
CHOICES

For Immediate Release

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Market Commentary and Litigation Evidence that Risk Adjustment is Bad Policy

Washington, D.C., August 5, 2016 — One month after CMS released the results of the risk adjustment program's second year, market stakeholders are openly acknowledging the program's shortfalls. Insurance companies small and large, industry analysts, and market regulators have all taken issue with the accuracy of CMS' risk adjustment program and are beginning to recognize its damaging effects.

In a high-profile investor earnings call on July 27, Anthem Chief Financial Officer John Gallina advocated for improvements to the risk adjustment program because it, "overcharges for healthy members and over-reimburses for certain moderately unhealthy disease states."¹ The bias that Anthem observes is a major theme of the original [CHOICES white paper](#) from December 2015 and is being validated by carriers' experience with risk adjustment this year.

Aetna Chairman and CEO Mark Bertolini aired similar grievances in an earnings call on August 2, stating that, "[because] the current risk adjustment mechanism does not include pharmacy, nobody is getting adequately reimbursed."² In subsequent interviews, Bertolini also pointed to the risk adjustment program as a primary reason why Aetna has shied away from expanding their involvement in the ACA marketplaces next year.³

In addition, noteworthy industry analysts Mike Adelberg and Nicholas Bagley commented in one of the most popular blogs on Health Affairs this week that, "risk-adjustment distributions have topped 20 percent of premiums for several smaller insurers, leading to charges that risk adjustment doesn't accurately measure members' actual risk, but instead rewards those insurers who most aggressively 'code capture.'"⁴ These statements support another CHOICES assertion that the risk adjustment program has been more afflictive to small insurance carriers and is bad for competition.

Numerous industry stakeholders are also holding CMS accountable through litigation. Evergreen Health of Maryland, recently filed suit and took aim at CMS based on the "arbitrary and capricious" design of the risk adjustment program and their unfair treatment of the risk corridor program.⁵ Iowa's Insurance Commissioner, Nick Gerhart, also filed a lawsuit against federal government and their position of super-priority for collecting

¹ Livingston, Shelby (July 27, 2016). "Public exchange claims limit profit, but Anthem vows to fight for Cigna merger." *Business Insurance* (Available [here](#))

² Earnings Call Transcript (August 2, 2016). "Aetna (AET) Mark T. Bertolini on Q2 2016 Results - Earnings Call Transcript." *Seeking Alpha* (Available [here](#))

³ Tracer, Zachary (August 2, 2016). "Aetna's Obamacare Reversal Is Latest Blow to U.S. Health Law." *Bloomberg News* (Available [here](#))

⁴ Adelberg, M. & Bagley, N. (August 1, 2016). "Struggling To Stabilize: 3Rs Litigation And The Future Of The ACA Exchanges." *Health Affairs Blog* (Available [here](#))

⁵ Gantz, Sarah (June 13, 2016). "Evergreen Health Co-op suing federal government over insurance program." *Baltimore Sun* (Available [here](#))

risk adjustment dues from liquidated carriers ahead of hospitals and doctors.⁶ Insurance companies Minuteman Health and New Mexico Health Connections recently filed lawsuits against the federal government contending that the risk adjustment program, as currently designed, is not stabilizing the market like the law intends and should be halted temporarily while the while improvements are sought.^{7,8}

The flawed nature of the current risk adjustment program is having an injurious impact on the individual market in a very real way. Members of the CHOICES coalition are no longer the only ones to make note of and comment on the program's shortfalls. Allowing the market to continue with the current program methodology in place is untenable and will not produce gainful results. Federal and state regulators should take note and begin working towards a viable solution immediately.

About CHOICES

Consumers for Health Options, Insurance Coverage in Exchanges in States (CHOICES) members are non-profit and investor-owned, health system-sponsored and independent, and startups as well as companies with decades of experience as members of their local communities.

⁶ Iowa Insurance Division (May 3, 2016). "Lawsuit Filed in CoOpportunity Liquidation." *Press Release* (Available [here](#))

⁷ PR Newswire (August 1, 2016). "Minuteman Health files Risk Adjustment lawsuit against federal agencies." *PR Newswire* (Available [here](#))

⁸ Higdon, Marissa (August 1, 2016). "NM Health Connections files lawsuit against feds." *Albuquerque Business First* (Available [here](#))