



July 16, 2018

Administrator  
Centers for Medicare & Medicaid Services  
U.S. Department of Health and Human Services  
Hubert H. Humphrey Building  
200 Independence Avenue, SW  
Washington, DC 20201

Dear Administrator Verma:

On behalf of the undersigned organizations, we are writing regarding the decision announced on July 7 by the Centers for Medicare & Medicaid Services (CMS) to suspend billions of dollars in annual payments to insurers as required under the Affordable Care Act's (ACA) risk-adjustment program. This action comes at a particularly sensitive time, when health plans are making decisions about whether to participate in the individual marketplace and developing premiums for 2019, and states are reviewing rates. We are very concerned that this move will create further uncertainty in the marketplace, negatively impacting patients' access to affordable and comprehensive coverage, and lead to higher premium increases next year.

The risk adjustment program protects insurers from unanticipated costs in the event that their enrollees are less healthy, as well as minimizes any incentives for insurers to target healthier individuals only for enrollment. Of the three premium stabilization programs authorized by the ACA, the risk adjustment program is the only one that is permanent. Therefore, it is particularly critical that the program remain operational. It works by transferring funds from plans with healthier enrollees in the individual and small group markets to plans with less healthy enrollees. CMS' announcement means that almost \$10.4 billion in risk adjustment transfers for 2017, expected to be paid in the fall of 2018, will not be made until the litigation is resolved in *New Mexico Health Connections v. HHS*, a case where the U.S. District Court in New Mexico invalidated the methodology used to calculate risk adjustment payments based on the statewide average premium. The Court's invalidation was based on the need for further explanation by CMS for operating the risk adjustment program in a budget neutral manner. This ruling is in conflict with the federal court decision in Massachusetts that upheld the risk adjustment methodology.

CMS' decision to delay these transfers jeopardizes patients' ability to access affordable coverage as well as lifesaving care and treatment. Insurers may be unwilling to sell coverage under such uncertain conditions, and those that do will likely increase premiums. The implications of a delay in calculating, collecting, and making the risk adjustment payments to insurers are significant for both patients and providers. Therefore, we urge CMS to reconsider its decision and seek other possible options to resolve the issues raised by the *New Mexico* risk adjustment litigation. For example, CMS could issue an

expedited rule using the same rationale it used for the risk adjustment payment methodology in the final rule on Notice of Benefit and Payment Parameters for 2019.

We appreciate your consideration of this urgent matter.

Sincerely,

AARP  
Alliance of Specialty Medicine  
American Academy of Family Physicians  
American Cancer Society Cancer Action Network  
American College of Physicians  
American College of Surgeons  
American Diabetes Association  
American Heart Association  
American Hospital Association  
American Liver Foundation  
American Lung Association  
American Medical Association  
Arthritis Foundation  
Association of American Medical Colleges  
Crohn's & Colitis Foundation  
Cystic Fibrosis Foundation  
Epilepsy Foundation  
Family Voices  
Federation of American Hospitals  
Hemophilia Federation of America  
Leukemia & Lymphoma Society  
Lutheran Services in America  
March of Dimes  
Mended Little Hearts  
National Alliance on Mental Illness  
National Multiple Sclerosis Society  
National Organization for Rare Disorders  
National Patient Advocate Foundation