

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

NEW MEXICO HEALTH CONNECTIONS,
a New Mexico Non-Profit Corporation,

No. 1:16-cv-00878-JB/WPL

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES, et al.,

Defendants.

**PLAINTIFF NEW MEXICO HEALTH CONNECTIONS’
RESPONSE TO HHS’S NOTICE**

HHS’s most recent Notice of “Additional Developments” (ECF Doc. No. 84) informs the Court that HHS has issued a new proposed risk adjustment rule to govern the 2018 benefit year (the “Proposed 2018 Rule”). Like the newly-issued 2017 Rule before it, the Proposed 2018 Rule would supersede the now-vacated 2018 risk adjustment regulations that are being litigated in this case. Given that HHS’s Rule 59 motion seeks reconsideration of the Court’s decision regarding a rule that is shortly to be replaced, the motion is now entirely moot as to 2017 and 2018. While the 2018 Proposed Rule is still flawed, NMHC will seek its remedy in the proper arena: through the notice and comment procedure set forth in the APA (unlike its promulgation of the new 2017 Rule, HHS has followed proper APA procedure in issuing the 2018 Proposed Rule by allowing for public comment). The only regulations remaining at issue for the Court are for 2014-2016.

The issuance of both new regulations also betrays the hollowness of HHS's cry that this Court's remedy of vacatur will inevitably cause market disruption. As HHS has now twice shown, it is not helpless. It is capable of responding to this Court's order by issuing new rules. That it has failed to issue those rules properly or in a manner that resolves the deep flaws in risk adjustment is an issue for another day. But there can be no question that the speculative market disruption HHS complains of is a self-inflicted wound from its months of inaction earlier this year.

Dated: August 13, 2018

Respectfully submitted:

/s/ Nancy R. Long

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CERTIFICATE OF SERVICE

I hereby certify that on August 13, 2018, I electronically filed the foregoing Response to HHS's Notice using the Court's CM/ECF system, causing a notice of filing to be served upon all counsel of record.

/s/ Nancy R. Long
Nancy R. Long