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Contact: David Mendes
Phone: 202.785.7872
Email: mendes@actuary.org

Academy: U.S. District Court Decision Mischaracterizes Role of Actuarial Standards Board

WASHINGTON—A recent decision by the U.S. District Court for the Northern District of Texas regarding a Department of Health and Human Services (HHS) regulation on actuarially sound Medicaid payments to managed care organizations (MCOs) mischaracterizes the role of the Actuarial Standards Board (ASB).

“Several times, the court’s opinion erroneously characterizes the ASB’s role and functions as imposing requirements on states in the manner of a law,” said American Academy of Actuaries Assistant Director of Communications for Public Affairs David Mendes. “However, statements in the opinion such as that ASB ‘decreed that the states must...’ are simply not correct.”

The Actuarial Standards Board does not establish or promulgate laws or regulations in any situation. It provides guidance, through actuarial standards of practice (ASOPs), on what individual actuaries doing their best to comply with duly enacted laws and regulations should take into consideration.

ASOP 49, *Medicaid Managed Care Capitation Rate Development and Certification*, which is discussed in the case (Civil Action No. 7:15-cv-00151-O) between several plaintiff states and defendant HHS over the payment of the Affordable Care Act’s health insurer providers fee, provides guidance to actuaries on possible adjustments to capitation rates for taxes, assessments, or fees paid by MCOs, which are private organizations. It states that an actuary preparing a certification under 42 *Code of Federal Regulations* 438.6(c) “should consider the need to adjust capitation rates for each MCO to reflect each MCO’s expected expenses for these items.”

“The district court’s opinion pertains to legal aspects of HHS rulemaking on which the Academy’s Actuarial Standards Board has no authority,” said Mendes. “When ASOPs reference federal or state laws or regulations, they do so only to identify the law with which actuaries, and others, must comply.”

The ASB, which is housed within the American Academy of Actuaries, is not a party to the underlying case.

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The American Academy of Actuaries is a 19,000-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.