

111TH CONGRESS
1ST SESSION

H. R. 109

To provide for the offering of Health Benefit Plans to individuals, to increase funding for State high risk health insurance pools, and to promote best practice protocols for State high risk pools.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 6, 2009

Mr. FORTENBERRY introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To provide for the offering of Health Benefit Plans to individuals, to increase funding for State high risk health insurance pools, and to promote best practice protocols for State high risk pools.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; FINDINGS AND PURPOSES;**

4 **TABLE OF CONTENTS.**

5 (a) **SHORT TITLE.**—This Act may be cited as the
6 “America’s Affordable Health Care Act of 2009”.

7 (b) **FINDINGS AND PURPOSES.**—

8 (1) **FINDINGS.**—Congress finds the following:

1 (A) The regulation of the practice of insur-
2 ance is a State prerogative.

3 (B) It is in the interests of health care
4 consumers that Congress allows for policies that
5 increase the affordability of health insurance
6 products.

7 (C) The Federal Government provides
8 States and the medical community with public
9 financing to support the medical needs of the
10 uninsured.

11 (D) There is a correlation between the
12 amount of insurance benefits and the cost of in-
13 surance products.

14 (E) State mandate laws have created bar-
15 riers to affordable health coverage.

16 (F) A number of States allow for the cre-
17 ation of insurance products that recognize the
18 increased costs associated with mandate laws.

19 (G) Consumers throughout the United
20 States are finding it increasingly hard to secure
21 affordable health care coverage which contrib-
22 utes to the national uninsured rate.

23 (2) FEDERAL INSURANCE PRODUCT.—Congress
24 further finds that it is in the interests of taxpayers,
25 health care purchasers, and the health care provider

1 community, to allow for a class of federally certified
2 insurance products that can be purchased in the in-
3 dividual market without being subject to State ben-
4 efit mandate laws.

5 (3) PURPOSES.—The purposes of this Act
6 are—

7 (A) to promote increased affordability and
8 access to health care coverage for citizens of the
9 United States;

10 (B) to allow consumers the ability to make
11 choices by weighing insurance benefits with the
12 cost of insurance;

13 (C) to provide incentives to health plans
14 and health insurance issuers to offer increas-
15 ingly affordable insurance policies to all those
16 in the individual market;

17 (D) to provide low-income and uninsured
18 workers with incentives to purchase insurance
19 policies;

20 (E) to provide incentives to companies and
21 States to offer health care solutions for high
22 risk beneficiaries;

23 (F) to provide for new coverage opportuni-
24 ties to solve the problems of affordability and
25 uninsurance; and

1 (G) to promote the availability of health
 2 insurance coverage through high risk pools for
 3 individuals whose health conditions create bar-
 4 riers to such coverage.

5 (c) TABLE OF CONTENTS.—The table of contents of
 6 this Act is as follows:

Sec. 1. Short title; findings and purposes; table of contents.

TITLE I—HEALTH BENEFIT PLANS

Sec. 101. Certification of Health Benefit Plans.

Sec. 102. Conditions for certification.

Sec. 103. Review of implementation.

Sec. 104. Definitions.

TITLE II—EXPANSION OF STATE HIGH RISK HEALTH INSURANCE POOLS

Sec. 201. Increasing and expanding funding for State high risk health insur-
 ance pools.

Sec. 202. Qualified high risk pools best practices guidelines and grant program.

7 **TITLE I—HEALTH BENEFIT** 8 **PLANS**

9 **SEC. 101. CERTIFICATION OF HEALTH BENEFIT PLANS.**

10 (a) IN GENERAL.—A health insurance issuer may
 11 apply to the Secretary for up to 3 health insurance cov-
 12 erage policies offered in the individual market in any State
 13 to be certified as Health Benefit Plans under this title
 14 with respect to eligible individuals and the policies so cer-
 15 tified may be offered and sold to such individuals without
 16 regard to any State or local law respecting mandates for
 17 benefits.

1 (b) CONSTRUCTION.—Except as specifically provided
2 under subsection (a) with respect to health insurance ben-
3 efits, nothing in this title shall be construed as—

4 (1) modifying the application of State or local
5 requirements relating to matters not described in
6 subsection (a), such as underwriting, enrollment,
7 and premiums;

8 (2) superseding any provision of State or local
9 law or regulation relating to the business of insur-
10 ance, including the regulation of insurers and insur-
11 ance products, underwriting, enrollment, and pre-
12 miums;

13 (3) preventing a State or local jurisdiction from
14 applying fraud and abuse provisions otherwise appli-
15 cable with respect to the sale and marketing of
16 health insurance coverage to the sale and marketing
17 of Health Benefit Plans under this title; or

18 (4) exempting a Health Benefits Plan, and the
19 health insurance issuer offering such a plan, from
20 applicable requirements of State law and compliance
21 with applicable provisions of title XXVII of the Pub-
22 lic Health Service Act.

1 **SEC. 102. CONDITIONS FOR CERTIFICATION.**

2 (a) IN GENERAL.—The Secretary shall not certify
3 under this title a Health Benefit Plan offered by a health
4 insurance issuer unless—

5 (1) the Plan includes benefits for items and
6 services within each of the categories of basic serv-
7 ices described in subsection (b); and

8 (2) the issuer—

9 (A) is licensed under State law to offer
10 health insurance coverage in the State involved;
11 and

12 (B) submits to the Secretary such informa-
13 tion and assurances as the Secretary may re-
14 quire to assure compliance of the issuer, and
15 Health Benefit Plans offered by the issuer, with
16 the applicable requirements of this title.

17 (b) CATEGORIES OF BASIC SERVICES.—

18 (1) IN GENERAL.—The categories of basic serv-
19 ices described in this subsection are as follows:

20 (A) Inpatient hospital services.

21 (B) Physicians' surgical and medical serv-
22 ices.

23 (2) TREATMENT OF OTHER CATEGORIES.—

24 Nothing in this section shall be construed as pre-
25 venting a Health Benefit Plan from providing cov-

1 erage of benefits that are not within a category of
2 basic services described in paragraph (1).

3 (c) **RECIPROCAL ARRANGEMENTS.**—Health insur-
4 ance issuers offering Health Benefit Plans may create re-
5 ciprocal arrangements with other issuers of such plans in
6 order to improve the portability of such plans among eligi-
7 ble individuals.

8 **SEC. 103. REVIEW OF IMPLEMENTATION.**

9 (a) **REVIEW.**—The Secretary shall review the imple-
10 mentation of this title and the impact of such implementa-
11 tion on the availability and purchase of health insurance
12 coverage.

13 (b) **REPORT.**—Not later than 3 years after the date
14 of the enactment of this Act, the Secretary shall submit
15 to Congress a report on this title and its impact on making
16 health insurance coverage more affordable.

17 **SEC. 104. DEFINITIONS.**

18 In this title:

19 (1) The term “eligible individual” means an in-
20 dividual who is a citizen or national of the United
21 States or an alien lawfully residing permanently in
22 the United States.

23 (2) The terms “health insurance coverage”,
24 “health insurance issuer”, and “individual market”
25 have the meanings given such terms in section 2791

1 of the Public Health Service Act (42 U.S.C. 300gg–
2 91).

3 (3) The term “Secretary” means the Secretary
4 of Health and Human Services.

5 **TITLE II—EXPANSION OF STATE**
6 **HIGH RISK HEALTH INSUR-**
7 **ANCE POOLS**

8 **SEC. 201. INCREASING AND EXPANDING FUNDING FOR**
9 **STATE HIGH RISK HEALTH INSURANCE**
10 **POOLS.**

11 (a) IN GENERAL.—Section 2745(d) of the Public
12 Health Service Act (42 U.S.C. 300gg–45(d)) is amend-
13 ed—

14 (1) in paragraph (2)—

15 (A) in the heading, by striking “THROUGH
16 2010” and inserting “THROUGH 2009”; and

17 (B) in the matter preceding subparagraph
18 (A), by striking “through 2010” and inserting
19 “through 2009”;

20 (2) by redesignating paragraphs (3), (4), and
21 (5) as paragraphs (4), (5), and (6), respectively; and

22 (3) by inserting after paragraph (2) the fol-
23 lowing new paragraph:

24 “(3) AUTHORIZATION OF APPROPRIATIONS FOR
25 FISCAL YEARS 2010 THROUGH 2014.—There are au-

1 thorized to be appropriated for each of fiscal years
2 2010 through 2014—

3 “(A) \$10,000,000 to carry out subsection
4 (a); and

5 “(B) \$100,000,000, of which, subject to
6 paragraph (5)—

7 “(i) two-thirds of the amount appro-
8 priated shall be made available for allot-
9 ments under subsection (b)(2); and

10 “(ii) one-third of the amount appro-
11 priated shall be made available for allot-
12 ments under subsection (c)(3).”.

13 (b) CONFORMING AMENDMENTS.—Section 2745 of
14 the Public Health Service Act (42 U.S.C. 300gg–45) is
15 amended—

16 (1) in subsection (a), by striking “subsection
17 (d)(1)(A)” and inserting “paragraphs (1)(A) and
18 (3)(A) of subsection (d)”;

19 (2) in each of paragraphs (1) and (2) of sub-
20 section (b), by striking “(1)(B)(i) and (2)(A)” and
21 inserting “(1)(B)(i), (2)(A), and (3)(B)(i)”;

22 (3) in each of paragraphs (1) and (3) of sub-
23 section (c), by striking “(1)(B)(ii) and (2)(B)” and
24 inserting “(1)(B)(ii), (2)(B), and (3)(B)(ii)”;

25 (4) in subsection (d)—

1 (A) in each of paragraphs (1)(B) and (2),
2 by striking “paragraph (4)” and inserting
3 “paragraph (5)”; and

4 (B) in paragraph (5), as redesignated by
5 subsection (a)(2), by striking “paragraph
6 (1)(B) or (2)” and inserting “paragraph
7 (1)(B), (2), or (3)(B)”.

8 **SEC. 202. QUALIFIED HIGH RISK POOLS BEST PRACTICES**
9 **GUIDELINES AND GRANT PROGRAM.**

10 Section 2745 of the Public Health Service Act (42
11 U.S.C. 300gg-45) is amended—

12 (1) in subsection (b)(1), by striking “In the
13 case” and inserting “Subject to subsection (f)(1), in
14 the case”;

15 (2) by redesignating subsection (f) and (g) as
16 subsections (g) and (h), respectively; and

17 (3) by inserting after subsection (e) the fol-
18 lowing new subsection:

19 “(f) **QUALIFIED HIGH RISK POOLS BEST PRACTICES**
20 **GUIDELINES AND GRANT PROGRAM.—**

21 “(1) **BEST PRACTICES REPORT REQUIRE-**
22 **MENT.—**To be eligible to receive a grant under sub-
23 section (b) for a fiscal year beginning more than 60
24 days after the date of the enactment of the Amer-
25 ica’s Affordable Health Care Act of 2009, a State

1 that has established a qualified high risk pool shall
2 submit to the Secretary, not later than 120 days
3 after the beginning of such fiscal year, evidence-
4 based information on the operation of such pool, as
5 specified by the Secretary for purposes of creating
6 the best practices guidelines described in paragraph
7 (2).

8 “(2) BEST PRACTICE GUIDELINES.—Not later
9 than 120 days after the date of the enactment of the
10 America’s Affordable Health Care Act of 2009, the
11 Secretary shall, after providing for notice and com-
12 ment, recommend and post on the public Internet
13 site of the Department of Health and Human Serv-
14 ices a list of best practices with respect to the oper-
15 ation of qualified high risk pools. The Secretary
16 shall provide for notice to the States and insurers
17 who manage such qualified high risk pools of the
18 proposed development of such practices and shall de-
19 velop such best practices with input obtained from
20 such States and insurers. Such best practices should
21 be categorized and applied according to the number
22 of individuals enrolled in the qualified high risk pool
23 involved.

1 “(3) BONUS GRANTS FOR STATE QUALIFIED
2 HIGH RISK POOLS THAT FOLLOW BEST PRAC-
3 TICES.—

4 “(A) IN GENERAL.—In the case of a State
5 that is one of the 50 States or the District of
6 Columbia, that has established a qualified high
7 risk pool, and that is receiving a grant under
8 subsection (b)(1), for each fiscal year for which
9 the State demonstrates according to a process
10 specified by the Secretary that such qualified
11 high risk pool was operated in accordance with
12 the best practices posted under paragraph (2),
13 the Secretary shall provide a bonus grant from
14 the funds appropriated under subparagraph (C)
15 and allotted to the State under subparagraph
16 (B).

17 “(B) ALLOTMENT; LIMITATION.—The Sec-
18 retary shall allot funds appropriated under sub-
19 paragraph (C) among States qualifying for a
20 bonus grant under subparagraph (A) in a man-
21 ner specified by the Secretary, but in no case
22 shall the amount so allotted to a State for a fis-
23 cal year exceed 10 percent of the funds so ap-
24 propriated for the fiscal year.

1 “(C) AUTHORIZATION OF APPROPRIATIONS
2 FOR BONUSES.—There are authorized to be ap-
3 propriated for each of fiscal years 2010 through
4 2013 \$26,000,000 for allotments under sub-
5 paragraph (B).”.

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