Federal Issues

Legislative

U.S. Court of Appeals Upholds HHS Risk Adjustment Regulations
On Tuesday, the U.S. Court of Appeals for the Tenth Circuit issued a decision in New Mexico Health Connections v. HHS upholding the Department of Health and Human Services’ (HHS) policy of using a statewide average premium in its original 2014-2018 risk adjustment regulations for the individual and small group markets, and the agency’s decision to operate the program in a budget neutral manner.

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The result: Following the decision, HHS’ original risk adjustment rules for 2014, 2015 and 2016 – and revised rules for 2017 and 2018 – all remain valid and in place. Risk adjustment rules for 2019 and 2020 have not been challenged.

The Tenth Circuit’s decision reverses an earlier lower court decision vacating the original 2014-2018 risk adjustment regulations on the basis the agency had acted arbitrarily and capriciously by improperly relying on the assumption that the Affordable Care Act (ACA) required risk adjustment payments to be budget neutral when the agency established the program’s payment formula.

The Tenth Circuit found that:

- “HHS did not act arbitrarily and capriciously in using the statewide average premium in its formula for the 2014, 2015 and 2016 rules” or in using a budget neutral design for the program.
- HHS acted reasonably and sufficiently explained in its underlying rulemaking processes why it chose to use statewide average premium over other alternatives.
- Because “the ACA neither requires nor forbids budget neutrality” for risk adjustment - and because there was no funding authorization allowing the program to be operated otherwise - HHS did not act unreasonably in operating the program in a budget neutral manner.

The appeals court also found that New Mexico Health Connections’ challenge to the original 2017 and 2018 risk adjustment rules was moot given that HHS has since issued revised rules that supersede and replace the original rules for those years. New Mexico Health Connections has filed a separate lawsuit challenging HHS’ revised 2017 risk adjustment rule, which was not the subject of the case before the Tenth Circuit. That case remains stayed.

AHIP and BCBSA had urged for the Tenth Circuit to reverse the lower court’s decision in a joint amicus brief filed in support of the government’s appeal.

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**Federal Issues**

Regulatory

**Administration Extends Transparency Rule Comment Deadline to January 29**

The U.S. Departments of Health and Human Services (HHS), Labor, and the Treasury have extended the public comment deadline of the Transparency in Coverage proposed rule by 15 days until January 29, 2020.

Last month, AHIP and the Blue Cross Blue Shield Association submitted a letter to the Tri-Agencies requesting a 90-day extension of the comment deadline in order to respond to the rule in a meaningful manner.

Why this matters:

- The proposed rule would require group health plans, including self-insured, and issuers in the individual and group markets to make available a self-service internet tool so consumers can obtain...
an estimate of their personal cost-sharing liability for an item or service provided by a specific provider before they receive care.

- The Tri-Agencies also propose that plans and issuers publicly disclose negotiated in-network rates and out-of-network allowed amounts for all covered items and services in machine readable files.
- This proposed requirement on health plans is consistent with the requirement that hospitals publicly disclose negotiated rates included in the Medicare and Medicaid Programs 2020 Hospital Outpatient Prospective Payment System Final Rule. The hospitals have sued HHS seeking to have the rule invalidated.

Hospital and Insurer Position:
- While strongly supporting efforts for greater transparency in health care, hospitals and insurers have concerns about whether the rules will help consumers, saying that mandating the disclosure of privately and competitively-negotiated rates may add to consumer confusion. Both believe that consumers need useful and meaningful information.
- Additionally, mandating the release of this information interferes with negotiations and creates anticompetitive behavior, which will drive health care prices higher for patients, consumers, and taxpayers.

Policy/Market Trends

Pharmaceutical Manufacturers Raise Drug Prices in the New Year
According to separate analyses by GoodRX and 3 Axis Advisors, drug manufacturers have increased list prices on more than 250 drugs (3 Axis) and 411 drugs (GoodRX) by an average of 5 percent beginning on December 31, 2019. GoodRx compared the current 2020 price increase to an increase in list price of 486 brand drugs by an average of 5.2 percent in January of 2019.

House Speaker Pelosi (D-CA) cited the 3 Axis Advisors’ study on Thursday, calling upon the Senate to take legislative action on lowering drug prices, referencing the House passage of the Lower Drug Costs Now Act (H.R. 3). Current Senate efforts to address drug costs, including Sens. Grassley (R-IA) and Wyden’s (D-OR) bill package S. 2543, have been stalled before reaching the Senate floor.
The Senate of Pennsylvania is in session January 7 and the Pennsylvania House of Representatives has a non-voting date on January 7.

The Delaware Legislature returns to session January 14.

The West Virginia Legislature runs from January 8 – March 7.

Congress
The U.S. House is in session January 7-10.

Interested in reviewing a copy of a bill(s)? Access the following web sites:

Pennsylvania Legislation: www.legis.state.pa.us.
West Virginia Legislation: http://www.legis.state.wv.us/
For copies of congressional bills, access the Thomas website – http://thomas.loc.gov/.

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