The “New and Temporary” Federal High-Risk Insurance Pool

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The Patient Protection and Affordable Care Act (PPACA),¹ includes several measures designed to assist those individuals considered to be high-risk or “uninsurable,” with obtaining health insurance coverage. One such provision is the establishment of the temporary Pre-Existing Condition Insurance Program (PCIP).² Under the PCIP, individuals with pre-existing conditions who have been without health insurance coverage for six months may apply for a policy valid through January 1, 2014, when the establishment of health insurance exchanges will replace the program. Section 1101 of the PPACA directs the secretary of the U.S. Department of Health and Human Services (DHHS) to establish the temporary high-risk program within 90 days of the law’s enactment.³ On April 2, 2010, DHHS Secretary Kathleen Sebelius wrote to governors and state insurance commissioners and offered the states the following choices regarding the pools: (1) operate a new high-risk pool alongside an existing state high-risk pool; (2) establish a new high-risk pool if the state did not currently have one; (3) build upon other existing coverage programs designed to cover high-risk individuals; (4) contract with current Health Insurance Portability and Accountability Act (HIPAA)⁴ insurance carriers or insurers of last resort to provide subsidized coverage; or (5) do nothing, in which case the DHHS would carry out the coverage program in the state.⁵ Approximately a month later, Texas Governor Rick Perry announced that the state would not participate in the federal program, in part, because he said the $5 billion that Congress appropriated to establish the pools in all 50 states is inadequate.⁶ “Most experts believe this amount to be insufficient. In the coming years, state officials could be forced to reduce health coverage, raise premiums or ask state taxpayers to pay for these high-risk pools once federal funds run dry,” said Perry in a letter to Kathleen Sebelius.⁷

Background

First established in 1976 by Minnesota and Connecticut, high-risk insurance pools are state-run programs designed to provide health insurance coverage to residents who are

² Id. at § 1101; see also Pre-Existing Condition Ins. Plan, https://www.pcip.gov/ (last visited Aug. 19, 2010).
³ PPACA § 1101, supra note 1.
⁷ Id.
unable to obtain private coverage due to pre-existing medical conditions.\textsuperscript{8} Currently in place in 34 states,\textsuperscript{9} the high-risk pools typically share a common structure, but differ state-to-state in terms of eligibility requirements, benefits provided, pre-existing condition exclusions, premium costs, and administration.\textsuperscript{10} The number of individuals taking advantage of the high-risk pools varies as well. In Texas, approximately 27,000 residents are enrolled in the state’s pool while approximately 7,000 individuals are enrolled in California’s program and only 300 residents are enrolled in Florida’s program.\textsuperscript{11}

To be eligible for most state high-risk pool policies, applicants must be “medically eligible” for coverage, i.e., an individual must have been denied coverage altogether, charged substantially higher premiums than the rest of the population, or offered basic coverage which excluded services related to treatment of a pre-existing medical condition.\textsuperscript{12} Some states grant high-risk policies to residents in an effort to help them comply with the federal Health Insurance Portability and Accountability Act (HIPAA). Specific provisions of HIPAA guarantee individuals the right to purchase individual coverage with no pre-existing condition exclusions when they leave group health coverage. To be HIPAA-eligible, a person must have had at least 18 months of prior health insurance coverage under a group policy and must have exhausted COBRA coverage.\textsuperscript{13} Finally, individuals with specific medical conditions such as HIV/AIDS, cancer, or diabetes will be automatically qualified to purchase a high-risk policy.\textsuperscript{14}

The benefits provided to high-risk policy holders are often as comprehensive as benefits provided under typical private group health insurance plans. As is the case with many private insurance policies, there are often waiting periods before a high-risk policy will cover health care services for pre-existing conditions—typically between six and 12 months. The premiums for high-risk policies also vary according to age, gender, smoking status, geography, income, etc.

Not only do state-run high-risk pools provide a level of basic health insurance coverage to a population that would otherwise not be able to obtain it, they are often able to provide policies that are more affordable than traditional private individual insurance.

\textbf{Texas’ High-Risk Insurance Pool}

\textsuperscript{9} This number includes Idaho, which operates a high-risk reinsurance plan, but does not include Florida, whose high-risk pool has been closed to new enrollment since 1991.
\textsuperscript{10} Schwartz, \textit{ supra} note 8 at 1.
\textsuperscript{11} Id.
\textsuperscript{12} Id. at 2.
\textsuperscript{13} Id.
\textsuperscript{14} Id.
Texas currently has more uninsured individuals, approximately 6.1 million or 26.8 percent, than any other state.\textsuperscript{15} It also has more residents enrolled in the state’s health insurance high-risk pool than any other state—approximately 27,000 individuals.\textsuperscript{16} Under the state’s insurance pool program, individual applicants and dependents meet eligibility requirements if they are under the age of 65, a legal resident of the state and a United States citizen or a legal permanent resident, and have been rejected for coverage by an insurance company due to health reasons, or have been offered a policy that excludes a medical condition, or the applicant has been diagnosed with a specific medical condition.\textsuperscript{17} Additionally, the state’s pool provides policies to HIPAA-eligible individuals.\textsuperscript{18} Once a high-risk policy has been issued, the resident must wait 12 months before the policy will cover pre-existing medical conditions and premiums vary widely.\textsuperscript{19} Texas’ high-risk pool has paid out approximately $265 million in medical and pharmacy benefits to policy holders.\textsuperscript{20}

Had Texas accepted its share of federal funding for expansion of the high-risk pool program, it would have received approximately $493 million. However, in May 2010, Texas Governor Rick Perry informed HHS Secretary Kathleen Sebelius that the state would not participate in the federal PCIP, citing a number of reasons including, Perry noted, “[i]n the coming years, state officials could be forced to reduce health coverage, raise premiums or ask state taxpayers to pay for these high-risk pools once federal funds run dry.”\textsuperscript{21} Perry said that he could not commit to the program without knowing what the rules for the pools will be in the future. “As we’ve seen in federal education and stimulus programs, the administration is again asking the states to commit to a program without knowing the rules of engagement,” said Perry.\textsuperscript{22}

On May 27, 2010, officials with the Texas Health Insurance Pool sent a letter to applicants informing them of their options under the federal high-risk pool established under PPACA.\textsuperscript{23} The letter stated, in part, “[t]he premium rates for the Federal Pool will be approximately half the rates that Texas law requires for the State Pool. The Federal


\textsuperscript{16} See Id.


\textsuperscript{18} Id.

\textsuperscript{19} Id.

\textsuperscript{20} See Ratcliffe, supra note 6.

\textsuperscript{21} Id.

\textsuperscript{22} Id.

The Federal Temporary High-Risk Pool

Section 1101 of the PPACA created a temporary high-risk insurance pool to provide coverage to individuals with pre-existing medical conditions who have been uninsured for six months. 25 Officially known as the Pre-existing Condition Insurance Plan (PCIP), the $5 billion program is being implemented by DHHS and allows states to either operate their own high-risk pool or have the federal government carry out the program. 26 Policy holders will have the ability to access medical coverage for pre-existing medical conditions and will not pay out-of-pocket expenses in excess of $5,950 for individuals and $11,900 for families, excluding premiums. 27 The health plans will also be required to cover at least 65 percent of the health care costs for a standard population. 28 The federal pool is expected to terminate on January 1, 2014, when the state-based health insurance exchanges will offer coverage.

The PCIP created for Texas will be run by DHHS and will cover a broad range of health benefits. 29 Premiums range from $323 to $688 depending on the person’s age and covered in-network services are subject to a $2,500 annual deductible (except for preventive services) before the plan starts paying benefits. 30 Once the deductible is met, there is a $25 co-pay for doctor visits, $4 to $30 for most prescription medications for the first two prescriptions and 50 percent off the cost of the medications after that. 31

Conclusion

Although the Pre-Existing Condition Insurance Program is considered to be an early benefit of the PPACA for those who are uninsured, many have not yet taken advantage of the program. According to Kaiser Health News, a total of approximately 3,600 individuals have applied with about 1,200 having been approved. 32 Some state and federal health officials say that although the plans are more affordable than other coverage alternatives, many residents are still unable to pay the premiums, unable to qualify for coverage, and many are still unaware of the program’s existence. 33

24 Id.
25 See PPACA, supra note 1 at § 1101; see also Scott, supra note 16.
27 Id.
30 Id.
31 Id.
33 Id.
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