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**Date:** May 31, 2019

**Subject:** Change to Risk Adjustment Holdback Policy for the 2018 Benefit Year and Beyond

For the 2014-2017 benefit years of the HHS-operated risk adjustment program, CMS held back a percentage of risk adjustment payments for sequestration and appeals until all risk adjustment appeals for a state market risk pool for the applicable benefit year were resolved.<sup>1</sup> Once all appeals in an applicable state market risk pool for the benefit year were resolved, the holdback amount was distributed in accordance with a successful appeal decision or was otherwise released to the issuers receiving payments for the applicable benefit year in the state market risk pool (unless the money was required to be held until the next fiscal year due to sequestration<sup>2</sup>).

Beginning with the 2018 benefit year and beyond, there are two new aspects to the HHS-operated risk adjustment program that can be appealed: risk adjustment data validation (RADV) results<sup>3</sup> and the high-cost risk pool (HCRP) transfers. Extension of the current holdback policy to include these potential appeals would require CMS to hold back a substantial percentage of risk adjustment and HCRP payments until the appeal process has been exhausted to account for potential successful appeals. CMS therefore proposed to change the holdback policy and sought comment on the proposal.<sup>4</sup> After reviewing comments received<sup>5</sup>, **CMS is finalizing the proposed change and, beginning with the 2018 benefit year, will release the holdback amounts without regard to any pending appeals and make any necessary post-calculation adjustments in the event an appeal is successful.**<sup>6</sup>

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<sup>1</sup> See, e.g., [https://www.regtap.info/uploads/library/FT\\_Slides\\_072716\\_v3\\_5CR\\_072716.pdf](https://www.regtap.info/uploads/library/FT_Slides_072716_v3_5CR_072716.pdf); [https://www.regtap.info/uploads/library/FT\\_RAD\\_slides\\_072017\\_5CR\\_072017.pdf](https://www.regtap.info/uploads/library/FT_RAD_slides_072017_5CR_072017.pdf); and [https://www.regtap.info/uploads/library/FT\\_FM\\_HIX820\\_Slides\\_081318\\_5CR\\_081418.pdf](https://www.regtap.info/uploads/library/FT_FM_HIX820_Slides_081318_5CR_081418.pdf).

<sup>2</sup> In these situations, the holdback amounts were usually released as part of the December payment cycle in the fiscal year following that in which it was sequestered.

<sup>3</sup> Consistent with 45 C.F.R. § 153.630(d)(2), issuers can appeal the findings of a second validation audit and/or the calculation of a risk score error rate as result of RADV.

<sup>4</sup> On April 4, 2019, CMS released *Proposed Change to Risk Adjustment Holdback for the 2018 Benefit Year and Beyond* available at: <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Proposed-Changes-RA-Holdback-2018BY.pdf>.

<sup>5</sup> Stakeholders who commented expressed support for the proposed change and also requested the release of detailed information on outstanding appeals in August, specifically, which states/risk pools have appeals each August, the dollar amount of appeal(s) in state market risk pools, which RA area (RA, high-risk pool, RADV) is being appealed and the percent of appeals and dollar amount that have been successful in prior years. We appreciate these comments and intend to provide further details on the information that will be released on outstanding appeals in future guidance.

<sup>6</sup> We note that risk adjustment program will continue to be subject to the applicable fiscal year sequestration rate as noted in the applicable annual HHS notice of benefit and payment parameters.

Therefore, in the event of a successful risk adjustment transfer, RADV, or HCRP appeal, CMS will make any necessary post-calculation adjustments to risk adjustment transfers for the applicable benefit year in the impacted state market risk pools (or national market for HCRP). As a reminder, in light of the budget neutral nature of the HHS-operated risk adjustment program, adjustments made in the event of a successful appeal could result in additional charges being assessed or a decrease to payment amounts previously calculated to balance the state market risk pool (or national market for the HCRP). We will resolve all outstanding risk adjustment and RADV appeals that can impact a benefit year's transfers in a state market risk pool before making post-calculation adjustments to account for successful risk adjustment and RADV appeals. We will similarly resolve all outstanding HCRP appeals for a benefit year before making post-calculation adjustments to account for successful HCRP appeals.

In August following the applicable benefit year, CMS intends to announce by risk adjustment program area (i.e., risk adjustment transfer, RADV or HCRP) which state market risk pools (or the national market for HCRP) are subject to an appeal so that issuers are aware in which markets and risk pools post-calculation adjustments could occur.