Health Reform WK-EDGE Wrap Up, HEALTH INSURANCE EXCHANGES/MARKETPLACE—And the debt goes on: 2016 risk corridor collections will pay 2014 balances, (Nov. 15, 2017)

Health Reform WK-EDGE Wrap Up

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Because 2015 benefit year collections under the risk corridor program were insufficient to pay 2014 benefit year payment balances in full, HHS will use issuer-level risk corridors payments and charges for 2016 benefit year risk corridors collections to make additional payments toward 2014 benefit year payment balances, according to a CMS Bulletin from the Center for Consumer Information & Insurance Oversight (CCIO). The risk corridor payment and charge amounts published in the bulletin reflect risk corridors data submitted to HHS by September 30, 2017, and do not account for amounts that may be held back for administrative appeals (CCIO Memorandum, November 13, 2017).

Establishment of the risk corridor program. Section 1342 of the Patient Protection and Affordable Care Act (ACA) (P.L. 111-148) created the temporary risk corridor program to provide issuers with protection against uncertainty resulting, in part, from the prohibition against denial of enrollment to individuals based upon preexisting conditions by limiting issuers’ losses and gains for calendar years 2014 through 2016. Under section 1342(b)(1), the HHS Secretary must make payments to QHPs that suffer losses above a set amount. Under section 1342(b)(2), QHPs experiencing gains above a set amount make payments to the Secretary (see 2015 risk corridor payments will go toward 2014 balances, November 22, 2016).

Lawsuits. A number of insurers have filed lawsuits against the federal government seeking money owed under the risk corridor program. As recently as this month, Humana filed a lawsuit seeking $611 million in payments from the federal government for benefit years 2014 through 2016. According to Humana, the government’s “unilateral decision” to pay only a fraction of what it owes violates the language of Section 1342 of the ACA (see Humana sues government for $611M in risk corridor payments, November 8, 2017).

In a case filed by Moda Health Plan, Inc., the court found on February 7, 2017, that the government was liable for annual risk corridor payments. In another case, the court granted class certification and denied the government’s motion to dismiss on jurisdictional grounds, finding that HHS was required to make annual risk corridor payments to insurers. With no current appropriations for risk corridor payments and Congress’s attempts to repeal the ACA, however, it remains to be seen if, and how, HHS will pay (see When will insurers receive risk corridor payments? February 15, 2017).

Addressing the shortfall of risk corridor payments. HHS established a three-year payment framework for the risk corridors program beginning in 2014. HHS provided the details of the framework in a guidance titled Risk Corridors and Budget Neutrality. The guidance explains that “if risk corridors collections for a particular benefit year are insufficient to make full risk corridors payments as calculated for that benefit year, risk corridors payments are reduced pro rata to the extent of any shortfall. HHS then uses risk corridors collections for the subsequent benefit year toward risk corridors payment balances for the previous benefit years until issuers have been reimbursed in full for the previous benefit year, before making payments for the current benefit year.” On November 18, 2016, HHS announced that all 2015 benefit year risk corridors collections would be applied toward 2014 benefit year risk corridors payment balances.

Collection and payment. HHS plans to collect the full 2016 risk corridors charge amounts in November 2017. Based on the collections, HHS intends to reduce the 2014 payment amounts pro rata based on collections received. HHS will begin remitting risk corridors payments to issuers in January 2018, as collections are
received. The full 2016 risk corridors charge amounts as well as the 2014 payment amounts are listed by state and issuer in a table included in the memorandum.

Companies: Humana, Moda Health Plan, Inc.

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