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## State High-Risk Pools

### **Introduction**

State high risk pools are state sponsored programs that provide health coverage to people who are unable to find coverage in the individual market due to a pre-existing condition. Currently, high risk pools are available in 35 states, and an estimated 207,000 people receive health coverage through these pools. Many of the state high risk pools share a common structure but differ in a number of ways including: eligibility requirements, cost-sharing, premium costs, benefits, pre-existing condition exclusion periods, and funding sources.

The recently signed health reform law, the Patient Protection and Affordable Care Act (P.L. 111-148) created a new, temporary high risk health insurance pool program (Section 1101) within 90 days of enactment. The program is funded at \$5 billion and lasts until 2014, when individuals enrolled in the program are transitioned into new state-based health exchanges.

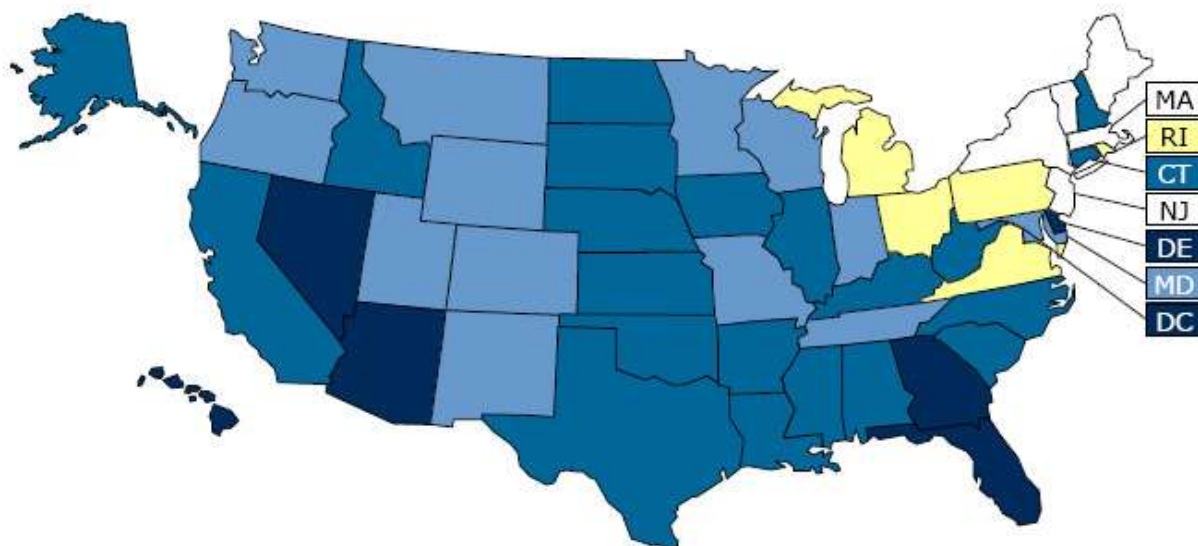
This paper provides an overview of current structure of state high risk pools, including the federal government's role, and discusses the new temporary high risk pool program and how it may impact or interact with existing state high risk pools.

### **Current structure of state high risk pools**

#### *Overview*

State high risk pools are generally operated through a state-established nonprofit entity which is governed by a board of directors who are generally appointed by the Governor or a state insurance commissioner. The size of the board varies anywhere from 3 to 15 members who are tasked with overseeing the management of the high risk pools. Members of the board typically represent an array of interests including: insurance companies, enrollees, health care providers, and state agencies.

35 states operate a high risk pool, while others use mechanisms like guarantee issue or open enrollment requirements to assist coverage options.



### State High-Risk Coverage Mechanism

*Source: National Conference of State Legislatures, 2009*  
*Note: Open enrollment requirements act as a limited form of guaranteed issue where a capped number of spots within affected plans are available during the open enrollment period, filled in order of application.*

### Eligibility

Several general categories of eligibility criteria are established by individual states for high risk pools. A state may enroll people who are medically eligible, or uninsurable, if they are unable to obtain health insurance in the private market due to a pre-existing condition or if premiums are substantially higher than the coverage offered through the pool. States may also qualify people who have specific health conditions, such as AIDS or cancer. Finally, many states allow HIPAA-eligible persons to enroll in their high risk pools. The following requirements must be met in order to be HIPAA-eligible: 18 months of prior coverage not interrupted by a gap of more than 63 days; coverage must have been through a group plan, COBRA or other continuation coverage must have been exhausted; ineligibility for Medicare or Medicaid; and, no coverage available by other health insurance.

### Enrollment

A total of 207,000 people received coverage through a state high risk pool in 2009. The Government Accountability Office estimates an additional 4 million individuals are potentially eligible for enrollment in a high risk pool based on their uninsured status and preexisting health

condition. All high risk pools accepted new enrollees in 2008, except for California and Florida. Average household income for enrollees whose data is available was about \$41,000 in 2008. Average age of an enrollee that year was 49 years old and length of enrollment was an average of three years.

HRP	Total HRP enrollees	Total HRP enrollees and dependents	Estimated number of individuals potentially eligible for HRP enrollment <sup>a</sup>
AL	2,272	2,410	79,632
AK	469	469	14,490
AR	3,079	3,079	61,110
CA	6,809	7,036	846,720
CO	8,552	8,552	100,674
CT	2,073	2,336	43,344
FL	292	292	465,948
ID	1,272	1,337	27,216
IL	16,063	16,063	218,610
IN	6,261	6,561	96,516
IA	2,732	2,732	34,524
KS	1,693	1,863	40,320
KY	4,185	4,354	71,694
LA	1,117	1,117	101,682
MD	11,366	14,691	95,886
MN	23,511	27,386	55,188
MS	3,468	3,468	68,418
MO	3,015	3,015	91,098
MT	3,016	3,016	18,900
NE	5,126	5,126	26,712
NH	1,038	1,094	17,388
NM	6,020	6,020	53,550
ND	1,463	1,463	8,568
OK	2,276	2,276	80,640
OR	13,953	15,318	78,246
SC	2,329	2,329	88,830
SD	669	669	10,962
TN	3,768	3,768	104,580
TX	24,170	26,908	716,562
UT	3,621	3,621	50,274
WA	3,397	3,397	97,020

WV	568	652	33,768
WI	16,284	16,284	60,480

Source: GAO-09-730R State High-Risk Health Insurance Pools

### *Funding*

All state high risk pools operate at a loss. State high risk pools are funded through a variety of sources. Of about \$2 billion in total funding in 2008, premiums were the largest source of revenue (54 percent). In order to assure enrollee affordability, however, premium contributions are capped to limit enrollee costs. Therefore, states look to other sources to fund the pools, including fees on health insurance companies (23 percent), state general revenue funds, state tobacco settlement funds, hospital assessments, and federal grants (less than 2 percent). These funding sources, however, do not cover the total amount necessary to enroll all potentially eligible individuals.

### **Federal Law**

#### *Trade Adjustment and Assistance Act of 2002*

The Trade Adjustment and Assistance Act of 2002 (Trade Act) provided a total of \$100 million in funding for the establishment and operation of state high risk pools. \$20 million of the total was to be used to provide states, which did not have an operational high risk pool at the time of the bill's enactment, with a \$1 million dollar grant to assist in the creation and implementation of a high risk pool. The remaining \$80 million authorized and appropriated in the Trade Act was to be split evenly over fiscal years 2003 and 2004 to provide money to states to defray some of the operating losses experienced by states with existing high risk pools. In order to qualify for this funding, a state must have established a risk pool that: 1) restricts premiums to no more than 150% of the premium for applicable standard risk rates in the state, 2) offers a choice of two or more coverage options through the pool, and has in effect a mechanism designed to ensure continued funding of losses incurred after the end of fiscal year 2004 in connection with operation of the pool.

#### *DRA and the State High Risk Pool Funding Extension Act of 2006*

The State High Risk Pool Funding Extension Act of 2006 extended the authorization of the high risk pool program for fiscal years 2006-2010. This authorization provided that \$15 million could be made available to assist states in the creation and implementation of high risk pools. It further provided for an annual amount of \$75 million to assist states in defraying operational costs of the high risk pools and to provide bonus grants to supplement consumer benefits. These benefits include premium subsidies, disease management programs and program expansions.

The Deficit Reduction Act, the Consolidated Appropriations Act of 2008, and the Omnibus Appropriations Act of 2009 funded the grants authorized under the State High-Risk Pool Funding Extension Act, although at generally less than the full \$75 million. Since 2003, state high risk pools have received \$335 million in funding.

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Federal funding for the state programs expires September 30, 2010.

*The Patient Protection and Affordable Care Act of 2010*

On March 23, 2010, President Obama signed H.R. 3590, the *Patient Protection and Affordable Care Act* into law. This legislation establishes a new, temporary high risk pool program and provides \$5 billion in federal funds to pay for the program. The Secretary of Health and Human Services has 90 days to establish and begin carrying out the program. HHS may perform the requirements of this provision either directly or through contracts to eligible entities (either a state or nonprofit entity). Coverage under high risk pools terminates on January 1, 2014 when enrollees under the new federal program would be transferred to the new insurance exchanges.

**Temporary High Risk Health Insurance Pool Program**

The new program requires state high risk pools to meet statutory requirements, including:

- 1) Provides eligible individuals health insurance coverage that does not exclude people based on preexisting conditions.
- 2) Provides health insurance coverage in which the issuer's share of the total allowed costs of benefits provided is greater than 65 percent and which has an out of pocket limit of no more than \$5,000 for self-only coverage and \$10,000 for family coverage.
- 3) Ensures that premium rates charged through the high risk pools shall:
  - a. Vary only with respect to:
    - i. Whether coverage is for an individual or family;
    - ii. Geography; and
    - iii. Tobacco use, except that the rate shall not vary by more than 1.5 to 1;
  - b. Vary on the basis of age by a factor of not great than 4 to 1; and
  - c. Be established at a standard rate for a standard population.

*Eligible Individuals*

An individual is eligible for coverage in a high risk pool established under this program if the individual: is a citizen, national, or lawfully present in the U.S.; has not been covered for 6 months prior to the individual applying for coverage through the high risk pool; and has a preexisting health condition.

*Sanctions*

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An issuer or employment-based health plan must reimburse the program for medical expenses incurred for an individual who the Secretary finds was encouraged to disenroll from health benefits coverage prior to enrolling in coverage through the high risk pool program.

### **Analysis**

Instead of building on the existing state high risk pool program, Congress created a new program with expanded coverage and new requirements for eligibility that existing program enrollees will be unlikely to meet. As a result, it is unclear what may happen to the existing high risk pools, or to the individuals who rely on them to provide coverage for often times very serious medical conditions.

For example, because existing high risk pool enrollees have coverage currently, they would not qualify for the new program where individuals must not have had coverage for at least 6 months. As a result, and to qualify for the new program, an individual might have to disenroll and go without coverage for 6 months in order to qualify for the new coverage. A more logical structure would allow individuals who are currently covered to automatically transition into the new program.

In addition, because the federal funding for existing state high risk pools will end on September 30 of this year, and the significant amount of money available through the new program (\$5 billion), states will most likely focus on that program. As a result, it is critical to ensure the existing program enrollees can seamlessly transition to the new structure, whether through state initiatives, funding, or both.

### **Recommendations**

Prior to September 30, CAHC recommends Congress change the law to allow the very sick individuals enrolled in the existing program may continue coverage without a disruption in coverage or gaps in care. One way to do this would be to amend Section 1101(d) and add a new (4) to allow coverage under state high risk pools. The language would read:

*Section 1101(d) of Public Law 111-148 is amended by striking “and” at the end of (2); striking “.” and adding “and” at the end of (3) and adding at the end the following:*

*(4). An individual enrolled under a program under Section 2745 of the Public Health Service Act.*

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**P.L. 111-148, Patient Protection and Affordable Care Act of 2010**

**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—

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(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

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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 from 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

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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 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 to qualified high risk pools which are established in accordance with this section.