

Exhibit B

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

NEW MEXICO HEALTH CONNECTIONS,
Plaintiff,

VS. NO. CV 16-0878 JB/JHR

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

Transcript of Motion Proceedings before
The Honorable James O. Browning, United States
District Judge, Albuquerque, Bernalillo County,
New Mexico, commencing on January 22, 2018.

For the Plaintiff: Mr. Barak Bassman; Ms. Leah
Katz; Ms. Nancy Long

For the Defendants: Mr. James Powers; Ms. Serena
Orloff

Jennifer Bean, FAPR, RDR, RMR, CCR
United States Court Reporter
Certified Realtime Reporter
333 Lomas, Northwest
Albuquerque, NM 87102
Phone: (505) 348-2283
Fax: (505) 843-9492

1 So let's look again at these interrelated
2 programs.

3 THE COURT: Well, I guess I'm still
4 struggling with, it certainly seems that budget
5 neutrality is at least reasonable. It may not be the
6 best reading of the statute, but it seems to me it's
7 at least reasonable, because I'm having a hard time
8 figuring out how else a program would work. If
9 you're trying to disincentivize gaming of the system,
10 I'm trying to think how a program would work that
11 didn't have the transfers to the people that have
12 assembled the higher risk enrollees. How else would
13 it work? How else would you have the money going to
14 the other person, if it was not going to be budget
15 neutral?

16 MR. BASSMAN: So, a couple of things.

17 THE COURT: I mean, it doesn't make sense
18 here for the Government to be coming out of the
19 Treasury, if the whole purpose of the transfer is to
20 keep the players competitive and not getting an
21 advantage in the market, isn't it?

22 MR. BASSMAN: Here is where I think that's
23 wrong, Your Honor, and why the Government acted
24 arbitrarily and capriciously.

25 First, payments in clearly should be the

1 sitting on its hands, and not taking action, is not
2 engaged in rational decision making. This is
3 arbitrary and capricious behavior.

4 At this point, Your Honor, the next issue
5 I'd move on to deals with prescription drug data. So
6 I don't know if this would a useful break point.

7 THE COURT: Yeah, let's let Mr. Powers
8 respond on the HCC issue. Mr. Powers.

9 MR. POWERS: Thank you, Your Honor.

10 And if I may, I'd like to just briefly
11 touch on a couple of points related to state average
12 premium.

13 THE COURT: You're welcome to.

14 MR. POWERS: Just one point where I believe
15 I misspoke in discussing the agency's interpretation
16 of the statute. The agency's view is that the
17 statute does not prohibit budget neutrality, first of
18 all.

19 And that second, you know, the only
20 reasonable interpretation of the statute, in light of
21 the absence of appropriations for risk adjustment, is
22 that risk adjustment is a budget neutral program.

23 And we do not think that the agency needed
24 to seek the counsel of GAO on this point. The agency
25 was entrusted by Congress, given broad discretion to


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C-E-R-T-I-F-I-C-A-T-E

UNITED STATES OF AMERICA
DISTRICT OF NEW MEXICO

I, Jennifer Bean, FAPR, RDR, CRR, RMR, CCR,
Official Court Reporter for the State of New Mexico,
do hereby certify that the foregoing pages constitute
a true transcript of proceedings had before the said
Court, held in the District of New Mexico, in the
matter therein stated.

In testimony whereof, I have hereunto set my
hand on January 30, 2018.



Jennifer Bean, FAPR, RMR-RDR-CCR
Certified Realtime Reporter
United States Court Reporter
NM CCR #94
333 Lomas, Northwest
Albuquerque, New Mexico 87102
Phone: (505) 348-2283
Fax: (505) 843-9492