



AMERICAN ACADEMY of ACTUARIES

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October 3, 2019

Centers for Medicare & Medicaid Services (CMS)
Department of Health and Human Services (HHS)
Baltimore, MD 21244-8016

Re: Changes to RADV timing in the final 2020 NBPP and related documents

To Whom It May Concern,

On behalf of the Individual and Small Group Markets Committee (“the Committee”) of the American Academy of Actuaries,¹ I am providing comments on rules finalized in the 2020 Notice of Benefit and Payment Parameters (NBPP) concerning risk adjustment data validation (RADV)-related transfers.² In particular, these comments focus on the timing of the payment transfers, pricing considerations, and other concerns.

Payment Timing

Under payment timing finalized in the 2019 NBPP, 2017 benefit year RADV results would be used to adjust 2018 transfers.³ These adjustments would be part of the regularly scheduled 2018 benefit year transfers and would be reflected in 2018 federal minimum medical loss ratio (MLR) filings. However, the final 2020 NBPP modified this timing. Under the modified rules, the initial 2017 RADV transfer report was delayed until August 2019, and extended appeals of the reported amounts are allowed until transfers are made in 2021. Transfers are to be reflected in the 2021 MLR reporting year and included in MLR filings in 2022, 2023, and 2024. This revised timing has consequences that will affect Affordable Care Act (ACA) marketplaces.

First, issuers now have a reasonable degree of certainty of their calendar-year 2021 RADV transfers (based on the 2017 audit)—whether receivable or payable. While formal financial reporting treatment has not been specified by the National Association of Insurance Commissioners (NAIC) or specific state regulators at this time, we expect that issuers will include RADV-related transfers as assets or liabilities in 2019 statutory reporting. Given the substantial size of some of the transfers, the immediate financial reporting of the RADV adjustments could have a material impact on issuer risk-based capital. Moreover, because pricing

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.

² Federal Register, [Notice of Benefit and Payment Parameters for 2020](#), April 25, 2019.

³ In the case of issuers exiting a particular market, 2017 benefit year RADV results would be used to adjust 2017 transfers.

levels for 2019 and 2020 have been set, issuers with a significant RADV-related liability could face regulatory financial instability. The timing changes allowing the pricing of these liabilities in 2021 do not alleviate the negative financial effects, because issuers will be expected to recognize the liabilities as soon as they can be estimated.

Second, not including the 2017 RADV payments in MLR filings until 2022 is inconsistent with the incurred nature of other elements of the MLR calculation and is inconsistent with the financial reporting treatment of the adjustments. To illustrate, prior-year risk adjustment holdbacks were typically included in amounts issuers submitted on their annual MLR filing, even though holdbacks were not paid during the MLR reporting year (or even by the MLR filing submission date). If issuers include 2017 RADV transfer considerations in 2021 premiums, however, including transfers in 2022 MLR filings might be appropriate because the actual amount paid or received would then be on a consistent basis with the premium adjustment, but both the premium and MLR timing would be inconsistent with the timing of the financial reporting.

Appropriateness of pricing RADV into 2021 premiums

Generally speaking, plan experience from 2019 is used to develop premiums for 2021. This typically includes both incurred claims for 2019 as well as risk adjustment results for 2019, adjusted for changes between the 2019 experience period and 2021. In the May 8, 2019, update to the Unified Rate Review instructions, CMS added language allowing states to additionally permit issuers to reflect 2017 benefit year RADV transfers (which originally would have affected the 2018 risk adjustment transfers) in 2021 premiums (or alternatively to reflect 2021 RADV expectations in 2021 premiums). Given the outlier nature of RADV adjustments, RADV amounts owed during 2021 based on 2017 benefit year RADV are less likely to be representative of 2021 RADV or even of adjustments to 2019 RADV that would more traditionally be used in 2021 pricing.

Explicitly pricing 2017 benefit year RADV into 2021 premiums essentially requires members who purchase 2021 coverage to pay for losses realized by 2017 and 2018 experience (or rewards these members for gains due to prior experience). Explicitly pricing 2017 benefit year RADV into 2021 premiums may also cause inadvertent distortions in competitive positions: Two otherwise identical issuers, one of which receives a RADV transfer due to 2017 benefit year RADV and the other that receives no adjustment, would then have different premium levels, and consumers would then see a competitive imbalance and potentially reward issuers for items other than quality or price of the underlying insurance product. Additionally, the potential for volatility in RADV results from year to year could generate significant instability as issuers see larger swings in rate adjustments if their outlier status does not remain consistent between consecutive RADV benefit years. Furthermore, issuers that owe money into RADV will need to charge higher premium rates, which could reduce enrollment and potentially discourage issuers from continuing.

On the other hand, if states do not permit issuers to price 2017 benefit year RADV into 2021 premiums, issuers could see significant instability as a result of inclusion of RADV in MLR filings for the 2021 MLR reporting year. Issuers that receive RADV transfers could be forced to

pay the receipt back to policyholders in the form of rebates, while issuers that must pay RADV cannot collect revenue necessary to pay for the liability. This could in turn increase the risk margin issuers deem necessary to offer coverage and / or decrease participation in a particular state.

Other concerns

The current RADV regulations consider adjustments for two separate classes of issuers—those that exit after the RADV benefit year and those that remain for the next year. However, the extended timing could yield payment uncertainty for issuers that exit in the two years after the RADV benefit year. For example, an issuer that was subject to 2017 benefit year RADV and exited an area in 2019 or 2020 would not be otherwise participating in business activities in 2021 when RADV transfers are to be made. Depending on the reason for the exit, there could be operational challenges for collecting charges owed by such issuers. It might be appropriate to provide further clarification on how transfers will be handled for issuers that exit following the RADV benefit year but prior to the actual payment date.

Lastly, the Committee wishes to echo prior concerns we have expressed in a prior comment letter about the current RADV implementation.⁴ The current methodology yields adjustments of significant magnitude and might not serve to create more stable and accurate risk adjustment results, in part because it is based on national averages and thus may show inappropriate results where state-level coding and charting practices deviate from that average because outliers are adjusted all the way to national averages rather than to the edge of the outlier interval or to state averages. As we stated in our prior letter, it could be appropriate to consider adjusting negative (and positive) outliers to the applicable lower (upper) bound of the confidence interval. This practice would minimize adjustments and resulting unexpected impacts on transfers. Additionally, it would remove the extreme impact of small adjustments in hierarchical condition categories accuracy for issuers whose failure rates are near the edges of the confidence interval. This change could be coupled with realigning the MLR reporting of RADV adjustments to occur based on the year the RADV adjustments are applied to risk adjustment transfers.

We would welcome the opportunity to speak with you in more detail and answer any questions you have regarding these comments. Please contact David Linn, the Academy's senior health policy analyst, at 202-223-8196 or linn@actuary.org to facilitate further discussions.

Sincerely,

Barbara Klever, MAAA, FSA
Chairperson, Individual & Small Group Markets Committee
American Academy of Actuaries

⁴ For more discussion of the issues we noted, see our comments to the proposed 2020 NBPPs here: https://www.actuary.org/sites/default/files/files/publications/2020_NBPP_Comments_021918.pdf.