

United States Senate

WASHINGTON, DC 20510

July 17, 2018

Seema Verma
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Room 445-G, Hubert H. Humphrey Building
200 Independence Ave., S.W.
Washington, D.C. 20201

Dear Administrator Verma:

We are writing to express serious concerns about the suspension of \$10.4 billion in risk adjustment collections and payments required by federal law following a February 2018 U.S. District Court decision in New Mexico, even though the decision did not include a nationwide injunction prohibiting such collections and payments.^[1] The risk adjustment program helps maintain stability in the individual and small group markets. The program is a commonsense way of making sure insurance companies do not avoid covering individuals with preexisting conditions. We urge CMS to live up to its public commitment to a “prompt resolution”^[2] by taking swift action, such as by releasing an interim final rule to address the issues raised by the New Mexico district court ruling.

As you know, Judge James O. Browning ruled that the U.S. Department of Health and Human Services (HHS) needs to take further steps to justify in rulemaking its methodology for determining risk adjustment payments and collections for 2017 and 2018. Specifically, the judge requests further justification for keeping the risk adjustment program budget neutral and using statewide average premiums as part of the formula. Although HHS is pursuing a reconsideration of this case, the judge in New Mexico has indicated he will not release his decision until the end of summer.

Letting this issue play out in the courts may not lead to a prompt resolution. Moreover, CMS has a quicker solution at its fingertips. In its 2019 Notice of Benefit and Payment Parameters, CMS included the further justifications sought by the judge. The rule discusses how a budget neutral framework minimizes uncertainty for insurers and prevents HHS from needing to rely on additional appropriated funds. HHS operates the risk adjustment program in every U.S. state, and the use of statewide average premiums as part of the formula ensures a balanced budget on a state-by-state basis, protecting taxpayer dollars. This same justification could be included in an interim final rule for prior years, addressing the judge’s concern while maintaining the Administration’s position in the case.

Insurers are warning about the short-term effects of missing the deadline for 2017 risk-adjustment payments and collections. If this occurs, it will financially reward the plans that enrolled higher numbers of healthy individuals in 2017 at the expense of plans that enrolled more individuals with preexisting

^[1] United States District Court for the District of New Mexico. *New Mexico Health Connections v. U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services*. 28 Feb. 2018, <https://s3.amazonaws.com/assets.fiercemarkets.net/public/004-Healthcare/new+mexico+health+connections2.pdf>.

^[2] “United States District Court Ruling Puts Risk Adjustment On Hold.” CMS.gov, 7 July 2018, www.cms.gov/Newsroom/MediaReleaseDatabase/Press-releases/2018-Press-releases-items/2018-07-07.html.

conditions. In the long term, we will see higher premiums due to the uncertainty this adds to the marketplace, on top of a number of efforts the Trump Administration has taken to undermine our health care system.

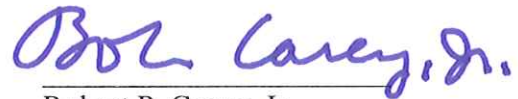
Insurance companies are currently finalizing their rates for 2019. The Blue Cross Blue Shield Association stated that this action will significantly increase 2019 premiums for millions of individuals and small businesses. America's Health Insurance Plans similarly stated that the decision will have serious consequences for millions of consumers, creating more market uncertainty and increasing premiums for many health plans.

In order to prevent rising premiums and protect coverage for individuals with preexisting conditions, CMS needs to act with the utmost urgency to resolve the \$10.4 billion hold on the risk adjustment program. The risk adjustment program is critical for stabilizing the individual and small group insurance markets and minimizing incentives for insurers to avoid enrolling individuals with higher health risks. We urge CMS to take immediate action by issuing an interim final rule that will protect this successful program.

Sincerely,



Gary C. Peters
United States Senator



Robert P. Casey, Jr.
United States Senator