



**GRA State Health & Long-term Care Team
Opportunities for State Advocacy**

**Assuring the Promise of
Federal Health Care Reform in 2010:
State High Risk Pools**



Assuring the Promise of Federal Health Care Reform in 2010: State High Risk Pools

This Advocacy Brief will be updated periodically as policy and regulations concerning the federal high risk pool program are designed. With information in flux, please check with GRA colleagues on latest developments.

Millions across the United States are considered “uninsurable” because private health insurance companies can deny coverage to applicants if they have a pre-existing medical condition. While state governments are not *required* to have some last resort coverage option available, most do -- usually through a high risk health insurance pool. High-risk pools are usually private, self-funded health insurance plans organized in 35 states to serve high-risk individuals who meet enrollment criteria and don’t have access to group coverage (Appendix 1). In most states, they are independent entities governed by their own boards and administrators. Coverage options in high risk pools are similar to traditional individual health insurance, although premiums are more expensive. High risk pools also serve as the guaranteed-issue purchasing option for individuals who wish to exercise federal group-to-individual insurance portability rights under HIPAA, the Health Insurance Portability and Accountability Act of 1996 in many states.

A New High Risk Pool Program

Under § 1101 of the [Patient Protection and Affordable Care Act](#), the Secretary of HHS must establish a new and “temporary high risk federal health insurance pool program” within 90 days of enactment (Appendix 2). The law directs HHS to implement the program either directly or through contracts with states or private, not-for-profit entities.

Anyone with a preexisting medical condition *and* who has been uninsured for six months prior to applying for coverage *and* is a U.S. citizen or legal resident is eligible for this insurance. The U.S. GAO estimates a potential pool of nearly 4 million individuals.



The Act provides \$5 billion for this program and the Secretary is authorized to stop taking new applications to stay within this limit. This funding may be inadequate.

Premiums and benefit levels for this new high risk pool group have not been determined. Premium amounts could vary based on geography, family composition, tobacco use and age — with a maximum 4-to-1 age rating. Benefits will be determined by the Secretary; the consumer share of the actuarial value of the covered benefits is limited to 35% with a maximum annual out-of-pocket limit of \$5,950 (single) and \$11,900 (family) in 2010. There are no subsidies for those applicants with low incomes.

Coverage under this temporary program will be available until January 1, 2014, when full health reform is implemented. Enrollees will be transitioned into Health Insurance Exchanges or Medicaid expansion programs at that time.

State Implementation Options

Last week, HHS sent a [letter](#) to all states listing implementation options and asked states to indicate their intent by April 30, 2010 to either:

1. Operate a new high risk pool alongside a current state high risk pool;
2. Establish a new high risk pool (in states without an existing high risk pool);
3. Build on other existing coverage programs designed to cover high risk individuals;
4. Contract with a current HIPAA carrier of last resort or other carrier to provide subsidized coverage for the eligible population; or
5. Do nothing, in which case HHS would carry out a coverage program in the state.

States with existing high risk pools may contract for the new coverage group *only* if it maintains the current rate of funding for an existing pool. To protect against “dumping” by insurers and employer-based health plans, HHS can seek reimbursement when individuals join the new pool if they were “encouraged” to drop their existing coverage. There is no mandate that existing state high risk pools are continued, and federal subsidy funds (through FFY 2011 appropriations) are not yet assured.

How Existing State High Risk Pools Operate

High risk pools currently operate in thirty-five states, but combined they cover only about 200,000 individuals. Some states limit enrollment through caps or have long waiting lists. Most allow age rating, but many limit this to less than 4-to-1. Monthly premiums for a 50 year old vary widely among the states — from \$363 in NM to over \$1,300 in AK and WA. While high risk pools generally cover most medical services, the financial benefits are limited. Deductibles are generally high: 14 states start at \$500 and 16 start at \$1,000. Twenty-one states offer High Deductible Health Plans. Fifteen states offer reduced premiums or cost sharing requirements for low-income enrollees. Several states have annual benefits caps on total care and/or prescription drugs. Benefits are typically provided through an indemnity structure or preferred provider organizations. Premiums cover, on average, only about 55% of the benefits paid out. The state high risk pools



currently receive about \$900 million per year in public and private subsidies to cover claims of about \$2 billion.

It is uncertain whether the new federal high risk pool program will offer better benefits and / or lower costs than what is offered by existing state high risk pools. Many expect that premium levels will be different between the new federal high risk pool program and existing state programs.

State Advocacy Opportunities

1. The first step is to investigate what state policy makers are considering.
 - Is the state interested in contracting with HHS to administer the new high risk pool? ¹
 - Has the state opened discussion with HHS or submitted a letter of intent (due April 30, 2010)?
 - Does the state or the existing state high risk pool have the capacity to establish and open the new pool by late June?
 - Does the state high risk pool (or state) have the legal authority to contract with HHS to administer the new pool? If not, what legislative or administrative action is necessary?
 - What implementation option seems most likely?
2. For states with no existing or interested high risk pool, or no supportive state policy environment, another mechanism must be identified and activated – a federal coverage program in the state. In these states, AARP can help indicate the level of need and demand for such temporary coverage.
3. Working with state officials to help design an adequate benefit package for uninsured individuals with pre-existing medical conditions is important for AARP.
4. Outreach to those who may qualify for the new pool is the next step. In states with existing high risk pools with capped enrollment or waiting lists, we should press for an affirmative outreach campaign by state pool administrators. Such outreach could be developed now even though details of the new federal program are not yet established.
5. In all states, we should advocate for public and private outreach and enrollment programs to ensure that *all those who meet the eligibility criteria* receive information on the new temporary coverage program. This could include screening and outreach by health care providers and health insurers, as well as Medicaid agencies.
6. In states with existing high risk pools, we should support continuation of the pools and their funding until guaranteed issue coverage under national health care reform is available in 2014.

¹ Fourteen states have expressed interest and at least one has declined.



Additional Resources

April 2nd HHS Press Release and letter to the states
<http://www.hhs.gov/news/press/2010pres/04/20100402b.html>

National Association of State Comprehensive Health Insurance Plans (the trade association of high-risk pools), <http://naschip.org/portal/>

All High-Risk Pools Are Not Equal: Examining the Minnesota Model, Courtney Burke and Lynn Blewett, *Health Affairs Blog*, March 2010 <http://healthaffairs.org/blog/2010/03/19/all-high-risk-pools-are-not-equal-examining-the-minnesota-model/#more-4359>

Issues for Structuring Interim High-Risk Pools, Kaiser Issue Brief, January 2010
<http://www.kff.org/healthreform/upload/8040.pdf>

State High-Risk Pools: An Overview, Tanya Schwartz, Kaiser Issue Brief, January 2010
<http://www.kff.org/uninsured/upload/8041.pdf>

Health Insurance: Enrollment, Benefits, Funding, and Other Characteristics of State High-Risk Health Insurance Pools, GAO-09-730R, July 22, 2009
Summary: <http://www.gao.gov/products/GAO-09-730R>
Full Report: <http://www.gao.gov/new.items/d09730r.pdf>



Appendix 1. States with High Risk Pools

Alabama	Yes
Alaska	Yes
Arizona	
Arkansas	Yes
California	Yes
Colorado	Yes
Connecticut	Yes
Delaware	
District of Columbia	
Florida	Yes
Georgia	
Hawaii	
Idaho	Yes
Illinois	Yes
Indiana	Yes
Iowa	Yes
Kansas	Yes
Kentucky	Yes
Louisiana	Yes
Maine	
Maryland	Yes
Massachusetts	
Michigan	
Minnesota	Yes
Mississippi	Yes
Missouri	Yes
Montana	Yes
Nebraska	Yes
Nevada	
New Hampshire	Yes
New Jersey	
New Mexico	Yes
New York	
North Carolina	Yes
North Dakota	Yes
Ohio	
Oklahoma	Yes
Oregon	Yes
Pennsylvania	
Rhode Island	
South Carolina	Yes
South Dakota	Yes
Tennessee	Yes
Texas	Yes
Utah	Yes
Vermont	
Virginia	
Washington	Yes
West Virginia	Yes
Wisconsin	Yes
Wyoming	Yes

Source: National Association of State Comprehensive Health Insurance Plans 3/23/2010



Appendix 2. Text § 1101 of the Patient Protection and Affordable Care Act:

Subtitle B—Immediate Actions to Preserve and Expand Coverage

SEC. 1101. IMMEDIATE ACCESS TO INSURANCE FOR UNINSURED INDIVIDUALS WITH A PREEXISTING CONDITION.

(a) **IN GENERAL.**—Not later than 90 days after the date of enactment of this Act, the Secretary shall establish a temporary high risk health insurance pool program to provide health insurance coverage for eligible individuals during the period beginning on the date on which such program is established and ending on January 1, 2014.

(b) ADMINISTRATION.—

(1) **IN GENERAL.**—The Secretary may carry out the program under this section directly or through contracts to eligible entities.

(2) **ELIGIBLE ENTITIES.**—To be eligible for a contract under paragraph (1), an entity shall—

(A) be a State or nonprofit private entity;

(B) submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require; and

(C) agree to utilize contract funding to establish and administer a qualified high risk pool for eligible individuals.

(3) **MAINTENANCE OF EFFORT.**—To be eligible to enter into a contract with the Secretary under this subsection, a State shall agree not to reduce the annual amount the State expended for the operation of one or more State high risk pools during the year preceding the year in which such contract is entered into.

(c) QUALIFIED HIGH RISK POOL.—

(1) **IN GENERAL.**—Amounts made available under this section shall be used to establish a qualified high risk pool that meets the requirements of paragraph (2).

(2) **REQUIREMENTS.**—A qualified high risk pool meets the requirements of this paragraph if such pool—

(A) provides to all eligible individuals health insurance coverage that does not impose any preexisting condition exclusion with respect to such coverage;

(B) provides health insurance coverage—

(i) in which the issuer's share of the total allowed costs of benefits provided under such coverage is not less than 65 percent of such costs; and

(ii) that has an out of pocket limit not greater than the applicable amount described in section 223(c)(2) of the Internal Revenue Code of 1986 for the year involved, except that the Secretary may modify such limit if necessary to ensure the pool meets the actuarial value limit under clause (i);

(C) ensures that with respect to the premium rate charged for health insurance coverage offered to eligible individuals through the high risk pool, such rate shall—

(i) except as provided in clause (ii), vary only as provided for under section 2701 of the Public Health Service Act (as amended by this Act and notwithstanding the date on which such amendments take effect);



- (ii) vary on the basis of age by a factor of not greater than 4 to 1; and
- (iii) be established at a standard rate for a standard population; and
- (D) meets any other requirements determined appropriate by the Secretary.

(d) **ELIGIBLE INDIVIDUAL.**—An individual shall be deemed to be an eligible individual for purposes of this section if such individual—

- (1) is a citizen or national of the United States or is lawfully present in the United States (as determined in accordance with section 1411);
- (2) has not been covered under creditable coverage (as defined in section 2701(c)(1) of the Public Health Service Act as in effect on the date of enactment of this Act) during the 6-month period prior to the date on which such individual is applying for coverage through the high risk pool; and
- (3) has a pre-existing condition, as determined in a manner consistent with guidance issued by the Secretary.

(e) **PROTECTION AGAINST DUMPING RISK BY INSURERS.**—

(1) **IN GENERAL.**—The Secretary shall establish criteria for determining whether health insurance issuers and employment-based health plans have discouraged an individual from remaining enrolled in prior coverage based on that individual’s health status.

(2) **SANCTIONS.**—An issuer or employment-based health plan shall be responsible for reimbursing the program under this section for the medical expenses incurred by the program for an individual who, based on criteria established by the Secretary, the Secretary finds was encouraged by the issuer to disenroll from health benefits coverage prior to enrolling in coverage through the program. The criteria shall include at least the following circumstances:

(A) In the case of prior coverage obtained through an employer, the provision by the employer, group health plan, or the issuer of money or other financial consideration for disenrolling from the coverage.

(B) In the case of prior coverage obtained directly from an issuer or under an employment based health plan—

(i) the provision by the issuer or plan of money or other financial consideration for disenrolling from the coverage; or

(ii) in the case of an individual whose premium for the prior coverage exceeded the premium required by the program (adjusted based on the age factors applied to the prior coverage)—

(I) the prior coverage is a policy that is no longer being actively marketed (as defined by the Secretary) by the issuer; or

(II) the prior coverage is a policy for which duration of coverage form issue or health status are factors that can be considered in determining premiums at renewal.

(3) **CONSTRUCTION.**—Nothing in this subsection shall be construed as constituting exclusive remedies for violations of criteria established under paragraph (1) or as preventing States from applying or enforcing such paragraph or other provisions under law with respect to health insurance issuers.

(f) **OVERSIGHT.**—The Secretary shall establish—

- (1) an appeals process to enable individuals to appeal a determination under this section; and



(2) procedures to protect against waste, fraud, and abuse.

(g) FUNDING; TERMINATION OF AUTHORITY.—

(1) IN GENERAL.—There is appropriated to the Secretary, out of any moneys in the Treasury not otherwise appropriated, \$5,000,000,000 to pay claims against (and the administrative costs of) the high risk pool under this section that are in excess of the amount of premiums collected from eligible individuals enrolled in the high risk pool. Such funds shall be available without fiscal year limitation.

(2) INSUFFICIENT FUNDS.—If the Secretary estimates for any fiscal year that the aggregate amounts available for the payment of the expenses of the high risk pool will be less than the actual amount of such expenses, the Secretary shall make such adjustments as are necessary to eliminate such deficit

(3) TERMINATION OF AUTHORITY.—

(A) IN GENERAL.—Except as provided in subparagraph (B), coverage of eligible individuals under a high risk pool in a State shall terminate on January 1, 2014.

(B) TRANSITION TO EXCHANGE.—The Secretary shall develop procedures to provide for the transition of eligible individuals enrolled in health insurance coverage offered through a high risk pool established under this section into qualified health plans offered through an Exchange. Such procedures shall ensure that there is no lapse in coverage with respect to the individual and may extend coverage after the termination of the risk pool involved, if the Secretary determines necessary to avoid such a lapse.

(4) LIMITATIONS.—The Secretary has the authority to stop taking applications for 2010 participation in the program under this section to comply with the funding limitation provided for in paragraph (1).

(5) RELATION TO STATE LAWS.—The standards established under this section shall supersede any State law or regulation (other than State licensing laws or State laws relating to plan solvency) with respect qualified high risk pools which are established in accordance with this section.