

WAC 284-43-0230 Risk adjustment program. (1) An issuer of a nongrandfathered individual or small group health plan in Washington state must participate in the permanent risk adjustment program, established pursuant to RCW 48.43.720.

(2) U.S. Department of Health and Human Services (HHS) will administer the risk adjustment program for 2014-2015. Issuers must comply with HHS requirements for the risk adjustment program.

(3) Beginning September 1, 2015, or on the date established by the HHS, the commissioner will annually publish a notice of benefit and payment parameters, and include a statement of intent regarding whether the state or HHS will administer the risk adjustment program for the ensuing benefit year.

The commissioner will determine the form of the notice, which will be consistent with the form required by HHS.

(4) The commissioner will establish an advisory group to provide advice regarding whether the state should operate the risk adjustment program for a future period of benefit year or years.

(a) The advisory group consists of representatives from issuers who participate in the risk adjustment program, the health benefit exchange, and if under contract or otherwise established by the legislature, the designated administrative entity for the state risk adjustment program. If an issuer wishes to participate in the advisory group, it must notify the commissioner in writing of its designated participant not later than May 1st of each year.

(b) The advisory group will meet at the commissioner's discretion.

(5) If HHS does not provide the commissioner with the data submitted by issuers, for a benefit year during which HHS administers the program, within thirty days of its submission to HHS, an issuer must submit to an actuarial firm designated by the commissioner the same data that it submits to HHS for the risk adjustment program. Corrected data must also be submitted. All issuers participating in the risk adjustment program in Washington state, not just those participating in the advisory group, must conform to this requirement.

(a) The data may only be used to perform modeling to assist the advisory group and commissioner in the annual decision-making process described in this section. Modeling done using the data must deidentify both issuers and any enrollees. Each advisory group participant is entitled to review all modeling reports, and upon request, learn which deidentified issuer represents their data set. The actuarial firm may not otherwise disclose the identity of data set sources.

(b) The actuarial firm and each issuer must execute all necessary privacy and security agreements to ensure the confidentiality and privacy of personal health information, establish remedies for unauthorized release or distribution of the data that are consistent with state and federal law, provide for the retention of the data for not less than ten years, and for the destruction of the data after a ten year period of time.

The commissioner will prepare a template agreement for use by the actuarial firm and submitting issuers. The agreement must be identical for each issuer, unless the commissioner specifically agrees to an exception or change requested by an issuer or the actuarial firm for good cause. The commissioner will resolve disputes between the actuarial firm and an issuer.

(c) Where necessary to ensure that data is credible and useful to the modeling, the actuarial firm may issue specific data definition

related to requested data submission, and may require submission of additional data to the data submitted to HHS.

(6) Each issuer must accurately report risk adjustment payments received or made under the risk adjustment program as part of a non-grandfathered individual or small group's rate filing.

(7) An issuer that does not submit data to either HHS or the actuarial firm pursuant to this rule, or otherwise fails to comply with the risk adjustment program requirements, is subject to enforcement under Title 48 RCW.

[WSR 16-01-081, recodified as § 284-43-0230, filed 12/14/15, effective 12/14/15. Statutory Authority: RCW 48.02.060, 48.43.720. WSR 13-05-025 (Matter No. R 2012-12), § 284-170-002, filed 2/11/13, effective 3/14/13.]