



# State Health Exchange LEADERSHIP NETWORK



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July 12, 2018



*Mr. Alex Azar, Secretary, U.S. Department of Health and Human Services  
Ms. Seema Verma, Administrator, Centers for Medicare and Medicaid Services  
U.S. Department of Health & Human Services  
200 Independence Avenue, SW  
Washington, D.C. 20201*



Dear Secretary Azar and Administrator Verma:



We, the undersigned directors of state-based marketplaces, are writing to convey the critical importance of the risk adjustment program and the federal government’s continued, vigorous support of that program. On July 7, 2018, the Centers for Medicare and Medicaid Services (CMS) issued a press release announcing that the agency is barred from making further collections or payments under the risk adjustment program, including amounts for the 2017 benefit year, pending the outcome of litigation in the U.S. District Court for the District of New Mexico. We share your disappointment in this ruling and write to encourage you to continue to defend the risk adjustment program in federal court. We also request that you clarify publicly that the New Mexico litigation does not relate to CMS’ implementation of the risk adjustment program for the 2019 benefit year.

As you know, the risk adjustment program is a critical market stabilization program in the Patient Protection and Affordable Care Act (ACA). The purpose of the program is to require the transfer of funds from carriers that have lower-risk enrollees to carriers that have higher-risk enrollees. By requiring carriers to compete based on quality, value and efficiency and not by seeking to enroll only healthy individuals, this important program was intended to have the paradigm for health insurance in the individual market follow that used successfully by large employers, Medicare, and Medicaid programs across the nation. The decision by the New Mexico District Court, if upheld, would undermine the program and is already causing serious concern among carriers in our respective states, with implications for overall market stability. As state-based marketplaces responsible for implementing the ACA in our states, we know that risk adjustment is a system that has worked, continues to work, and should be vigorously defended, just as the administration successfully did in Massachusetts and is now doing in New Mexico.

It is important to note that the decision by the New Mexico District Court does not apply to the upcoming 2019 benefit year. The court’s order is narrow. It invalidated the use of statewide average premiums in the risk adjustment methodology simply because the US Department of Health and Human Services’ (HHS) justification for the policy – budget neutrality – was not set forth in the regulations. HHS addressed this concern in the final Benefit and Payment Parameters rule for 2019 by including specific language justifying why the risk adjustment program must be budget neutral. As such, CMS is not barred from

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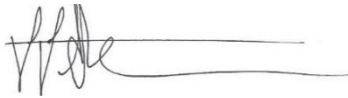
making further collections or payments under the risk adjustment program for 2019. Public clarification that there will not be an impact in 2019 can mitigate disruption and instability in the individual market. CMS should also immediately issue interim final rules or other guidance to address the court's order and make the 2017 risk adjustment payments. The new uncertainty for 2014-2018 risk adjustment could result in higher-than-necessary 2019 premiums and may cause some carriers to leave the market. By acting quickly, CMS can mitigate this disruption and instability.

We look forward to working with you and your staff at CMS to vigorously defend this process that has worked and is working, and to provide needed clarity to carriers on how to move forward in the interim while this case is in process.

Sincerely,



**Nathan Clark**  
Acting Chief Executive Officer  
MNsure



**Louis Gutierrez**  
Executive Director  
Massachusetts Health  
Connector Authority



**Chiqui Flowers**  
Administrator  
Oregon Health Insurance  
Marketplace



**Mila Kofman**  
Executive Director  
DC Health Benefit  
Exchange Authority



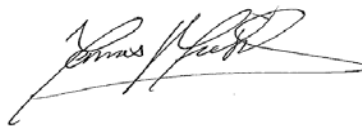
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