

(i) *Sunset*. This section does not apply to benefits for services furnished after December 31, 2007.

Dated: March 15, 2007.

**Leslie V. Norwalk,**

*Acting Administrator, Centers for Medicare & Medicaid Services.*

Dated: April 11, 2007.

**Michael O. Leavitt,**

*Secretary, Department of Health and Human Services.*

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### 45 CFR Part 148

[CMS-2260-IFC]

RIN 0938-A046

### High Risk Pools

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Interim final rule with comment period.

**SUMMARY:** This interim final rule with comment period will amend our regulations regarding grants to States for operation of qualified high risk pools to conform to provisions of the Deficit Reduction Act of 2005 and the State High Risk Pool Funding Extension Act of 2006. Those provisions extended funding for seed and operational grants for State High Risk Pools and amended section 2745 of the Public Health Service Act.

**DATES:** *Effective date:* These regulations are effective on August 27, 2007.

*Comment date:* To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on August 27, 2007.

**ADDRESSES:** In commenting, please refer to file code CMS-2260-IFC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on specific issues in this regulation to <http://www.cms.hhs.gov/eRulemaking>. Click on the link "Submit electronic comments on CMS regulations with an open comment period." (Attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word.)

2. *By regular mail.* You may mail written comments (one original and two copies) to the following address ONLY:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, *Attention:* CMS-2260-IFC, P.O. Box 8016, Baltimore, MD 21244-8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments (one original and two copies) to the following address ONLY:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, *Attention:* CMS-2260-IFC, Mail Stop C4-26-05.00, 7500 Security Boulevard, Baltimore, MD 21244-1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to one of the following addresses. If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786-7195 in advance to schedule your arrival with one of our staff members.

Room 445-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or 7500 Security Boulevard, Baltimore, MD 21244-1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

*Submission of comments on paperwork requirements.* You may submit comments on this document's paperwork requirements by mailing your comments to the addresses provided at the end of the "Collection of Information Requirements" section in this document.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** Paul Youket, (410) 786-7528, or John Young, (410) 786-0505.

#### **SUPPLEMENTARY INFORMATION:**

*Submitting Comments:* We welcome comments from the public on all issues set forth in this rule to assist us in fully considering issues and developing policies. You can assist us by

referencing the file code CMS-2260-IFC and the specific "issue identifier" that precedes the section on which you choose to comment.

*Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: <http://www.cms.hhs.gov/eRulemaking>. Click on the link "Electronic Comments on CMS Regulations" on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1-800-743-3951.

#### **I. Background**

The Trade Adjustment Assistance Reform Act of 2002 (Pub. L. 107-210) added section 2745 of the Public Health Service Act (PHS Act) to provide for two types of grants to States for the promotion of "qualified high risk pools." These pools provide health coverage to high-risk individuals who may find private health insurance unavailable or unaffordable. Under this provision, a pool could meet the definition of a "qualified" high risk pool for purposes of section 2745 only if it met the definition of a qualified high risk pool in section 2744(c)(2) of the PHS Act. Section 2744 deals with how States can satisfy the requirement of section 2741 of the PHS Act to guarantee access to health coverage for individuals who meet the definition of an "eligible individual" under section 2741, as added by the Health Insurance Portability and Accountability Act of 1996 (HIPAA). These individuals are commonly referred to as "HIPAA-eligible" individuals.

Under section 2744(c)(2) of the PHS Act, a qualified high risk pool must provide health coverage without a pre-existing condition exclusion to "all" HIPAA-eligible individuals. This meant that State high risk pools that did not allow all HIPAA-eligible individuals into the pool without a pre-existing condition exclusion could not meet the definition of a "qualified" risk pool.

The two types of grants authorized by the legislation were “seed grants” for States that had not yet created a high risk pool, and “operational” grants to offset losses incurred by States that operate a qualified high risk pool. Under the prior law, in order for a risk pool to qualify for an operational grant, it could not charge premiums that exceeded 150 percent of the premium for applicable standard risk rates. Moreover, the amount of the grants was limited to 50 percent of the losses incurred by a State.

Section 6202 of the Deficit Reduction Act of 2005 (Pub. L. 109–171) (DRA) and the State High Risk Pool Funding Extension Act of 2006 (Pub. L. 109–172) (Extension Act) extended funding for seed and operational grants for State High Risk Pools and amended section 2745 of the PHS Act.

The Extension Act made the following changes:

1. Expanded the definition of a “qualified high risk pool.” As noted above, section 2745(d) of the PHS Act previously defined the term to have the same meaning as in section 2744(c)(2) of the PHS Act, which required that the risk pool provide coverage to “all” HIPAA-eligible individuals (as defined in § 148.103), without any pre-existing condition exclusion. The revised definition specifies that, for purposes of grants under section 2745, a risk pool can be qualified even if the State uses other mechanisms beyond the risk pool to ensure that health coverage is provided to all HIPAA-eligibles.

2. Expanded the definition of “State.” Section 2745 of the PHS Act previously defined this term to include only the 50 States and the District of Columbia, but has now been amended to include U.S. Territories.

3. Increased the amount of premiums that a risk pool can charge and still qualify for an operational grant. Section 2745 of the PHS Act previously required that the premiums charged under the pool not exceed 150 percent of the premium for applicable standard risk rates. As amended, it permits grants to States with premiums of up to 200 percent of the standard risk rates, as long as States with premiums greater than 150 percent of the standard rate use at least half of the grant funds to reduce high risk pool premiums for enrollees.

4. Removed the limitation that a State’s grant not exceed 50 percent of its operating losses.

5. Changed the funding allotment formula. Previously, the grant funds were to be allotted to States under a relatively simple formula based on the number of uninsured individuals in the State. Under the new legislation, the

allotment formula is more complex. Of the total appropriation for a given year—if money is appropriated—two-thirds would be available for grants to cover operational losses. Of these funds, 40 percent is to be equally divided among any of the 50 States and the District of Columbia that apply. Another 30 percent of that amount is allotted among all States that apply for grants based on the ratio of uninsured individuals in the State to uninsured individuals in all States that apply. The final 30 percent is to be allotted based on the ratio of the number of individuals enrolled in a State’s risk pool to the number enrolled through the risk pools of all the qualifying States that apply. (Territories are eligible for the proportional allotments, but only up to a total of \$1 million for all Territories combined.)

6. Provided authority for “bonus grants” to States (not including Territories) that qualify for operational grants. One-third of a total yearly appropriation will be used to provide grants to enable States to provide specified supplemental consumer benefits to enrollees or potential enrollees of the qualified high risk pool. (A bonus grant is not to exceed 10 percent of the total for any one State.)

This interim final rule with comment period updates our regulations at 45 CFR part 148, subpart E, Grants to States for Operation of Qualified High Risk Pools, to implement the changes made by the Deficit Reduction Act of 2005 and the State High Risk Pool Funding Extension Act of 2006.

## II. Provisions of This Interim Final Rule

[If you choose to comment on issues in this section, please include the caption “Provisions of this Interim Final Rule” at the beginning of your comments.]

We are revising the regulation text in 45 CFR part 148 to conform with the State High Risk Pool Funding Extension Act of 2006 and the DRA. These revisions are discussed in detail below.

### A. Definitions (§ 148.308)

We are amending § 148.308 (Definitions) to

- Add a definition of “bonus grants.”
- Revise the definition of “qualified high risk pool;” and
- Revise the definition of “State.”

#### 1. Bonus Grant

We are adding the following definition for Bonus Grants—Funds that the Secretary provides from the appropriated grant funds to be used to provide supplemental consumer

benefits to enrollees or potential enrollees in qualified high risk pools.

#### 2. Qualified High Risk Pool

We are amending the definition at § 148.308 to reflect the exception added by the Extension Act in section 2745(g)(1)(A) of the PHS Act. Specifically, a State may elect to meet the definition of a qualified high risk pool under § 148.128(a)(2)(ii)(A) by providing for enrollment of eligible individuals through an acceptable alternative mechanism (as defined for purposes of section 2744 of the PHS) that includes a high risk pool as a component.

#### 3. State

In accordance with the Extension Act, we are amending the definition to include any of the 50 States and the District of Columbia, and the U.S. Territories of Puerto Rico, the Virgin Islands, Guam, American Samoa and the Northern Mariana Islands.

### B. Grants for Operational Losses (§ 148.310)

#### 1. Eligibility Requirements for an Operational Grant

This section specifies the eligibility requirements for operational grants. A State must meet all of the following requirements to be eligible for a grant:

a. Maximum premium. We are amending § 148.310 to reflect that the statute has increased the maximum premium that a risk pool can charge and still qualify for a grant. The maximum has been changed from 150 percent to 200 percent of the premium for applicable standard risk rates for the State.

b. Continued funding. The statute previously required that the pool have in effect a mechanism reasonably designed to ensure continued funding of losses incurred by the State after the end of fiscal year 2004, which was the last year that grants were authorized under the prior appropriation. The statute, as revised by the Extension Act, now requires that a risk pool have such a mechanism to ensure funding after the end of the last fiscal year for which a grant is provided. We interpret this to mean that the pool has capacity or mechanisms in place that can reasonably be expected to ensure that it may operate in the future without the benefit of Federal funding.

In the case of a qualified high risk pool of a State that charges premiums that exceed 150 percent of the premium for applicable standard risks, the State must use at least 50 percent of the amount of the grant provided to the

State to reduce premiums for enrollees. The application should demonstrate/attest that the funds will be used this way.

## 2. Amount of Grant Payment (§ 148.312)

Two-thirds of any amounts appropriated are made available for operational grants. An eligible State may receive a grant to fund up to 100 percent of the losses incurred in the operation of its qualified high risk pool during the fiscal year for which it is applying. The grant may be less than 100 percent after the allotment limits are applied, but in no case will it be more than 100 percent.

Funds will be allocated in accordance with § 148.312 to each State that meets the eligibility requirements of § 148.310 and files an application in accordance with § 148.316. Specifically:

- Forty percent of funds made available under that section will be equally divided among any of the 50 States and the District of Columbia that meet the eligibility criteria for an operational grant;
- Thirty percent of funds made available will be divided among States (including territories) based on the number of uninsured residents in the State during the specified year as compared to the total number of uninsured residents in all States that apply for grants;
- Thirty percent will be divided among States (including territories) based on the number of people in State high risk pools during the specified year as compared to all States that apply.

In accordance with the statute, in no case will the aggregate amount allotted and made available to the U.S. Territories for a fiscal year exceed \$1 million.

We will calculate the number of uninsured individuals for each eligible State by taking a 3-year average of the number of uninsured individuals in that State in the Current Population Survey (CPS) of the Census Bureau. The 3-year average will be calculated using numbers available as of March 1 of each year for the preceding 3-year period.

## C. Bonus Grants

One-third of the total appropriation will be available for the bonus grants. These grants will be available to any one of the 50 States and the District of Columbia that receives an operational grant under § 148.310. The grants must be used to provide one or more of the following benefits:

- (1) Low income premium subsidies;
- (2) Reduction in premium trends, actual premium or other cost-sharing requirements;

(3) An expansion or broadening of the pool of individuals eligible for coverage, such as through eliminating waiting lists, increasing enrollment caps, or providing flexibility in enrollment rules;

(4) Less stringent rules or additional waiver authority with respect to coverage of pre-existing conditions;

(5) Increased benefits; and

(6) The establishment of disease management programs. In no case will a State receive bonus grants that exceed 10 percent of the total funds allotted for bonus grants in that fiscal year.

## D. Periods During Which Eligible States May Apply for a Grant (§ 148.314)

Funds are currently appropriated for Federal fiscal year 2006 and authorized for fiscal years 2007 through 2010. Funding for FY 2007 through 2010 under Pub. L. 109–172 requires subsequent enactment of appropriations authority. States will be unable to apply for grants unless and until such funding becomes available. A State that meets the eligibility requirements in § 148.310 may apply for a grant to fund losses that were incurred during the State's or pool's fiscal year ending prior to or during any federal fiscal year, 2007 through 2010 for which authorized funds are appropriated, in connection with the operation of its qualified high risk pool. Grant funding is administered on a retrospective basis (for example, pools with losses incurred in 2005 may apply for Federal Fiscal Year 2006 grant funds). If a State becomes eligible for a grant in the middle of its fiscal year, a State may apply for losses incurred in a partial fiscal year if a partial year audit is done. Only losses that are incurred after it is established that a pool is eligible (i.e., that it is a qualified high risk pool as defined by § 148.128(a)(2)(ii)) will qualify for a grant. An eligible State must apply for a grant no later than June 30 following the end of the State fiscal year during which it incurred losses. Each State may only be awarded one grant per fiscal year. A grant for a partial fiscal year counts as a full grant.

States that meet all of the eligibility requirements in § 148.310 and submit timely requests in accordance with paragraph (c) of § 148.314 will receive distribution of grant funds using the following methodology:

- Grant applications for losses will be on a retrospective basis. For example, grant applications for 2006 funds are based on the State's fiscal year 2005 incurred losses.
- Grant allocations for each fiscal year will be determined by taking all grant applications received by June 30 of the Federal fiscal year and allocating

grant funds in accordance with § 148.312. In no case will a State receive funds greater than 100 percent of its losses.

If any excess funds remain after the initial calculation, these excess funds will be proportionately redistributed to the States whose allocations have not exceeded 100 percent of their losses. This process will occur at the time of the initial calculation and there will be one annual allocation and distribution by September 30 of each year.

## Grant Application Instructions (§ 148.316)

We are amending § 148.316 to reflect the addition of application requirements for bonus grants. We are changing the heading of § 148.316(a), "Application package," to "Application for operational losses." We are inserting a bonus grants section by redesignating § 148.316(a)(3) as § 148.316(a)(4) and adding new paragraph (a)(3), the bonus grants requirements. The individual State applying for a bonus grant must provide:

(i) A narrative description with detailed information about each one of the following supplemental consumer benefits to be provided to enrollees and/or potential enrollees in the high risk pool:

- (A) Low income premium subsidies;
- (B) Reduction in premium trends, actual premium or other cost-sharing requirements;
- (C) An expansion or broadening of the pool of individuals eligible for coverage, such as through eliminating waiting lists, increasing enrollment caps, or providing flexibility in enrollment;
- (D) Less stringent rules, or additional waiver authority with respect to coverage of pre-existing conditions;
- (E) Increased benefits; and
- (F) The establishment of disease management programs.

(ii) A description of the population or subset population that will be eligible for the supplemental consumer benefits.

(iii) A projected budget for the use of bonus grant funds using the SF 424 and SF 424 A.

We are revising the "Standard forms application kit" in § 148.316(b). We are eliminating the text "Additional Assurances" in "Standard forms application kit," paragraph (b)(1)(i).

We are also changing the Web site URL address for the "Standard forms kit" download at paragraph (b)(1)(ii) to <http://www.grants.gov>.

There are no other changes to the content of the "Standard forms application kit."

In § 148.316(c), "Submission of application package," we are deleting

paragraphs (c)(1) and (c)(2) and replacing with text that will read: All applications should be submitted electronically via <http://www.grants.gov>.

In § 148.316(d), “Application deadlines,” we are changing the applications deadlines text to read: The deadline for States to submit an application for losses incurred in a State fiscal year is *June 30 of the next Federal fiscal year that begins after the end of the State fiscal year*.

In § 148.316(e), “Where to submit an application,” we are changing the text to read: Applications must be submitted to <http://www.grants.gov>.

#### Funding Mechanism (§ 148.318)

We are amending § 148.318, dealing with continued funding of a risk pool. The State must outline funding sources, such as assessments and State general revenues, which can cover the projected costs and are reasonably designed to ensure continued funding of losses a State incurs in connection with the operation of the qualified high risk pool after the last fiscal year for which it is applying for grant funds.

#### Grant Awards (§ 148.320)

We are amending this section to specify that the grantee will be required to submit quarterly progress and financial reports under part 92 of this title and in accordance with section 2745(f) of the Public Health Service Act, requiring the Secretary to make an annual report to Congress that includes information on the use of these grant funds by the States.

### III. Collection of Information Requirement

Under the Paperwork Reduction Act of 1995, we are required to provide 30-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of these issues for the following sections of this document that contain information collection requirements (ICRs):

#### Section 148.316 Grant Application Instructions

Section 148.316(a) requires each State to compile an application package that documents that it has met the requirements for a grant. If a risk pool entity applies on behalf of a State, it must provide documentation that it has been delegated appropriate authority by the State.

The burden associated with this requirement is subject to the PRA; however, the structure of the application collection and grant monitoring reporting requirements of the grants has not been changed from the original grants program and is currently approved under OMB control number 0938–0887 “Matching Grants to States for the Operation of High Risk Pools and Supporting Regulations at 42 CFR 148.316, 148.318, and 148.320” with a current expiration date of 01/31/2010. We are, however, revising this package to include the additional request under 148.316(a)(3) for (1) description of Type of Consumer Benefits; (2) Description of the Eligible Population for the consumer benefits; and, (3) Projected Budget for the use of Bonus Grants. We believe the burden associated with the additional information is already captured in the currently approved OMB package (#0938–0887).

#### Section 148.320 Grant Awards

Section 148.320(a)(2)(iii) states that a grantee is required to submit quarterly progress and financial reports under part 92 of this title and in accordance with section 2745(f) of the Public Health Service Act, requiring the Secretary to make an annual report to Congress that includes information on the use of these grant funds by States.

The burden associated with this requirement is the time it would take for a grantee to submit quarterly progress and financial reports. We estimate it will take one grantee 1 hour per quarter to comply with this requirement.

If you comment on these information collection and record keeping requirements, please mail copies directly to the following:

Centers for Medicare & Medicaid Services, Office of Strategic Operations and Regulatory Affairs Division of Regulations Development, *Attn.*: Melissa Musotto, CMS–2260–IFC, Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, *Attn.*: Katherine Astrich, CMS Desk Officer, CMS–2260–IFC, [katherine\\_astrich@omb.eop.gov](mailto:katherine_astrich@omb.eop.gov). Fax (202) 395–6974.

### IV. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

### V. Waiver of Notice of Proposed Rulemaking and the 60-Day Delay in the Effective Date

[If you choose to comment on issues in this section, please include the caption “Waiver of Notice of Proposed Rulemaking and the 60-Day Delay in the Effective Date” at the beginning of your comments.]

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on the proposed rule in accordance with 5 U.S.C. section 553(b) of the Administrative Procedure Act (APA). The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed, and the terms and substance of the proposed rule or a description of the subjects and issues involved. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued.

In this case, we believe that a notice-and-comment procedure is unnecessary because the regulation is only being amended to conform directly to the provisions of the Deficit Reduction Act of 2005 and the State High Risk Pool Funding Extension Act of 2006. The statutory effective date was the date of enactment, February 10, 2006. The law amends section 2745 of the Public Health Service Act, and the rule updates 45 CFR Subchapter B, Part 148, Subpart E—Grants to States for Operation of Qualified High Risk Pools to conform to the new and changed provisions of the law.

In addition, we ordinarily provide a 30-day delay in the effective date of the provisions of an interim final rule.

Section 553(d) of the APA (5 U.S.C. section 553(d)) ordinarily requires a 30-day delay in the effective date of final rules after the date of their publication in the **Federal Register**. This 30-day delay in effective date can be waived, however, if an agency finds for good cause that the delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the finding and its reasons in the rule issued.

All revisions are to update the current sections of the regulation. The only new section added is § 148.316(a)(3), bonus grants for supplement consumer benefits, which is a new provision of the Extension Act. Other revisions include an expanded definition of "qualified high risk pool," an updated definition of "States" to include U.S. Territories, and changes to the funding formula and updating dates to reflect new census measure periods and application deadlines. Although the grant solicitation clearly conforms to the provisions of the law and a grant cycle has already been completed under the provisions of this law, we believe that this action will better accommodate the implementation of the statute before the end of the second funding cycle.

**VI. Regulatory Impact Statement**

[If you choose to comment on issues in this section, please include the caption "Regulatory Impact Statement" at the beginning of your comments.]

We have examined the impact of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96-354), the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more in any 1 year). This rule does not reach the economic threshold and thus is not considered a major rule.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by

nonprofit status or by having revenues of \$6 million to \$29 million in any 1 year. Individuals and States are not included in the definition of a small entity. We are not preparing an analysis for the RFA because we have determined that this rule will not have a significant economic impact on a substantial number of small entities.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. That threshold level is currently approximately \$120 million. This rule will have no consequential effect on State, local, or tribal governments or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. Since this regulation does not impose any costs on State or local governments, the requirements of E.O. 13132 are not applicable.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

**List of Subjects in 45 CFR Part 148**

Administrative practice and procedure, Health care, Health insurance, Penalties, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 45 CFR chapter IV as set forth below:

**PART 148—REQUIREMENTS FOR THE INDIVIDUAL HEALTH INSURANCE MARKET**

■ 1. The authority citation for part 148 continues to read as follows:

**Authority:** Secs. 2741 through 2763, 2791, and 2792 of the Public Health Service Act (42 U.S.C. 300gg-41 through 300gg-63, 300gg-91, and 300gg-92).

**Subpart E—Grants to States for Operation of Qualified High Risk Pools**

■ 2. Section 148.306 is revised to read as follows:

**§ 148.306 Basis and scope.**

This subpart implements section 2745 of the Public Health Service Act (PHS Act). It extends grants to States that have qualified high risk pools that meet

the specific requirements described in § 148.310. It also provides specific instructions on how to apply for the grants and outlines the grant review and grant award processes.

- 3. Section 148.308 is amended by—
- A. Adding the definition for "bonus grants."
- B. Revising the definition of "qualified high risk pool."
- C. Revising the definition of "State."

The addition and revisions read as follows:

**§ 148.308 Definitions.**

\* \* \* \* \*

*Bonus grants* means funds that the Secretary provides from the appropriated grant funds to be used to provide supplemental consumer benefits to enrollees or potential enrollees in qualified high risk pools.

\* \* \* \* \*

*Qualified high risk pool* as defined in sections 2744(c)(2) and 2745(g) of the PHS Act means a risk pool that—

- (1) Provides to all eligible individuals health insurance coverage (or comparable coverage) that does not impose any preexisting condition exclusion with respect to such coverage for all eligible individuals, except that it may provide for enrollment of eligible individuals through an acceptable alternative mechanism (as defined for purposes of section 2744 of the PHS Act) that includes a high risk pool as a component; and
- (2) Provides for premium rates and covered benefits for such coverage consistent with standards included in the NAIC Model Health Plan for Uninsurable Individuals Act that was in effect at the time of the enactment of the Health Insurance Portability and Accountability Act of 1996 (August 21, 1996) but only if the model has been revised in State regulations to meet all of the requirements of this part and title 27 of the PHS Act.

\* \* \* \* \*

*State* means any of the 50 States and the District of Columbia and includes the U.S. Territories of Puerto Rico, the Virgin Islands, Guam, American Samoa and the Northern Mariana Islands.

\* \* \* \* \*

- 4. Section 148.310 is amended by—
- A. Republishing the introductory text to the section.
- B. Revising paragraph (b).
- C. Revising paragraph (d).
- D. Adding paragraphs (f), (g), and (h).

The republication, revisions, and additions read as follows:

**§ 148.310 Eligibility requirements for a grant.**

A State must meet all of the following requirements to be eligible for a grant:

\* \* \* \* \*

(b) The pool restricts premiums charged under the pool to no more than 200 percent of the premium for applicable standard risk rates for the State.

\* \* \* \* \*

(d) The pool has in effect a mechanism reasonably designed to ensure continued funding of losses incurred by the State after the end of each fiscal year for which the State applies for Federal Funding in fiscal years 2005–2010 in connection with the operation of the pool.

\* \* \* \* \*

(f) In the case of a qualified high risk pool in a State that charges premiums that exceed 150 percent of the premium for applicable standard risks, the State will use at least 50 percent of the amount of the grant provided to the State to reduce premiums for enrollees.

(g) In no case will the aggregate amount allotted and made available to the U.S. Territories for a fiscal year exceed \$1,000,000 in total.

(h) Bonus grant funding must be used for one or more of the following benefits:

(1) Low income premium subsidies;  
(2) Reduction in premium trends, actual premium or other cost-sharing requirements;

(3) An expansion or broadening of the pool of individuals eligible for coverage, such as through eliminating waiting lists, increasing enrollment caps, or providing flexibility in enrolment rules;

(4) Less stringent rules or additional waiver authority with respect to coverage of pre-existing conditions;

(5) Increased benefits; and  
(6) The establishment of disease management programs.

■ 5. Section 148.312 is amended by—

■ A. Revising paragraph (a).

■ B. Revising paragraph (b).

■ C. Adding a new paragraph (d).

The revisions and addition read as follows:

**§ 148.312 Amount of grant payment.**

(a) An eligible State may receive a grant to fund up to 100 percent of the losses incurred in the operation of its qualified high risk pool during the period for which it is applying or a lesser amount based on the limits of the allotment under the formula.

(b) Funds will be allocated in accordance with this paragraph to each State that meets the eligibility requirements of § 148.310 and files an

application in accordance with § 148.316. The amount will be divided among the States that apply and are awarded grants according to the allotment rules that generally provide that: 40 percent will be equally divided among those States; 30 percent will be divided among States and territories based on their number of uninsured residents in the State during the specified year as compared to all States that apply; and 30 percent will be divided among States and territories based on the number of people in State high risk pools during the specified year as compared to all States that apply. For the purposes of this paragraph:

(1) The number of uninsured individuals is calculated for each eligible State by taking a 3-year average of the number of uninsured individuals in that State in the Current Population Survey (CPS) of the Census Bureau during the period for which it is applying. The 3-year average will be calculated using numbers available as of March 1 of each year.

(2) The number of individuals enrolled in health care coverage through the qualified high risk pool of the State will be determined by attestation by the State in its grant application and verified for reasonability by the Secretary through acceptable industry data sources.

\* \* \* \* \*

(d) One-third of the total appropriation will be available for the bonus grants. In no case will a State for a fiscal year receive bonus grants that exceed 10 percent of the total allotted funds for bonus grants.

■ 6. Section 148.314 is revised to read as follows:

**§ 148.314 Periods during which eligible States may apply for a grant.**

(a) *General rule.* A State that meets the eligibility requirements in § 148.310 may apply for a grant to fund losses that were incurred during the State's fiscal year 2005, 2006, 2007, 2008 and 2009 in connection with the operation of its qualified high risk pool. Funding for FY 2007 through 2010 under Pub. L. 109–172 requires subsequent enactment of appropriations authority. States will be unable to apply for grants unless and until such funding becomes available. Grants funding is on a retrospective basis and applies to the States previous fiscal year. If a State becomes eligible for a grant in the middle of its fiscal year, a State may apply for losses incurred in a partial fiscal year if a partial year audit is done. Only losses that are incurred after eligibility is established will qualify for a grant.

(b) *Maximum number of grants.* An eligible State may only be awarded a maximum of five grants, with one grant per fiscal year. A grant for a partial fiscal year counts as a full grant.

(c) *Deadline for submitting grant applications.* The deadlines for submitting grant applications are stated in § 148.316(d).

(d) *Distribution of grant funds.* States that meet all of the eligibility requirements in § 148.310 and submit timely requests in accordance with paragraph (c) of this section will receive an initial distribution of grant funds using the following methodology: Grant applications for losses will be on a retrospective basis. For example, grant applications for 2006 funds are based on the State's fiscal year 2005 incurred losses. Grant funding is appropriated for Federal fiscal year 2006 and authorized to be appropriated for Federal fiscal years 2007 through 2010.

(e) *Grant allocations.* Grant allocations for each fiscal year will be determined by taking all grant applications during the period for which States are applying and allocating the funds in accordance with § 148.312.

(1) In no case will a State receive funds greater than 100 percent of their losses.

(2) If any excess funds remain after the initial calculation, these excess funds will be proportionately redistributed to the States whose allocations have not exceeded 100 percent of their losses.

■ 7. Section 148.316 is amended by—

■ A. Adding new introductory text to the section.

■ B. Amending paragraph (a) introductory text by revising the heading.

■ C. Redesignating paragraph (a)(3) as paragraph (a)(4).

■ D. Adding a new paragraph (a)(3).

■ E. Revising paragraph (b).

■ F. Revising paragraph (c).

■ G. Revising paragraph (d).

■ H. Revising paragraph (e).

The republication, revisions, and addition read as follows:

**§ 148.316 Grant application instructions.**

Funding for FY 2007 through FY 2010 under Pub. L. 109–172 requires the subsequent enactment of appropriations. States will be unable to apply for grants unless and until such funding becomes available.

(a) *Application for operational losses.* \* \* \*

\* \* \* \* \*

(3) *Bonus grants for supplemental consumer benefits.* Provide detailed information about the following

supplemental consumer benefits for which the entity is applying:

(i) A narrative description of one or more of the following of the supplemental consumer benefits to be provided to enrollees and/or potential enrollees in the high risk pool:

(A) Low income premium subsidies; (B) Reduction in premium trends, actual premium or other cost-sharing requirements;

(C) An expansion or broadening of the pool of individuals eligible for coverage, such as through eliminating waiting lists, increasing enrollment caps, or providing flexibility in enrollment;

(D) Less stringent rules, or additional waiver authority with respect to coverage of pre-existing conditions;

(E) Increased benefits; and

(F) The establishment of disease management programs.

(ii) A description of the population or subset population that will be eligible for the supplemental consumer benefits.

(iii) A projected budget for the use of bonus grant funds using the SF 424 A.

\* \* \* \* \*

(b) Standard form application kit—(1) Forms. (i) The following standard forms must be completed with an original signature and enclosed as part of the application package:

SF-424 Application for Federal Assistance.

SF-424A Budget Information.

SF-424B Assurances Non-Construction Program.

SF-LLL Disclosure of Lobbying Activities Biographical Sketch.

(ii) These forms can be accessed from the following Web site: <http://www.grants.gov>.

(2) *Other narrative*. All other narrative in the application must be submitted on 8½ x 11 inch white paper.

(c) *Application submission*. Submission of application package is through <http://www.grants.gov>. Submissions by facsimile (fax) transmissions will not be accepted.

(d) *Application deadlines*. (1) The deadline for States to submit an application for losses incurred in a State fiscal year that begins after the end of the State fiscal year. Funding for FY 2007 through 2010 under Pub. L. 109-172 requires subsequent enactment of appropriations authority. States will be unable to apply for grants unless and until such funding becomes available.

(2) *Deadline for States to submit an application for losses incurred in their fiscal year 2005*. States had to submit an application to CMS no later than June 30, 2006.

(3) *Deadline for States to submit an application for losses incurred in their fiscal year 2006*. States must submit an application to CMS by no later than June 30, 2007.

(4) *Deadline for States to submit an application for losses incurred in their fiscal year 2007*. States must submit an application to CMS by no later than June 30, 2008.

(5) *Deadline for States to submit an application for losses incurred in their fiscal year 2008*. States must submit an application to CMS by no later than June 30, 2009.

(6) *Deadline for States to submit an application for losses incurred in their fiscal year 2009*. States must submit an application to CMS by no later than June 30, 2010.

(e) *Where to submit an application*. Applications must be submitted to <http://www.grants.gov>. Submissions by facsimile (fax) transmissions will not be accepted.

■ 8. Section 148.318 is amended by revising paragraph (d)(2) to read as follows:

**§ 148.318 Grant application review.**

\* \* \* \* \*

(d) \* \* \*

(2) *Funding mechanism*. The State has outlined funding sources, such as assessments and State general revenues, which can cover the projected costs and are reasonably designed to ensure continued funding of losses a State incurs in connection with the operation of the qualified high risk pool after each fiscal year for which it is applying for grant funds.

■ 9. Section 148.320 is amended by revising paragraph (a)(2)(iii) to read as follows:

**§ 148.320 Grant awards.**

(a) \* \* \*

(2) \* \* \*

(iii) The grantee will be required to submit quarterly progress and financial reports under part 92 of this title and in accordance with section 2745(f) of the Public Health Service Act, requiring the Secretary to make an annual report to Congress that includes information on the use of these grant funds by States.

\* \* \* \* \*

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: March 22, 2007.

**Leslie V. Norwalk**,  
*Acting Administrator, Centers for Medicare & Medicaid Services.*

Approved: April 17, 2007.

**Michael O. Leavitt**,  
*Secretary.*

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