

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

HUMANA INC., et al.,

Plaintiffs,

v.

XAVIER BECERRA, et al.,

Defendants.

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Case No. 4:23-cv-909-O

**DEFENDANTS' NOTICE OF CONVENTIONAL
FILING OF CERTIFIED ADMINISTRATIVE RECORD**

PLEASE TAKE NOTICE that Defendants have conventionally filed with the Clerk of Court a certified copy of the administrative record for the rule challenged here. The administrative record has not been filed electronically because it is over 15,000 pages in length. Pursuant to an agreement, Defendants have served the administrative record on Plaintiffs via file-sharing service. Defendants' certification of the administrative record, as well as an index of its contents, are attached hereto.

Respectfully submitted,

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Date: August 23, 2024

INDEX TO THE RULEMAKING RECORD FOR
Humana v. Becerra, No. 23-909-0 (N.D. Tex.)

I. Federal Register Documents and Public Comments

A. Medicare Advantage Risk Adjustment Data Validation (“RADV”) Extrapolation Methodology Rule, 42 C.F.R. §§ 422.300, 422.310(e), 422.311(a)

1. Medicare and Medicaid Programs; Policy and Technical Changes to the Medicare Advantage, Medicare Prescription Drug Benefit, Program of All-Inclusive Care for the Elderly (PACE), Medicaid Fee-for-Service, and Medicaid Managed Care Programs for Years 2020 and 2021, 83 Fed. Reg. 54,982, 54,982, 55,037-41, 55,077 (Nov. 1, 2018) (Proposed rule) Bates: 000001
2. Medicare and Medicaid Programs; RADV, 83 Fed. Reg. 66,661, 66,661 (Dec. 27, 2018) (Proposed rule; extension of comment period) Bates: 000008
3. Medicare Program; Release of Data Underlying RADV Provisions, 84 Fed. Reg. 8,069, 8,069-70 (Mar. 6, 2019) (Proposed rule; supplement) Bates: 000009
4. Medicare and Medicaid Programs; Policy and Technical Changes to the Medicare Advantage, Medicare Prescription Drug Benefit, Programs of All-Inclusive Care for the Elderly (PACE), Medicaid Fee-For-Service, and Medicaid Managed Care Programs for Years 2020 and 2021, 84 Fed. Reg. 15,680, 15,680, 15,682-15,683 (Apr. 16, 2019) (Final rule; finalizing other provisions) Bates: 000011
5. Medicare and Medicaid Programs; RADV, 84 Fed. Reg. 18,215, 18,215-18,216 (Apr. 30, 2019) (Proposed rule; extension of comment period and announcement of the release of additional data) Bates: 000014
6. Medicare and Medicaid Programs; RADV, 84 Fed. Reg. 30,983, 30,983-84 (June 28, 2019) (Proposed rule; request for additional comment; announcement of the release of additional data) Bates: 000016
7. Public comments Bates: 000018
8. Medicare and Medicaid Programs; Policy and Technical Changes to the Medicare Advantage, Medicare Prescription Drug Benefit, Program of All-Inclusive Care for the Elderly (PACE), Medicaid Fee-For-Service, and Medicaid Managed Care Programs for Years 2020 and 2021; Extension of Timeline to Finalize a Rulemaking, 86 Fed. Reg. 58,245, 58,245-46 (Oct. 21, 2021) Bates: 006613
9. Medicare and Medicaid Programs; Policy and Technical Changes to the Medicare Advantage, Medicare Prescription Drug Benefit, Program of All-Inclusive Care for the

Elderly (PACE), Medicaid Fee-For-Service, and Medicaid Managed Care Programs for Years 2020 and 2021; Extension of Timeline to Finalize a Rulemaking, 87 Fed. Reg. 65,723, 65,723-24 (Nov. 1, 2022) Bates: 006615

10. Medicare and Medicaid Programs; Policy and Technical Changes to the Medicare Advantage, Medicare Prescription Drug Benefit, Program of All-Inclusive Care for the Elderly (PACE), Medicaid Fee-For-Service, and Medicaid Managed Care Programs for Years 2020 and 2021, 88 Fed. Reg. 6,643, 6,643-6,665 (Feb. 1, 2023) (Final rule) Bates: 006617

B. 2010 Medicare Advantage Policy and Technical Changes Rule

1. Medicare Program; Policy and Technical Changes to the Medicare Advantage and the Medicare Prescription Drug Benefit Programs, 74 Fed. Reg. 54,634, 54,634, 54,673-78 (Oct. 22, 2009) (Proposed rule) Bates: 006640
2. Public comments Bates: 006648
3. Medicare Program; Policy and Technical Changes to the Medicare Advantage and the Medicare Prescription Drug Benefit Programs, 75 Fed. Reg. 19,678, 19,678, 19,742-53 (Apr. 15, 2010) (Final Rule) Bates: 007051

II. CMS's Fee-for-Service ("FFS") Adjuster Study Documents and Data

- A. Fee for Service Adjuster and Payment Recovery for Contract Level Risk Adjustment Data Validation Audits – Executive Summary (Oct. 26, 2018) Bates: 007065
- B. Fee for Service Adjuster and Payment Recovery for Contract Level Risk Adjustment Data Validation Audits - Technical Appendix (Oct. 26, 2018) Bates: 007071
- C. Medical Record Reviewer Guidance in Effect as of March 20, 2019 Bates: 007087
- D. Data Dictionary Final Update (Apr. 25, 2019) Bates: 007159
- E. Estimated Regression Coefficients for Adjusted FFS Data Regression Pre vs. Post Perturbment (Apr. 25, 2019, originally generated July 26, 2018) Bates: 007309
- F. Limited Data Set ("LDS") Files, provided to public through the CMS Office of Enterprise Data Analytics ("OEDA") upon submission of an LDS Data Use Agreement ("DUA") (June 14, 2019) On file with CMS

LDS Files include:

1. Research Triangle Institute (“RTI”) input file representing calibration data used by RTI for the CMS-HCC model used to calculate 2009 MA payments
2. An input file containing CMS findings from RADV-like review of Calendar Year (“CY”) 2008 medical records
3. Ten FFS datasets representing the five percent sample of all final 2004 and 2005 diagnosis codes used for MA model calibrations through 2011
4. An HCC file containing the mapping from the International Classification of Disease (“ICD”), 9th Revision diagnosis code to Version 12 of the CMS–HCC model
5. A file consolidating MA data for beneficiaries who met eligibility criteria for Contract-Level Risk RADV audits from three sources: The adjusted Monthly Membership Report (“MMR”), the Model Output File (“MOF”), and the CMS Enrollment Database (“EDB”)
6. A file consolidating MA data for beneficiaries who did not meet all eligibility criteria for the Contract-Level RADV audits from the adjusted MMR, the MOF, and the EDB

G. June 21, 2019 Data Release

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| 1. Data Release Summary of Materials | Bates: 007323 |
| 2. Data Tables of Original and Perturbed, Unadjusted and Adjusted, Dollar Coefficients and Risk Factors | Bates: 007325 |
| 3. Table Descriptions | Bates: 007490 |
| 4. Data Dictionary for Tables of Original and Perturbed, Unadjusted and Adjusted, Dollar Coefficients and Risk Factors | Bates: 007492 |
| 5. Addendum to CMS’s FFS Adjuster Study | Bates: 007497 |
| 6. Programs | |
| a. FFSA Analysis with Bootstrap | Bates: 007508 |
| b. Tables Adjusted Replication | Bates: 007518 |
| c. Tables Unadjusted Replication | Bates: 007535 |
| 7. Variable Crosswalk | Bates: 007539 |

8. Sort_Info

On file with CMS

H. Medical Record Reviewer Guidance effective January 10, 2020

Bates: 007542

III. RADV Payment Error Calculation Methodology: Website Notices and Comments¹

A. Medicare Advantage RADV Notice of Payment Error Calculation Methodology for Part C Organizations Selected for Contract-Level RADV Audits: Request for Comment (Dec. 20, 2010) Bates: 007615

B. Comments Bates: 007618

C. Notice of Final Payment Error Calculation Methodology for Part C Medicare Advantage RADV Contract-Level Audits (Feb. 24, 2012) Bates: 007906

IV. Annual Advance Notices and Announcements of Rates and Policies²

A. Advance Notice of Methodological Changes for CY 2010 for Medicare Advantage (MA) Capitation Rates and Part C and Part D Payment Policies (Feb. 20, 2009) Bates: 007911

B. Announcement of CY 2010 Medicare Advantage Capitation Rates and Medicare Advantage and Part D Payment Policies (Apr. 6, 2009) Bates: 007938

C. Announcement of CY 2011 Medicare Advantage Capitation Rates and Medicare Advantage and Part D Payment Policies and Final Call Letter, 1, 16-19 (Apr. 5, 2010) Bates: 007979

D. Announcement of CY 2012 Medicare Advantage Capitation Rates and Medicare Advantage and Part D Payment Policies and Final Call Letter, 1, 37-38 (Apr. 4, 2011) Bates: 007984

¹ The Agency published the two notices contained in this section regarding RADV Payment Error Calculation Methodology at www.CMS.gov.

² The Medicare Statute requires the Agency to annually provide both an advance notice for comment of changes in Part C payment methodology and an announcement of changes in capitation rates and adjustment factors for the following calendar year. 42 U.S.C. §§ 1395w-23(b). The Agency implements this requirement by publishing these documents each year within the required timeframes (*see id.*) at www.CMS.gov.

- E. Announcement of CY 2017 Medicare Advantage Capitation Rates and Medicare Advantage and Part D Payment Policies and Final Call Letter, 1, 53-56 (Apr. 4, 2016)
Bates: 007987

V. Health Plan Management System (“HPMS”) Memoranda

- A. CMS, Private Plans Team, “CMS-4185-P RADV Rule Provision Notice” (Apr. 25, 2019)
Bates: 007992
- B. CMS, Center for Medicare, “Reminder of Existing Obligation to Submit Accurate Risk Adjustment Data” (Apr. 15, 2022)
Bates: 007993

VI. Program Manual Provisions

- A. MEDICARE MANAGED CARE MANUAL (CMS Pub. 100-16), Transmittal 1 (July 2, 2001)
Bates: 007996
- B. HOSPITAL MANUAL (CMS Pub. 10) Chapter IV, Billing Procedures, § 460, Completion of Form -1450 for Inpatient and/or Outpatient Billing (last revision Feb. 13, 2002)
Bates: 008078
- C. MEDICARE INTERMEDIARY MANUAL (CMS Pub. 13), Part 3, Claims Process, Chapter 7, Bill Review, § 3604, Review of Form HCFA-1450 for Inpatient and Outpatient Bills (last revision Feb. 7, 2003)
Bates: 008150
- D. MEDICARE CARRIERS MANUAL (CMS Pub. 14), Part 4, Professional Relations, §§ 2010-2010.2, Purpose of Health Insurance Claim Form HCFA-1500 and Items 1-33 (instructions) (last revision Aug. 1, 2003)
Bates: 008223
- E. MEDICARE MANAGED CARE MANUAL (CMS Pub. 100-16), Transmittal 47 (Feb. 20, 2004) (revising Chapter 7)
Bates: 008239
- F. MEDICARE MANAGED CARE MANUAL (CMS Pub. 100-16), Transmittal 57 (Aug. 13, 2004) (revising Chapter 7)
Bates: 008346
- G. MEDICARE MANAGED CARE MANUAL (CMS Pub. 100-16), Transmittal 114 (revising Chapter 7) (June 7, 2013)
Bates: 008353
- H. MEDICARE MANAGED CARE MANUAL (CMS Pub. 100-16), Transmittal 118 (Conversion from ICD-9 to ICD-10) (Sept. 19, 2014)
Bates: 008427
- I. MEDICARE MANAGED CARE MANUAL (CMS Pub. 100-16), Chapter 4 (Rev. 121, Issued: Apr. 22, 2016)
Bates: 008467
- J. MEDICARE PROGRAM INTEGRITY MANUAL (CMS Pub. 100-08), Chapter 1, (Rev. 11032,

Issued: Sept. 30, 2021)

Bates: 008578

K. MEDICARE PROGRAM INTEGRITY MANUAL (CMS Pub. 100-08), Chapter 3 (Rev. 12633,
Issued: May 9, 2024) Bates: 008592

L. MEDICARE PROGRAM INTEGRITY MANUAL (CMS Pub. 100-08), Chapter 6 (Rev. 10365,
Issued: Oct. 2, 2020) Bates: 008702

VII. Guides, Presentations, and Training Materials for Risk Adjustment Data Submission

- A. CMS, 2003 REGIONAL RISK ADJUSTMENT TRAINING FOR MEDICARE+CHOICE ORGANIZATIONS, PARTICIPANT GUIDE (Nov. 24, 2003) Bates: 008742
- B. CMS, April 2007 Monthly Risk Adjustment User Group Session, Presentation Slides (Apr. 18, 2007) Bates: 008927
- C. CMS, Center for Program Integrity (“CPI”), Medicare Advantage RADV: Contract-Level Industry-Wide Training Event (Jan. 29, 2019) Bates: 008945
- D. CMS, CPI, Medicare Advantage RADV: Calendar Year 2014 Contract-Level (CON14) Training Event, Presentation Slides (Apr. 2, 2019) Bates: 009003
- E. CMS, CPI – RADV CON 2011, 2012, 2013 Medicare Advantage Organization (“MAO”) Teleconference Frequently Asked Questions (July 11, 2019) Bates: 009119

VIII. Other HHS Authorities

- A. HHS Office of the Inspector General (“OIG”) Reports
 - 1. OIG, ENCOUNTER DATA SUBMITTED BY COMMUNITYCARE OKLAHOMA FOR 2003 MONTHLY CAPITATION PAYMENTS, A-06-06-00104 (May 3, 2007) Bates: 009120
 - 2. OIG, RISK ADJUSTMENT DATA VALIDATION OF PAYMENTS MADE TO PACIFICARE OF TEXAS FOR CALENDAR YEAR 2007 (CONTRACT NUMBER H4590), A-06-09-00012 (May 30, 2012) Bates: 009139
 - 3. OIG, RISK ADJUSTMENT DATA VALIDATION OF PAYMENTS MADE TO PARAMOUNT CARE, INC. FOR CALENDAR YEAR 2007 (CONTRACT NUMBER H3653), A-05-09-00044 (Sept. 25, 2012) Bates: 009207
 - 4. OIG, RISK ADJUSTMENT DATA VALIDATION OF PAYMENTS MADE TO EXCELLUS HEALTH PLAN, INC. FOR CALENDAR YEAR 2007 (CONTRACT NUMBER H3351), A-02-09-01014 (Oct. 5, 2012) Bates: 009247

5. OIG, RISK ADJUSTMENT DATA VALIDATION OF PAYMENTS MADE TO PACIFICARE OF CALIFORNIA FOR CALENDAR YEAR 2007 (CONTRACT NUMBER H0543), A-09-09-00045 (Nov. 30, 2012) Bates: 009302
6. OIG, MEDIC BENEFIT INTEGRITY ACTIVITIES IN MEDICARE PARTS C AND D, OEI-03-11-00310 (Jan. 9, 2013) Bates: 009366
7. OIG, VIDANT MEDICAL CENTER INCORRECTLY BILLED MEDICARE INPATIENT CLAIMS WITH SEVERE MALNUTRITION, A-03-15-00011 (Jan. 31, 2017) Bates: 009403
8. OIG, SOME DIAGNOSIS CODES THAT ESSENCE HEALTHCARE, INC., SUBMITTED TO CMS DID NOT COMPLY WITH FEDERAL REQUIREMENTS, A-07-17-01170 (Apr. 30, 2019) Bates: 009435
9. OIG, BILLIONS IN ESTIMATED MEDICARE ADVANTAGE PAYMENTS FROM CHART REVIEWS RAISE CONCERNS, OEI-03-17-00470 (Dec. 10, 2019) Bates: 009456
10. OIG, HOSPITALS OVERBILLED MEDICARE \$1 BILLION BY INCORRECTLY ASSIGNING SEVERE MALNUTRITION DIAGNOSIS CODES TO INPATIENT HOSPITAL CLAIMS, A-03-17-00010 (July 13, 2020) Bates: 009500
11. OIG, BILLIONS IN ESTIMATED MEDICARE ADVANTAGE PAYMENTS FROM DIAGNOSES REPORTED ONLY ON HEALTH RISK ASSESSMENTS RAISE CONCERNS, OEI-03-17-00471 (Sept. 8, 2020) Bates: 009900
12. OIG, INCORRECT ACUTE STROKE DIAGNOSIS CODES SUBMITTED BY TRADITIONAL MEDICARE PROVIDERS RESULTED IN MILLIONS OF DOLLARS IN INCREASED PAYMENTS TO MEDICARE ADVANTAGE ORGANIZATIONS, A-07-17-01176 (Sept. 16, 2020) Bates: 009564
13. OIG, MEDICARE ADVANTAGE COMPLIANCE AUDIT OF SPECIFIC DIAGNOSIS CODES THAT BLUE CROSS BLUE SHIELD OF MICHIGAN (CONTRACT H9572) SUBMITTED TO CMS, A-02-18-01028 (Feb. 24, 2021) Bates: 009589
14. OIG, MEDICARE ADVANTAGE COMPLIANCE AUDIT OF DIAGNOSIS CODES THAT HUMANA, INC., (CONTRACT H1036) SUBMITTED TO CMS, A-07-16-01165 (Apr. 19, 2021) Bates: 009627
15. OIG, MEDICARE ADVANTAGE COMPLIANCE AUDIT OF SPECIFIC DIAGNOSIS CODES THAT ANTHEM COMMUNITY INSURANCE COMPANY, INC. (CONTRACT H3655) SUBMITTED TO CMS, A-07-19-01187 (May 21, 2021) Bates: 009669

16. OIG, SOME MEDICARE ADVANTAGE COMPANIES LEVERAGED CHART REVIEWS AND HEALTH RISK ASSESSMENTS TO DISPROPORTIONATELY DRIVE PAYMENTS, OEI-03-17-00474 (Sept. 13, 2021) Bates: 009726
17. OIG, MEDICARE ADVANTAGE COMPLIANCE AUDIT OF SPECIFIC DIAGNOSIS CODES THAT COVENTRY HEALTH CARE OF MISSOURI, INC. (CONTRACT H2663) SUBMITTED TO CMS, A-07-17-01173 (Oct. 28, 2021) Bates: 009758
18. OIG, MEDICARE ADVANTAGE COMPLIANCE AUDIT OF SPECIFIC DIAGNOSIS CODES THAT UPMC HEALTH PLAN, INC. (CONTRACT H3907) SUBMITTED TO CMS, A-07-19-01188 (Nov. 5, 2021) Bates: 009817
19. OIG, 2021 TOP MANAGEMENT AND PERFORMANCE CHALLENGES FACING HHS (Nov. 16, 2021) Bates: 009893
20. OIG, MEDICARE ADVANTAGE COMPLIANCE AUDIT OF SPECIFIC DIAGNOSIS CODES THAT HEALTHFIRST HEALTH PLAN, INC. (CONTRACT H3359) SUBMITTED TO CMS, A-02-18-01029 (Jan. 5, 2022) Bates: 009952
21. OIG, MEDICARE ADVANTAGE COMPLIANCE AUDIT OF DIAGNOSIS CODES THAT SCAN HEALTH PLAN (CONTRACT H5425) SUBMITTED TO CMS, A-07-17-01169 (Feb. 3, 2022) Bates: 010004
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23. OIG, MEDICARE ADVANTAGE COMPLIANCE AUDIT OF SPECIFIC DIAGNOSIS CODES THAT PEOPLES HEALTH NETWORK (CONTRACT H1961) SUBMITTED TO CMS, A-06-18-05002 (May 25, 2022) Bates: 010120
24. OIG, MEDICARE ADVANTAGE COMPLIANCE AUDIT OF SPECIFIC DIAGNOSIS CODES THAT CARITEN HEALTH PLAN, INC., (CONTRACT H4461) SUBMITTED TO CMS, A-02-20-01009 (July 18, 2022) Bates: 010164
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27. OIG, MEDICARE ADVANTAGE COMPLIANCE AUDIT OF SPECIFIC DIAGNOSIS CODES THAT REGENCE BLUECROSS BLUESHIELD OF OREGON (CONTRACT H3817) SUBMITTED TO CMS, A-09-20-03009 (Sept. 13, 2022) Bates: 010361

28. OIG, MEDICARE ADVANTAGE COMPLIANCE AUDIT OF DIAGNOSIS CODES THAT INTER VALLEY HEALTH PLAN, INC. (CONTRACT H0545), SUBMITTED TO CMS, A-05-18-00020 (Sept. 26, 2022) Bates: 010418
29. OIG, MEDICARE ADVANTAGE COMPLIANCE AUDIT OF SPECIFIC DIAGNOSIS CODES THAT HIGHMARK SENIOR HEALTH COMPANY (H3916), SUBMITTED TO CMS, A-03-19-00001 (Sept. 29, 2022) Bates: 010464
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33. OIG, MEDICARE ADVANTAGE COMPLIANCE AUDIT OF SPECIFIC DIAGNOSIS CODES THAT BLUE CROSS & BLUE SHIELD OF RHODE ISLAND (H4152) SUBMITTED TO CMS, A-01-20-00500 (Nov. 16, 2022) Bates: 010699
34. OIG, MEDICARE ADVANTAGE COMPLIANCE AUDIT OF SPECIFIC DIAGNOSIS CODES THAT CIGNA-HEALTHSPRING OF TENNESSEE, INC. (CONTRACT H4454) SUBMITTED TO CMS, A-07-19-01193 (Dec. 22, 2022) Bates: 010748

B. CMS Financial Reports

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2. CMS, FINANCIAL REPORT: FY 2018 (Nov. 15, 2018) Bates: 010954
3. CMS, MEDICARE PART C IMPROPER PAYMENT MEASUREMENT PROGRAM – IMPROPER PAYMENT RATES, FY 2019 Bates: 011090
4. CMS, FINANCIAL REPORT FY: 2019 (Nov. 2019) Bates: 011094
5. CMS, PART C IMPROPER PAYMENT MEASURE (PART C IPM) FY 2020 PAYMENT ERROR RATE RESULTS Bates: 011230
6. CMS, FINANCIAL REPORT: FY 2020 (Nov. 2020) Bates: 011233

7. CMS, PART C IMPROPER PAYMENT MEASURE (PART C IPM) FY 2021 PAYMENT ERROR RATE RESULTS Bates: 011369
8. CMS, FINANCIAL REPORT: FY 2021 (Nov. 5, 2021) Bates: 011372
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10. CMS, FINANCIAL REPORT: FY 2022 (Nov. 7, 2022) Bates: 011503

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2. HHS, AGENCY FINANCIAL REPORT: FY 2022 (Nov. 14, 2022) Bates: 011953

D. Administrative Decisions

1. *Beneficiary v. CMS*, No. M-16-8149, Medicare Appeals Council, (Oct. 25, 2016) Bates: 012280
2. *McLaren Reg'l Med. Ctr. v. CMS*, No. M-18-3621, Medicare Appeals Council (June 7, 2018) Bates: 012287
3. *Zoll Lifecor Corp. v. CMS*, No. M-15-8503, Medicare Appeals Council (Dec. 6, 2018) Bates: 012295
4. *Desert Valley Hosp., Inc. v. CMS*, No. M-20-40, Medicare Appeals Council (Dec. 27, 2019) Bates: 012301
5. *Trinity Health v. CMS*, No. M-12-1257, Medicare Appeals Council (July 20, 2022) Bates: 012310

E. Other Authorities

1. Use of Statistical Sampling to Project Overpayments to Medicare Providers and Suppliers, Health Care Financing Administration ("HCFA")³ Ruling 86-1 (Feb. 20, 1986) Bates: 012316
2. U.S. PUBLIC HEALTH SERVICE AND THE HEALTH CARE FINANCING ADMINISTRATION, ICD-9-CM PREFACE AND OFFICIAL GUIDELINES FOR CODING AND REPORTING (Oct. 1, 2000) Bates: 012324

³ The Health Care Financing Administration ("HCFA") was the precursor agency to CMS.

3. CMS, Standard Managed Care Electronic Data Interchange (“EDI”) Enrollment Form (July 10, 2009) Bates: 012353
4. CMS, Standard Managed Care EDI Agreement Form (Mar. 4, 2011) Bates: 012356
5. CMS AND THE NATIONAL CENTER FOR HEALTH STATISTICS (“NCHS”), ICD-9-CM OFFICIAL GUIDELINES FOR CODING AND REPORTING (updated Aug. 23, 2011, effective Oct. 1, 2011) Bates: 012359
6. CMS, CY 2011 CMS Risk Adjustment Data Validation Overview, Presentation (Oct. 9, 2012) Bates: 012466
7. CMS, CY 2013 Standard Medicare Advantage Organization Contract Bates: 012503
8. CMS, Medical Record Checklist and Guidance Bates: 012523
9. CMS, RADV FACT SHEET (2013, updated June 1, 2017) Bates: 012526
10. CMS, REPORT TO CONGRESS: RISK ADJUSTMENT IN MEDICARE ADVANTAGE (Dec. 2018) Bates: 012531
11. CMS, FY 2019 MEDICARE & MEDICAID PROGRAM INTEGRITY: ANNUAL REPORT TO CONGRESS (March 2022) Bates: 012741
 - a. CMS, FY 2019, Recovery Audit Contractors (“RAC”) Appendices (July 29, 2021) Bates: 012874
12. CMS, 2021 REPORT TO CONGRESS: RISK ADJUSTMENT IN MEDICARE ADVANTAGE (Dec. 2021) Bates: 012896
13. CMS, Fast Facts (Aug. 2022) Bates: 013108
14. CMS, 2022 Midyear Final ICD-10 Mappings Bates: 013121
15. CMS, Medicare Advantage RADV Final Rule (CMS-4185-F2) Fact Sheet (Jan. 30, 2023) Bates: 013378
16. Press Release, CMS Office of Communications, CMS Issues Final Rule to Protect Medicare, Strengthen Medicare Advantage, and Hold Insurers Accountable, (Jan. 30, 2023) Bates: 013381

IX. Other Government Authorities

A. GAO Reports

1. GAO-12-51, MEDICARE ADVANTAGE: CMS SHOULD IMPROVE THE ACCURACY OF RISK SCORE ADJUSTMENTS FOR DIAGNOSTIC CODING PRACTICES (Jan. 2012)
Bates: 013383
2. GAO-13-206, MEDICARE ADVANTAGE: SUBSTANTIAL EXCESS PAYMENTS UNDERSCORE NEED FOR CMS TO IMPROVE ACCURACY OF RISK SCORE ADJUSTMENTS (Jan. 2013)
Bates: 013415
3. GAO-14-571, MEDICARE ADVANTAGE: CMS SHOULD FULLY DEVELOP PLANS FOR ENCOUNTER DATA AND ASSESS DATA QUALITY BEFORE USE (July 2014)
Bates: 013441
4. GAO-16-76, MEDICARE ADVANTAGE: FUNDAMENTAL IMPROVEMENTS NEEDED IN CMS'S EFFORT TO RECOVER SUBSTANTIAL AMOUNTS OF IMPROPER PAYMENTS (Apr. 2016)
Bates: 013480
5. GAO-17-223, MEDICARE ADVANTAGE: LIMITED PROGRESS MADE TO VALIDATE ENCOUNTER DATA USED TO ENSURE PROPER PAYMENTS (Jan. 2017)
Bates: 013518
6. GAO-17-761T, MEDICARE ADVANTAGE PROGRAM INTEGRITY: CMS'S EFFORTS TO ENSURE PROPER PAYMENTS AND IDENTIFY AND RECOVER IMPROPER PAYMENTS (July 2017)
Bates: 013547
7. GAO-18-377, IMPROPER PAYMENTS: ACTIONS AND GUIDANCE COULD HELP ADDRESS ISSUES AND INCONSISTENCIES IN ESTIMATION PROCESSES (May 2018)
Bates: 013566
8. Excerpts from GAO-21-119SP, HIGH-RISK SERIES: DEDICATED LEADERSHIP NEEDED TO ADDRESS LIMITED PROGRESS IN MOST HIGH-RISK AREAS (Mar. 2021)
Bates: 013611
9. Excerpts from GAO-22-105184, HIGH-RISK SERIES: KEY PRACTICES TO SUCCESSFULLY ADDRESS HIGH-RISK AREAS AND REMOVE THEM FROM THE LIST (Mar. 2022)
Bates: 013669
10. GAO-22-106026, MEDICARE ADVANTAGE: CONTINUED MONITORING AND IMPLEMENTING GAO RECOMMENDATIONS COULD IMPROVE OVERSIGHT (June 2022)
Bates: 013718

B. Other Authorities

1. Exec. Order No. 13,520, Reducing Improper Payments (2009)

Bates: 013734

2. Office of Management and Budget (“OMB”) Memorandum M-15-02, Appendix C to Circular No. A-123, Requirements for Effective Estimation and Remediation of Improper Payments (Oct. 20, 2014) Bates: 013739

X. Publications and Other Authorities

A. MedPAC Reports

1. Excerpts from MEDICARE PAYMENT ADVISORY COMMISSION (“MEDPAC”), REPORT TO THE CONGRESS: MEDICARE PAYMENT POLICY, Vols. 1 and 2 (Mar. 1998) Bates: 013794
2. Excerpts from MEDPAC, REPORT TO THE CONGRESS: MEDICARE PAYMENT POLICY (Mar. 2010) Bates: 013964
3. Excerpts from MEDPAC, REPORT TO THE CONGRESS: MEDICARE PAYMENT POLICY (Mar. 2011) Bates: 014088
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a. Richard Kronick and F. Michael Chua, *Estimating the Magnitude of Medicare Advantage Coding Intensity and of the Budgetary Effects of Fully Adjusting for Differential MA Coding* (Feb. 23, 2021) (providing details and methodology for the estimates in CRFB, Feb. 23, 2021) Bates: 015861

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

HUMANA INC. and HUMANA BENEFIT
PLAN OF TEXAS, INC.,

Plaintiffs,

v.

XAVIER BECERRA, in his official capacity
as Secretary of the United States Department
of Health and Humana Services, and UNITED
STATES DEPARTMENT OF HEALTH AND
HUMAN SERVICES,

Defendants.

No. 4:23-cv-00909-O

CERTIFICATION OF THE ADMINISTRATIVE RULEMAKING RECORD

I, Martique Jones, Director of the Regulations Development Group, a component of the Office of Strategic Operations and Regulatory Affairs, Centers for Medicare & Medicaid Services, United States Department of Health and Human Services, certify that, to the best of my knowledge, the attached index lists the materials that comprise the complete administrative record of the rulemaking proceedings for the portions of the final rule that the Plaintiffs challenge in this action, which addresses Medicare Advantage Risk Adjustment Data Validation (“RADV”) extrapolation methodology. *See* 42 C.F.R. §§ 422.300, 422.310(e), 422.311(a); Medicare and Medicaid Programs; Policy and Technical Changes to the Medicare Advantage, Medicare Prescription Drug Benefit, Program of All-Inclusive Care for the Elderly (PACE), Medicaid Fee-For-Service, and Medicaid Managed Care Programs for Years 2020 and 2021, 88 Fed. Reg. 6,643 (Feb. 1, 2023).

Executed this 22nd day of August 2024, in Baltimore, Maryland.

Martique Jones, Director
Regulations Development Group
Office of Strategic Operations and Regulatory Affairs
Centers for Medicare & Medicaid Services
United States Department of Health and Human Services