Temporary Federal High Risk Health Insurance Pool Program

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Summary

This report briefly describes the temporary federal high risk health insurance pool program established by the Patient Protection and Affordable Care Act (PPACA, P.L. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, P.L. 111-152). Under PPACA, the federal high risk pool program is intended to help individuals with preexisting conditions who have been uninsured for six or more months to obtain health insurance coverage before 2014, when other relevant reforms take place. States can run the program or elect to have the Department of Health and Human Services operate the program in their state.

To be a qualified high risk pool, the high insurance coverage must have an actuarial value (the average percentage of expenses that the plan would cover) of at least equal 65% of total allowed costs, and out-of-pocket costs cannot exceed $5,950 for an individual in 2010. The premiums must be established at a standard rate for a standard population, and age rating cannot exceed a factor of 4 to 1. Claims and administrative costs will be subsidized by the federal government.

PPACA appropriates $5 billion of federal funds to support the program, available beginning on July 1, 2010, until the program ends on January 1, 2014. The Department of Health and Human Services has proposed allocating funds to states by using a combination of factors, including nonelderly population, nonelderly uninsured, and geographic cost as a guide, with the intention of reallocating funds based on actual enrollment and expenditure experiences. The Secretary of Health and Human Services may take any actions necessary to prevent deficits.

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Introduction

Since 1975, a growing number of states (35 currently) have implemented high risk pools, which offer nonprofit health insurance to individuals who are unable to purchase affordable coverage in the private market because of preexisting conditions.[1] State high risk pools often contract with a private health insurance carrier to administer the pool, and plan options can vary significantly both within pools and from state to state.[2] The Government Accountability Office (GAO) estimates that nearly 4 million individuals were eligible in states with high risk pools between 2005 and 2007.[3] However, in 2008, only a total of 199,020 individuals (ranging from 300 in Florida to 27,386 in Minnesota) were enrolled in the 34 high risk pools in operation during that time.[4]

The National Association of State Comprehensive Health Insurance Plans (NASCHIP) believes that the limited funding to subsidize the relatively high premiums charged for high risk pools has restrained enrollment in the plans.[5] The Patient Protection and Affordable Care Act (PPACA, P.L. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, P.L. 111-152) established a temporary federal high risk pool program. Under PPACA, the federally financed high risk pool program is intended to help certain individuals with preexisting conditions obtain coverage for the period between the dates beginning not later than 90 days from enactment (June 23, 2010) and January 1, 2014.[6]

Temporary Federal High Risk Pool Program

Under PPACA, the Secretary of Health and Human Services (hereafter referred to as the Secretary) must establish a temporary high risk health insurance pool program no later than 90 days after enactment, June 23, 2010.[7] The program is intended to bridge uninsured individuals with preexisting conditions to January 1, 2014, when group health plans and health insurance issuers of group or individual health insurance coverage will be prohibited from having preexisting condition exclusions.[8] Also effective for 2014 is the "guaranteed issue" provision

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[1] Lynn Gruber, "How state health insurance pools are helping Americans," National Association of State Comprehensive Health Insurance Plans, January 6, 2009. High risk pools are often called health insurance associations or comprehensive health insurance associations. The Connecticut Health Care Act of 1975 created the first state high risk pool followed by the Minnesota Comprehensive Health Association in 1976.

[2] United States Government Accountability Office, *Health Insurance: Enrollment, Benefits, Funding, and Other Characteristics of State High-Risk Health Insurance Pools*, July 22, 2009.

[3] Ibid.

[4] Kaiser Family Foundation*, State High Risk Pool Programs and Enrollment*, December 2008. Available at http://www.statehealthfacts.org/comparetable.jsp?ind=602&cat=7. North Carolina established the 35th state high risk pool in 2009. For more background information on state high risk pools, see CRS Report RL31745, *Health Insurance: State High Risk Pools*, by Bernadette Fernandez.

[5] Lynn R. Gruber, "State high risk pools hold value in the era of health reform," National Association of State Comprehensive Health Insurance Plans Board of Directors, November 15, 2007. The National Association of State Comprehensive Health Insurance Plans (NASCHIP) was created in 1993 to provide educational opportunities and information for state high risk health insurance pools that have been, or are yet to be, established by state governments to serve the medically "uninsurable" population.

[6] Plan enrollments generally are effective on a monthly basis, thus July 1, 2010, would be actual start date for coverage.

[7] §1101(a) of PPACA.

[8] §1201 PPACA: §2704 PHSA. A preexisting condition exclusion means denying benefits for chronic illnesses or (continued...)

requiring health insurance coverage in the individual or group market to accept every employer and individual in the state that applies for coverage.[9] Thus, individuals with preexisting conditions should not require a special high risk pool on or after January 1, 2014, because they will have access to health insurance coverage in the reformed insurance marketplace.

Eligible Individuals

The temporary federal high risk pool is intended to supplement existing state high risk pools. Indeed, existing state high risk pool enrollees will be ineligible for the federal program because federal enrollees must be without credible coverage for a six-month period prior to the date on which the individual is applying for coverage through the federal high risk pool program.[10] Credible coverage is defined by §2701(c) of the Public Health Service Act (PHSA) as a group health plan, health insurance coverage, Medicare Part A or Part B, Medicaid, coverage from the Department of Defense, a medical care program of the Indian Health Service (IHS), a state health benefits risk pool, the Federal Employee Health Benefits Program (FEHBP), a public health plan (as defined in regulations), or a health benefit plan under the Peace Corps Act.[11] Eligible individuals must also have a preexisting condition, as determined by the Secretary, and be a citizen or national of the United States or be lawfully present in the United States.[12]

Existing survey data on health conditions and insurance status give a range of estimates of potentially eligible individuals. The GAO estimate of approximately 4 million individuals was limited to states with existing high risk pools, and thus probably represents a low-end estimate of eligible individuals for the federal program, which will operate in all states.[13] Other full population survey estimates have found between 6.6 and 11.4 million adults are uninsured and have a chronic preexisting condition.[14] With respect to a likely number of enrollees, a survey of health insurance companies in the individual market found that there were 223,240 denials of coverage in 2008.[15] This figure likely represents a floor estimate of the number of individuals that would actually seek coverage in a federal high risk pool, since they have preexisting conditions, are probably uninsured due to the denial, and have actively sought coverage, thus showing a willingness to take the necessary steps in order to obtain coverage.

(...continued)

injuries, like carpal tunnel syndrome, diabetes, heart disease, and cancer, that an individual had before obtaining the current health insurance coverage.

[9] §1201 PPACA: §2702 PHSA.

[10] §1101(d) of PPACA.

[11] 45 CFR 146.113 defines a public health plan as any plan established or maintained by a state, the U.S. government, a foreign country, or any political subdivision of a state, the U.S. government, or a foreign country that provides health coverage to individuals who are enrolled in the plan.

[12] Ibid.

[13] United States Government Accountability Office, *Health Insurance: Enrollment, Benefits, Funding, and Other Characteristics of State High-Risk Health Insurance Pools*, July 22, 2009.

[14] Andrew P. Wilper, Steffie Woolhandler, Karen E. Lasser, Danny McCormick, David H. Bor, and David U. Himmelstein, National Study of Chronic Disease Prevalence and Access to Care in Uninsured U.S. Adults, Annals of Internal Medicine, 2008, 149:170-176. Ha Tu, "Rising health costs, medical debt and chronic conditions," Center for Studying Health System Change, September 2004.

[15] America's Health Insurance Plans (AHIP), "Individual Health Insurance 2009: A Comprehensive Survey of Premiums, Availability, and Benefits," October 2009.

Benefits and Premiums

The law establishes certain benefits and premium requirements. To be a qualified federal high risk pool, the health insurance coverage must have an actuarial value of at least 65% of the total allowed costs.[16] The coverage must also have an out-of-pocket limit no greater than the applicable amount for high-deductible health plans linked to health savings accounts, which is $5,950 for an individual in 2010.[17] This means the total annual cost sharing requirements, including deductibles, cannot exceed $5,950. While specific coverage policy is not addressed by the law (e.g., providers covered, covered days of hospitalization, covered prescription drugs), the Secretary is granted the authority to establish additional requirements concerning qualified high risk pools.[18]

By definition, individuals with preexisting conditions are generally high-cost members for a health insurer. Thus, it will be a challenge to balance coverage generosity and affordability of premiums with this high-cost population. Indeed, in 2007 the estimated national average per person annual medical spending for privately insured persons under 65 was $3,648, and it was about $9,000 per person for the enrollees in state high risk pools.[19] For currently operating state high risk pools, premiums have generally been high. Average state high risk pool premiums have been between 110% to 200% of the premium rates charged by other private health insurance carriers offering coverage in the individual market in the same state.[20]

Certain PPACA requirements for the federal high risk pool attempt to make premiums fair and affordable. By law, premiums for the federal high risk pool coverage must be established at a standard rate for a standard population and age rating cannot exceed a factor of 4 to 1.[21] These provisions will limit the variability of premiums among enrollees in the program. PPACA also subsidizes premiums by appropriating $5 billion for the payment of claims and administrative costs of the high risk pool that are in excess of the amount of premiums collected from enrollees.[22] Depending on the risk profile of the enrollees and the number of enrollees being subsidized, premiums could still be relatively high despite the subsidization.

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[16] §1101(c)(2)(B) of PPACA. The actuarial value of a health insurance policy is the percentage of the total covered expenses that the plan would, on average, cover. For example, a plan with a 65% actuarial value means that consumers would on average pay 35% of the cost of health care expenses through features like deductibles and coinsurance. The amount that individual consumers pay could vary substantially by the amount of services used.

[17] §1101(c)(2)(B) of PPACA and §223(c)(2) of the Internal Revenue Code of 1986.

[18] §1101(c)(2)(D) of PPACA.

[19] David Kashihara and Kelly Carper, "National Health Care Expenses in the U.S. Civilian Noninstitutionalized Population, 2007," Statistical Brief #229, December 2008, Agency for Healthcare Research and Quality. Available at http://www.meps.ahrq.gov/mepsweb/data_files/publications/st229/stat229.pdf. Kaiser Family Foundation, State High Risk Pool Programs and Enrollment, December 2007. Available at http://www.statehealthfacts.org/comparetable.jsp?ind=602&cat=7.

[20] United States Government Accountability Office, *Health Insurance: Enrollment, Benefits, Funding, and Other Characteristics of State High-Risk Health Insurance Pools*, July 22, 2009.

[21] §1101(c)(2)(C) of PPACA. The terms "standard rate" and "standard population" were not defined by PPACA. HHS has interpreted this provisions to mean that the rate may not exceed 100% of the standard non-group rate. U.S. Department of Health and Human Services, "Fact Sheet—Temporary High Risk Pool Program," April 2010. Available at http://www.hhs.gov/ociio/initiative/hi_risk_pool_facts.html. Age rating refers to the practice of a health insurer estimating the expected health care spending for all individuals within a given age group and then varying the premiums for individuals across groups to account for the differences. The higher the age group the higher the premiums are.

[22] §1101(g) of PPACA.

Protection Against Dumping by Health Insurers

Health insurers would have a powerful financial incentive to dump high-cost individuals with preexisting conditions into a high risk pool plan if they could. In order to prevent this type of activity, the Secretary must 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.[23] If an issuer or employment-based health plan is found by the Secretary to have encouraged an individual with preexisting conditions to disenroll, then the issuer or plan would be responsible for reimbursing the federal high risk pool program for the medical expenses incurred for that individual.[24] PPACA expressly permits the Secretary or a state operating the program to develop additional remedies to enforce the provision against dumping.[25]

Program Administration

PPACA provides that the Secretary may carry out the federal high risk pool program directly or through contracts to eligible entities.[26] In order to carry out the program, and other PPACA private health insurance provisions, the Secretary created a new Office of Consumer Information and Insurance Oversight (OCIIO) within the Office of the Secretary (OS).[27] OCIIO is led by a director that reports to the Secretary. Within OCIIO is an Office of Insurance Programs that is responsible for administering the temporary high-risk pool program and associated funding to states.[28]

Eligible Entities

To be eligible to contract with the Secretary for the federal high risk pool, an entity must either be a state or nonprofit private organization.[29] States that enter into a contract with the Secretary must agree not to reduce the annual amount expended for the operation of state high risk pools during the year preceding the year in which such contract is entered into.[30] On April 2, 2010, the Secretary sent a letter to state officials inviting them to participate in the program and asking that they submit a letter of intent by April 30, 2010.[31] To date, all states and the District of Columbia have either formally responded to the Secretary or made a public proclamation of their intentions, except Oregon and Utah. Most states (30 total) have chosen to contract with the Secretary to

[23] §1101(e)(1) of PPACA.

[24] §1101(e)(2) of PPACA.

[25] §1101(e)(3) of PPACA.

[26] §1101(b)(1) of PPACA. Eligible entities other than a state must be a non-profit organization.

[27] Department of Health and Human Services, "Statement of Organization, Functions, and Delegations of Authority," *Federal Register*, Vol. 75, No. 74 , Monday, April 19, 2010.

[28] Ibid.

[29] §1101(b)(2) of PPACA.

[30] §1101(b)(2)(C)(3) of PPACA.

[31] U.S. Department of Health and Human Services, "Sebelius Continues Work to Implement Health Reform, Announces First Steps to Establish Temporary High Risk Pool Program," April 2, 2010. Available at http://www.hhs.gov/news/press/2010pres/04/20100402b.html.

administer the program.[32] A total of 19 states indicated that they would not be participating. The Secretary will operate the program in those states. A list of states by their participation status is provided in **Table 1**.

Funding

PPACA appropriated $5 billion to pay claims and the administrative costs of the high risk pool that are in excess of the amount of premiums collected from enrollees beginning on July 1 until the program ends on January 1, 2014.[33] There has been some concern that the funding amount is inadequate for the program, even though various key factors such as the specific actuarial value, coverage policy, premiums, and cost sharing have not been defined yet for each plan. Rick Foster, the chief actuary of the Centers for Medicare and Medicaid Services, estimates that by 2011 and 2012 the initial funding will be exhausted, "resulting in substantial premium increases to sustain the program."[34] Many of the states that elected not to participate cited the funding as their reason. For example, Texas Governor Rick Perry in a letter to the Secretary stated that the funding is insufficient and that "state officials could be forced to reduce health coverage, raise premiums or ask state taxpayers to pay" for the high risk pool.[35] Similarly, Wyoming Governor Dave Freudenthal wrote the Secretary expressing the concern "that the allotted money may prove to be insufficient to fully operate this program until 2014."[36] If there are funding shortages, the law gives the Secretary broad authority for dealing with them. 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 expenses, the Secretary may make any program adjustments necessary to eliminate the deficit.[37]

The Secretary has proposed allocating funds for the program by using a formula similar to what was used for the State Children's Health Insurance Program (CHIP), whereby funds would be allotted to states using a combination of factors, including nonelderly population, nonelderly uninsured, and geographic cost, as a guide.[38] The Secretary intends to reallocate the unspent state allotments after a period of not more than two years, based on an assessment of enrollment and expenditure experiences of each state. A breakdown of the proposed funding by state is provided in **Table 1**.

[32] Jenny Backus, "High-Risk Pool Programs Take a Step Forward," April 30, 2010. Available at http://www.healthreform.gov/forums/blog/blog_20100430_1.html. National Conference of State Legislatures, "Coverage of High-Risk Individuals: State and Federal High-Risk Pools," May 6, 2010. Available at http://www.ncsl.org/?tabid=14329.

[33] §1101(g)(1) of PPACA.

[34] January 8, 2010, memorandum "Estimated Financial Effects of the Patient Protection and Affordable Care Act as Passed by the Senate on December 24, 2009" from CMS Chief Actuary Richard S. Foster to the Congress. Available at http://www.cms.gov/ActuarialStudies/Downloads/S_PPACA_2010-01-08.pdf.

[35] April 30, 2010 letter from Governor Rick Perry to Secretary Kathleen Sebelius. Available at http://governor.state.tx.us/files/press-office/O-SebeliusKathleen20100430.pdf.

[36] Leigh Anne G. Manlove, "Governor Freudenthal Opts for Federally Run High-Risk Insurance Pool," April 28, 2010. Available at http://governor.wy.gov/press-releases/governor-freudenthal-opts-for-federally-run-highrisk-insurance-pool.html.

[37] §1101(g)(2) of PPACA.

[38] U.S. Department of Health and Human Services, "Fact Sheet – Temporary High Risk Pool Program," April 2010. Available at http://www.hhs.gov/ociio/initiative/hi_risk_pool_facts.html.

Table 1. State High Risk Pool Enrollment, Participation in the Federal High Risk Pool, and Proposed Allocation of Federal Funds

State	Pre-PPACA State High Risk Pool Enrollment (2008)[a]	HHS or State to Run Federal High Risk Pool	Potential Allocation of Federal High Risk Pool Funds (in millions)
Alabama	2,653	HHS	$69
Alaska	469	State	$13
Arizona	No program	HHS	$129
Arkansas	3,061	State	$46
California	7,036	State	$761
Colorado	8,543	State	$90
Connecticut	2,336	State	$50
Delaware	No program	HHS	$13
District of Columbia	No program	State	$9
Florida	300	HHS	$351
Georgia	No program	HHS	$177
Hawaii	No program	HHS	$16
Idaho	No program	HHS	$24
Illinois	15,682	State	$196
Indiana	6,561	HHS	$93
Iowa	2,732	State	$35
Kansas	1,830	State	$36
Kentucky	4,458	State	$63
Louisiana	1,110	HHS	$71
Maine	No program	State	$17
Maryland	15,180	State	$85
Massachusetts	No program	State	$77
Michigan	No program	State	$141
Minnesota	27,386	HHS	$68
Mississippi	3,464	HHS	$47
Missouri	2,999	State	$81
Montana	2,995	State	$16
Nebraska	5,089	HHS	$23
Nevada	No program	HHS	$61
New Hampshire	1,094	State	$20
New Jersey	No program	State	$141
New Mexico	6,020	State	$37
New York	No program	State	$297

State	Pre-PPACA State High Risk Pool Enrollment (2008)[a]	HHS or State to Run Federal High Risk Pool	Potential Allocation of Federal High Risk Pool Funds (in millions)
North Carolina	Program started 2009	State	$145
North Dakota	1,463	HHS	$8
Ohio	No program	State	$152
Oklahoma	2,098	State	$60
Oregon	15,320	Undecided	$66
Pennsylvania	No program	State	$160
Rhode Island	No program	State	$13
South Carolina	2,328	HHS	$74
South Dakota	653	State	$11
Tennessee	4,516	HHS	$97
Texas	26,908	HHS	$493
Utah	3,715	Undecided	$40
Vermont	No program	State	$8
Virginia	No program	HHS	$113
Washington	3,397	State	$102
West Virginia	653	State	$27
Wisconsin	16,284	State	$73
Wyoming	687	HHS	$8
Totals	199,020	30 State, 19 HHS, 2 Undecided	$5 billion

Sources: Jenny Backus, "High-Risk Pool Programs Take a Step Forward," April 30, 2010. Available at http://www.healthreform.gov/forums/blog/blog_20100430_1.html. National Conference of State Legislatures, "Coverage of High-Risk Individuals: State and Federal High-Risk Pools," May 6, 2010. Available at http://www.ncsl.org/?tabid=14329. U.S. Department of Health and Human Services, "Fact Sheet – Temporary High Risk Pool Program," April 2010. Available at http://www.hhs.gov/ociio/initiative/hi_risk_pool_facts.html.

Notes: Oregon and Utah are considered "undecided" because they have engaged the Secretary in a series of discussions around concerns they have about operating the program. Both states have indicated they will not make a final decision until those discussions are completed.

a. This column provided the latest available enrollment statistics for state high risk pools in existence before PPACA.

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