

Maryland Co-Op Claims Risk Adjustment Formula Discriminates Against Smaller Insurers

Article By:

Eric A. Klein

Maryland's Evergreen Health Cooperative has filed for an injunction against the federal government to halt payment by the Consumer Operated and Oriented Plan (co-op) of the \$22 million it owes to CareFirst BlueCross BlueShield based on the Affordable Care Act's risk adjustment formula. Of the 23 co-ops that launched in 2014, at least half of them have failed, with nine failures in the Fall of 2015. More recently, the Centers for Medicare & Medicaid Services loosened financing rules for the co-op plans in an effort to allow them to tap the markets for capital.

How the Formula Spreads Risk

The Affordable Care Act (ACA) risk adjustment formula is intended to equalize the cost and risks of insuring unhealthy populations. It uses calculations based on insurers' prior experiences to estimate the health of each insured population and redistributes money from insurers with healthier populations to insurers that cover sicker populations. Risk adjustment payments are based on statewide average premiums and don't take into account plan efficiencies, like negotiated discounts with network providers.

Small Insurer Objections to the Formula

In its lawsuit, Evergreen claims the risk adjustment formula discriminates against small insurers that may not have adequate past information on their insured populations. This lack of information is claimed to make small insurers' populations seem healthier than they are, resulting in the transfer payment liabilities. In another example, it has been reported that Minuteman, a co-op in Massachusetts and New Hampshire, paid \$3.8 million in 2014 risk adjustments and may owe as much as \$17.6 million for 2015 risk adjustments. Co-ops are expressing concern that the application of the current risk adjustment formula may damage the insurance exchanges and create higher costs for insurance coverage.

CMS has noted that the robustness of the risk adjustment program is instrumental to the maintenance of successful insurance markets under the ACA. It has been reported that CMS is considering changes to address these concerns. The *Wall Street Journal* reports the Obama administration is working on revisions to the formula that would go into effect in 2017 and 2018.

Vanessa Lam contributed to this article.

Copyright © 2025, Sheppard Mullin Richter & Hampton LLP.

National Law Review, Volume VI, Number 175

Source URL: <https://natlawreview.com/article/maryland-co-op-claims-risk-adjustment-formula-discriminates-against-smaller-insurers>