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September 5, 2018

Centers for Medicare & Medicaid Services
Attention: CMS-9919-P
Hubert H. Humphrey Building
200 Independence Ave. SW
Washington, DC 20201

Re: Adoption of Methodology for HHS-Operated Permanent Risk Adjustment Program for 2018 Benefit Year (CMS-9919-P)

Dear Administrator Verma:

On behalf of the American Academy of Actuaries¹ Individual and Small Group Markets Committee and its Risk Sharing Subcommittee, we would like to offer comments on the Centers for Medicare and Medicaid Services' (CMS) and Department of Health and Human Services' (HHS) Aug. 10 proposed rule regarding the adoption of methodology for the HHS-operated permanent risk adjustment program.

We appreciate this opportunity to provide input on these unique actuarial issues. We encourage you to consider our comments as you work to advance this proposed rule. Our comments are offered in the context of our long-established mission to inform public policy deliberations in an objective and unbiased way.

The proposed rule reissues the previously published 2018 benefit year risk adjustment methodology with additional explanation supporting the use of statewide average premium and the rationale for operating risk adjustment in a budget-neutral manner. We view the reissuance of the previously published rule for the 2018 benefit year with the additional clarifications as a positive development.

We also approve of the risk adjustment methodology being budget-neutral. This is especially true in the absence of continuing appropriations guaranteed for the full amount of any possible shortfall between the amounts received from issuers with lower-risk enrollees and the amounts owed to issuers with higher-risk enrollees. Without the certainty of ongoing and full appropriations for risk adjustment, a non-budget-neutral risk adjustment methodology would create uncertainty for issuers as to whether full risk adjustment transfers will be paid. This uncertainty would impact pricing decisions and provide incentives for issuers to avoid higher-risk enrollees.

We are aware of two options being discussed for the premium parameter of the transfer formula—statewide average premium and a plan's own premium. Under an assumption of budget neutrality, methods that reduce the need for large retrospective reconciliations are preferable. Using statewide

¹ The American Academy of Actuaries is a 19,500-member professional association whose mission is to serve the public and the U.S. actuarial profession. For more than 50 years, the Academy has assisted public policymakers on all levels by providing leadership, objective expertise, and actuarial advice on risk and financial security issues. The Academy also sets qualification, practice, and professionalism standards for actuaries in the United States.

average premium makes the risk-adjustment methodology self-balancing. If a plan's own premiums were used under a budget-neutral program, the payments and/or charges would have to be prorated. CMS notes that this proration could be done by prorating payments owed down to equal charges collected, prorating charges up to equal payments owed, or by splitting the difference. These prorations would be calculated retrospectively based on the outcome of the risk adjustment transfer calculations and would need to be anticipated in the issuers' pricing calculations. This calculation adds an extra layer of complexity in estimating risk adjustment transfers and therefore in the premium rate preparation. In states where a significant amount of rate filing information is available when filed, carriers could end up requesting to refile rates once they see the premiums filed by other carriers.

Using a statewide average also eliminates the concern that if a plan's own premiums are used, an issuer that overprices its premiums will experience relatively larger risk-fund transfer amounts, whether charges or payments. An issuer that underprices its premiums will experience relatively smaller risk-fund transfers. We recognize that the use of a plan's own premium could result in better reflection of cost management through network discounts, care management, and plan efficiency. However, challenges in constructing a budget-neutral program when using other than a market average figure seem to outweigh potential benefits. Furthermore, many variances from a market average premium are likely the result of inaccurate rate setting. Using a plan's own premium could introduce some unintended incentives to price low, target healthy people, and minimize the risk adjustment transfer.

The 2018 risk adjustment methodology as published in the 2018 Notice of Benefit and Payment Parameters was relied upon by issuers when determining their participation in the individual and small group markets. Further, it was also used in determining the rates for these markets. We agree that no changes should be made to the risk adjustment methodology because issuers' rates have been set based on the published methodology and particularly because issuers are currently well into the 2018 benefit year. Any changes at this point would create unexpected losses for some issuers and windfalls for others and will increase ongoing issuer concerns that the rules will change after premium rates are filed, approved, and in use. Changing the rules causes uncertainty and often impacts future participation in these markets or results in higher rates to protect issuers from the uncertainty.

We appreciate the opportunity to provide these comments on the proposed rule and would welcome the opportunity to speak with you regarding these comments in more detail and answer any questions you have. If you have any questions or would like to discuss further, please contact David Linn, the Academy's senior health policy analyst, at 202-223-8196 or linn@actuary.org.

Sincerely,

Barbara Klever, MAAA, FSA
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