

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
Center for Consumer Information and Insurance Oversight
200 Independence Avenue SW
Washington, DC 20201



Date: October 27, 2023

RE: Unpaid 2022 Benefit Year Risk Adjustment Charges by Bright Health Group and Friday Health Plans

In the 2022 benefit year HHS-operated risk adjustment program, two large health insurance issuers of risk adjustment covered plans¹ participating in multiple states ended the year with financial issues that impacted their ability to timely pay their risk adjustment charges under the state payment transfer formula in full.^{2,3} This document provides an overview of the collection of 2022 benefit year risk adjustment charges from these two issuers under the HHS-operated risk adjustment program.⁴ The Centers for Medicare & Medicaid Services (CMS) will use all appropriate debt collection processes available to the federal government to enforce the collection of these debts. Pursuant to 45 C.F.R. § 30.17, if an issuer is financially unable to pay a debt in one lump sum, CMS may accept payment in regular installments under a written agreement. CMS maintains the discretion to determine whether an issuer satisfies the eligibility criteria to be granted a repayment plan.

The two issuers with unpaid 2022 benefit year risk adjustment charges as of October 2023 are Bright Health Group (Bright) and Friday Health Plans (Friday). All other 2022 benefit year risk adjustment charges from other issuers of risk adjustment covered plans have been paid in full and the funds collected will be distributed as 2022 benefit year risk adjustment payments in the November 2023 cycle.⁵

Bright Health Group

In September 2023, Bright made a significant payment (approximately \$1.5 billion) towards its 2022 benefit year risk adjustment charges (\$1.9 billion). Bright’s legal entities domiciled in Arizona, Georgia, North Carolina, South Carolina, and Tennessee paid their 2022 benefit year risk adjustment charges in

¹ See 45 CFR § 153.20 for a definition of “risk adjustment covered plan”.

² See 86 FR 24140 at 24183 - 24186 for information on and an illustration of the state payment transfer formula.

³ For further reading, see StarTribune article “Bright Health owes \$380 million in delayed payments to federal government” September 19, 2023 at <https://www.startribune.com/bright-health-owes-380-million-delayed-payments-federal-government-medicare-medicare-risk-adjustment/600305770/> and Fierce Healthcare article “Bright, Friday could cost other payers \$1B in risk adjustment payments, expert says” August 16, 2023 at <https://www.fiercehealthcare.com/payers/expert-insurtechs-bright-and-friday-might-leave-other-insurers-hook-1b-risk-adjustment>.

⁴ Section 1343 of the Affordable Care Act (ACA) establishes the permanent risk adjustment program for the individual and small group (including merged) markets. Consistent with section 1321(c)(1) of the ACA, HHS is responsible for operating the risk adjustment program on behalf of any state that fails to elect to do so. Since the 2017 benefit year, CMS, on behalf of HHS, has operated the risk adjustment program in all 50 states and the District of Columbia.

⁵ For information on the 2022 benefit year risk adjustment transfer calculations for the HHS-operated risk adjustment program, see <https://www.cms.gov/files/document/summary-report-permanent-risk-adjustment-transfers-2022-benefit-year.pdf>.

full. Issuers of risk adjustment covered plans in these states eligible to receive 2022 benefit year risk adjustment payments will receive those amounts in full in November 2023. However, four of Bright's legal entities domiciled in Florida, Illinois, Texas, and Colorado (which includes Alabama, Colorado, Nebraska, Oklahoma, Utah, and Virginia due to the structure of their legal entity) could not pay the full 2022 benefit year risk adjustment charges as of September 15, 2023. Consistent with the established policy for prorating payments to reflect collection of risk adjustment charges, issuers in the same market risk pools with Bright in these states who are eligible to receive 2022 benefit year risk adjustment payments will receive those initial funds as prorated 2022 benefit year risk adjustment payments in the November 2023 cycle.⁶

Pursuant to 45 CFR § 30.17, and consistent with the instructions set forth in the invoices Bright received in August 2023, Bright requested four repayment agreements with CMS for its 2022 benefit year risk adjustment charges for the state market risk pools where it could not pay the full 2022 benefit year risk adjustment charges as of September 15, 2023. CMS only enters into repayment agreements with issuers that meet applicable eligibility criteria in circumstances where an issuer is not in liquidation and may be able to pay the full debt within 36 months of the date of the repayment agreement. As part of the repayment agreement review process, CMS required financial documentation from Bright to demonstrate that the debt meets the applicable eligibility requirements for repayment plans, such as confirming that the issuer has an inability to pay the full amount of the debt in one lump sum as independently verified through financial information submitted to CMS pursuant to 45 CFR § 30.22. As part of this process CMS also evaluates whether the debt ultimately can be paid within the 36 months. Bright demonstrated to CMS their financial ability to pay the debt and requested to repay the full 2022 benefit year risk adjustment charges within an 18-month time period and therefore, CMS approved 18-month repayment agreements with Bright.

After approving four 18-month repayment agreements with Bright, CMS worked with state Departments of Insurance (DOIs) in Florida, Illinois, Texas, and Colorado to develop the repayment agreements for Bright's remaining 2022 benefit year risk adjustment charges. Under the repayment agreements, interest (at a statutory rate of 11.5 percent), administrative charges, and penalties continue to accrue during the entire repayment agreement period. In working with Bright and the DOIs in Illinois, Texas, and Colorado, CMS negotiated the large initial payment and finalized 18-month repayment agreements with monthly, interest-only payments until a balloon payment can be made within the 18 months in Illinois, Texas, and for Bright's Colorado entity (payments made in Colorado are for Bright's legal entity domiciled in Colorado, which covers operations in several states as described on the previous page). Bright's Florida repayment agreement is slightly different, as CMS and the state DOI finalized an 18-month repayment agreement with a monthly payment of \$1,000 (lower than the interest-only payment would be for Bright's outstanding principal in Florida) with a balloon payment due within 18 months. For all four of Bright's repayment agreements, CMS and the state DOIs structured the monthly payments to only be attributed to interest, to allow the maximum amount of funds to be used for the initial payment towards its 2022 benefit year risk adjustment charges in the impacted states and distributed to issuers eligible to receive 2022 benefit year risk adjustment payments in the November 2023 cycle. The monthly payments attributed to interest are retained by the U.S. Treasury and are not used to make 2022 benefit year risk adjustment payments to issuers of risk adjustment covered plans. In the event that Bright misses a monthly payment or fails to pay off the principal by the end of the 18 months as to one or more of these agreements, then the applicable repayment agreement(s) cease, and the debts would be referred to the U.S. Treasury for collection. As of October 2023, Bright has successfully made the first monthly payments of their repayment agreements.

⁶ See the Payment Processing Job Aid for risk adjustment payment cycle calculations https://regtap.cms.gov/reg_library.php?i=2088.

As of October 2023, the repayment agreements have outstanding principal amounts representing the remaining 2022 benefit risk adjustment charge amounts of \$80.9 million (Colorado, which covers operations in several states as described on the previous page), \$10.4 million (Illinois), \$89.6 million (Texas), and \$199.3 million (Florida).

Generally, we expect that payments on principal towards the remaining 2022 benefit year risk adjustment charge amounts are likely to be made at the time of the balloon payment. However, at any point, Bright can pay more than the minimum monthly payment amount, at which point any collections on principal will be distributed to issuers in the affected state market risk pools as further prorated 2022 benefit year risk adjustment payments⁷ in the following monthly payment cycle.

Bright exited the market starting with the 2023 benefit year and therefore will not participate in the HHS-operated risk adjustment program for the 2023 benefit year.

Friday Health Plans

Friday entered state liquidation on March 1, 2023 in Texas, August 1, 2023 in Georgia, and September 1, 2023 in Oklahoma, Nevada, Colorado, and North Carolina. Friday was not able to timely pay its 2022 benefit year risk adjustment charges in full in Colorado, Georgia, Nevada, New Mexico, North Carolina, Oklahoma, and Texas. As of October 2023, Friday has paid 5 percent of its total 2022 benefit year risk adjustment charges of \$780 million. As such, CMS will pursue all Federal debt collection methods available, including offsetting other ACA program payments to Friday pursuant to 45 CFR § 156.1215 and filing a proof of claim to assert the government's claim to all debts owed, including the unpaid debts for the 2022 benefit year risk adjustment charges in these states. Consistent with the established policy for addressing shortfalls in the collection of risk adjustment charges, issuers in the same state market risk pools as Friday who are eligible to receive 2022 benefit year risk adjustment payments will receive the initial funds collected as prorated 2022 benefit year risk adjustment payments in the November 2023 cycle.⁸ Any further collection of these amounts, through offsetting or otherwise, will be distributed to issuers in the affected state market risk pools as further prorated 2022 benefit year risk adjustment payments⁹ in the following monthly payment cycle.

Friday continued to operate and offer risk adjustment covered plans in certain state market risk pools for the 2023 benefit year and therefore will be required to participate in the HHS-operated risk adjustment program for those state market risk pools for the 2023 benefit year.

CMS updates the Payment Processing Job Aid¹⁰ annually to indicate the benefit years and state market risk pools for which there are uncollected charges. CMS will update this Job Aid in November 2023 to reflect the state market risk pools affected by the unpaid 2022 benefit year risk adjustment charges.

⁷ See supra note 6.

⁸ See supra note 6.

⁹ See supra note 6.

¹⁰ See supra note 6.