

## § 153.330

catastrophic, small group, or merged market risk pool by August 1 of the benefit year that is 2 calendar years prior to the applicable benefit year, in the form and manner specified by HHS.

(3) *Publication of reduction requests.* HHS will publish State reduction requests in the applicable benefit year's HHS notice of benefit and payment parameters rule and make the supporting evidence available to the public for comment, except to the extent the State requests HHS not publish certain supporting evidence because it contains trade secrets or confidential commercial or financial information as defined in HHS' Freedom of Information regulations under 45 CFR 5.31(d). HHS will publish any approved or denied State reduction requests in the applicable benefit year's HHS notice of benefit and payment parameters final rule.

(4) *HHS approval.* (i) Subject to paragraph (d)(4)(ii) of this section, HHS will approve State reduction requests if HHS determines, based on the review of the information submitted as part of the State's request, along with other relevant factors, including the premium impact of the transfer reduction for the State market risk pool, and relevant public comments:

(A) For the 2020 through 2023 benefit years, that State-specific rules or other relevant factors warrant an adjustment to more precisely account for relative risk differences in the State's individual catastrophic, individual non-catastrophic, small group, or merged market risk pool and support the percentage reduction to risk adjustment transfers requested; or State-specific rules or other relevant factors warrant an adjustment to more precisely account for relative risk differences in the State's individual catastrophic, individual non-catastrophic, small group, or merged market risk pool and the requested reduction would have *de minimis* impact on the necessary premium increase to cover the transfers for issuers that would receive reduced transfer payments.

(B) For the 2024 benefit year only, that the requested reduction would have *de minimis* impact on the necessary premium increase to cover the transfers for issuers that would receive reduced transfer payments.

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(ii) HHS may approve a reduction amount that is lower than the amount requested by the State if the supporting evidence and analysis do not fully support the requested reduction amount. HHS will assess other relevant factors, including the premium impact of the transfer reduction for the applicable State market risk pool.

(5) *Exception for prior participants.* As used in paragraph (d) of this section, prior participants mean States that submitted a State reduction request in the State's individual catastrophic, individual non-catastrophic, small group, or merged market risk pool in the 2020, 2021, 2022, or 2023 benefit year.

[77 FR 17247, Mar. 23, 2012, as amended at 78 FR 15528, Mar. 11, 2013; 81 FR 94174, Dec. 22, 2016; 83 FR 17059, Apr. 17, 2018; 84 FR 17561, Apr. 25, 2019; 86 FR 24286, May 5, 2021; 87 FR 27387, May 6, 2022; 88 FR 25916, Apr. 27, 2023]

## § 153.330 State alternate risk adjustment methodology.

(a) *State request for alternate methodology certification.* (1) A State request to HHS for the certification of an alternate risk adjustment methodology must include:

(i) The elements specified in § 153.320(b);

(ii) The calibration methodology and frequency of calibration; and

(iii) The statistical performance metrics specified by HHS.

(2) The request must include the extent to which the methodology:

(i) Accurately explains the variation in health care costs of a given population;

(ii) Links risk factors to daily clinical practice and is clinically meaningful to providers;

(iii) Encourages favorable behavior among providers and health plans and discourages unfavorable behavior;

(iv) Uses data that is complete, high in quality, and available in a timely fashion;

(v) Is easy for stakeholders to understand and implement;

(vi) Provides stable risk scores over time and across plans; and

(vii) Minimizes administrative costs.

(b) *Evaluation criteria for alternate risk adjustment methodology.* An alternate risk adjustment methodology will be

certified by HHS as a Federally certified risk adjustment methodology based on the following criteria:

(1) The criteria listed in paragraph (a)(2) of this section;

(2) Whether the methodology complies with the requirements of this subpart D;

(3) Whether the methodology accounts for risk selection across metal levels; and

(4) Whether each of the elements of the methodology are aligned.

(c) *State renewal of alternate methodology.* If a State is operating a risk adjustment program, the State may not implement a recalibrated risk adjustment model or otherwise alter its risk adjustment methodology without first obtaining HHS certification.

(1) Recalibration of the risk adjustment model must be performed at least as frequently as described in paragraph (a)(1)(ii) of this section;

(2) A State request to implement a recalibrated risk adjustment model or otherwise alter its risk adjustment methodology must include any changes to the parameters described in paragraph (a)(1) of this section.

[77 FR 17248, Mar. 23, 2012, as amended at 78 FR 15528, Mar. 11, 2013]

#### § 153.340 Data collection under risk adjustment.

(a) *Data collection requirements.* If a State is operating a risk adjustment program, the State must collect risk adjustment data.

(b) *Minimum standards.* (1) If a State is operating a risk adjustment program, the State may vary the amount and type of data collected, but the State must collect or calculate individual risk scores generated by the risk adjustment model in the applicable Federally certified risk adjustment methodology;

(2) If a State is operating a risk adjustment program, the State must require that issuers offering risk adjustment covered plans in the State comply with data privacy and security standards set forth in the applicable risk adjustment data collection approach; and

(3) If a State is operating a risk adjustment program, the State must ensure that any collection of personally

identifiable information is limited to information reasonably necessary for use in the applicable risk adjustment model, calculation of plan average actuarial risk, or calculation of payments and charges. Except for purposes of data validation, the State may not collect or store any personally identifiable information for use as a unique identifier for an enrollee's data, unless such information is masked or encrypted by the issuer, with the key to that masking or encryption withheld from the State. Use and disclosure of personally identifiable information is limited to those purposes for which the personally identifiable information was collected (including for purposes of data validation).

(4) If a State is operating a risk adjustment program, the State must implement security standards that provide administrative, physical, and technical safeguards for the individually identifiable information consistent with the security standards described at 45 CFR 164.308, 164.310, and 164.312.

[77 FR 17248, Mar. 23, 2012, as amended at 78 FR 15528, Mar. 11, 2013]

#### § 153.350 Risk adjustment data validation standards.

(a) *General requirement.* The State, or HHS on behalf of the State, must ensure proper implementation of any risk adjustment software and ensure proper validation of a statistically valid sample of risk adjustment data from each issuer that offers at least one risk adjustment covered plan in that State.

(b) *Adjustment to plan average actuarial risk.* The State, or HHS on behalf of the State, may adjust the plan average actuarial risk for a risk adjustment covered plan based on errors discovered with respect to implementation of risk adjustment software or as a result of data validation conducted pursuant to paragraph (a) of this section.

(c) *Adjustment to charges and payments.* The State, or HHS on behalf of the State, may adjust charges and payments to all risk adjustment covered plan issuers based on the adjustments calculated in paragraph (b) of this section.