



Benefit Trends

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Health Care Reform – Special Edition

Health Care Reform: High Risk Pools

LEGISLATIVE BRIEF

July 2, 2010

This memorandum is the eleventh installment in our effort to address the critical and imminent changes brought about by the Patient Protection and Affordable Care Act ([H.R. 3590](#); Reform Bill) and the Health Care and Education and Affordability Reconciliation Act ([H.R. 4872](#); Reconciliation Bill), collectively referred to as the Health Care Reform Law.

High Risk Pools

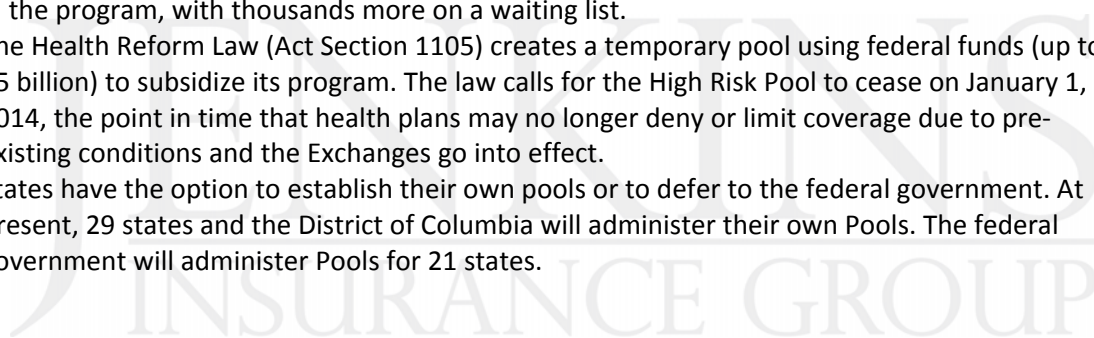
As of July 1, 2010, pursuant to the Health Reform Law, federal and state officials launched a temporary fund for providing health care coverage to individuals who have been uninsured for six months or more and have been denied coverage due to a pre-existing condition.

Background

High risk pools are not a new concept. The Health Insurance Portability and Accountability Act of 1996 (HIPAA) established Pools at the state level to cover individuals who have been denied health coverage due to pre-existing conditions. California, for example, has such a program administered by the Major Risk Medical Insurance Board (MRMIB) for individuals who have been denied health coverage by at least one California health insurer. At present, the MRMIB program provides coverage to approximately 7,100 individuals, the maximum number allowed in the program, with thousands more on a waiting list.

The Health Reform Law (Act Section 1105) creates a temporary pool using federal funds (up to \$5 billion) to subsidize its program. The law calls for the High Risk Pool to cease on January 1, 2014, the point in time that health plans may no longer deny or limit coverage due to pre-existing conditions and the Exchanges go into effect.

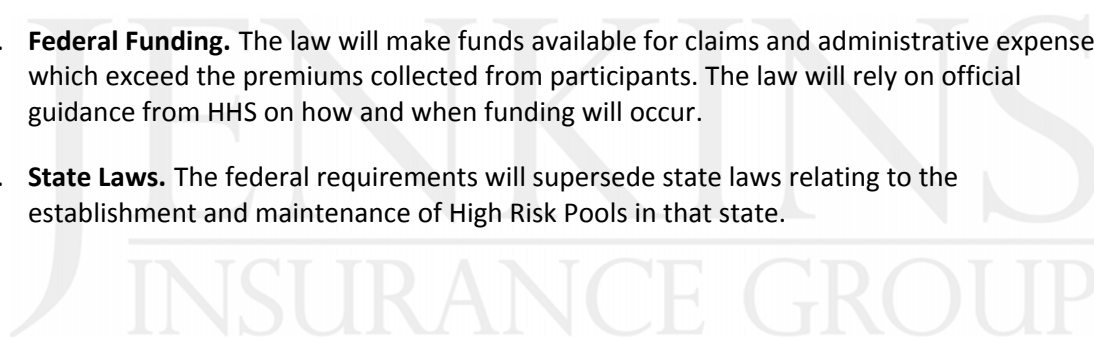
States have the option to establish their own pools or to defer to the federal government. At present, 29 states and the District of Columbia will administer their own Pools. The federal government will administer Pools for 21 states.



Pools: The Law

Federal law requires that the Pools be established within 90 days of HCR enactment (March 23, 2010). The law is silent on exactly when the Pools actually will begin to operate. At present, we expect policies issued starting in September.

1. **Administration.** The law directs the Department of Health and Human Services (HHS) to administer the Pool directly or through contracts with eligible entities (limited to states or non-profit private entities). To be eligible, a state must agree not to reduce its annual spending on existing high risk pools (i.e. HIPAA-mandated pool). HHS must approve any application for it to be effective as a state administered pool under the Health Reform Law.
2. **Qualified Risk Pool.** The law requires the Pool to be available to all eligible individuals. It must provide benefits equal to or higher than 65% of the premium collected from participants. The coverage out-of-pocket limits cannot exceed the out-of-pocket limits established annually for high deductible health plans (2010: \$5,950 for single coverage; \$11,900 for family coverage). The premium rates charge to individuals may vary; however, the variations must be within limits established under the Public Health Service Act Section 2701 and age-based premiums cannot exceed a 4 to 1 ratio. HHS may impose additional rate restrictions.
3. **Eligible Participants.** To participate in the Pool, an individual must:
 - Be an American citizen or a legal resident;
 - Have not been covered under creditable coverage (based on HIPAA rules) during the six months prior to the individuals date of application; and,
 - Have a pre-existing condition as determined by HHS guidance as to what conditions will qualify.
4. **Safeguarding the Pool.** HHS also must issue guidance for determining whether insurers or possibly employers have encouraged individuals to disenroll in the employer-based group health plan (or actually been disenrolled unilaterally) and provide for sanctions against any insurer or employer who does. The law contains reference to circumstances which should be addressed in the HHS guidance:
 - Did the employer, group health plan, or insurer provide a financial incentive to disenroll;
 - If the previous plan's premium exceeds the premiums available under the Pool has the insurer discontinued offering the less expensive plan or does the prior coverage contain provisions which would allow the underwriter to consider health status or policy longevity at the time of its renewal.
5. **Federal Funding.** The law will make funds available for claims and administrative expenses which exceed the premiums collected from participants. The law will rely on official guidance from HHS on how and when funding will occur.
6. **State Laws.** The federal requirements will supersede state laws relating to the establishment and maintenance of High Risk Pools in that state.



California

On Tuesday, June 29, 2010 the legislature passed and the governor signed two bills establishing California's High Risk Pool ([AB 1887](#) and [SB 227](#)). We will be releasing a legislative update on the California High Risk Pool legislation within the next few days. It is our understanding that the California Pool will begin operations in September and that the coverage will be available to 25,000 to 30,000 Californians. California will receive approximately \$761 million from the federal government over the next 3½ years.

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