legal issues raised in that case by appealing the District Court's ruling to the Tenth Circuit Court of Appeals.

On December 31, 2019, the Tenth Circuit Court of Appeals reversed the New Mexico District Court's judgment as to all years. The court held that HHS's use of statewide average premium in the risk adjustment state payment transfer formula in 2014-2016 was reasonable and HHS had adequately explained why it chose to use statewide average premium, including the decision to operate the program in a budget-neutral manner. CMS will therefore now resume collection and distribution of any remaining amounts for the 2014-2016 benefit years under the HHS-operated risk adjustment program, beginning with the June 2020 payment cycle.

For questions, please contact CMS at RARIPAYMENTOPERATIONS@cms.hhs.gov.

⁵ See the *Adoption of the Methodology for the HHS-operated Risk Adjustment Program under the Patient Protection and Affordable Care Act for the 2017 Benefit Year*; Final Rule, 83 FR 36456 (July 31, 2018); the *Update on the HHS-operated Risk Adjustment Program for the 2017 Benefit Year* (July 27, 2018), available at <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/2017-RA-Final-Rule-Resumption-RAOps.pdf> and the *Patient Protection and Affordable Care Act: Adoption of the Methodology for the HHS-operated Risk Adjustment Program for the 2018 Benefit Year*; Final Rule, 83 FR 63419 (Dec.10, 2018).