

116TH CONGRESS  
1ST SESSION

# S. 1868

To provide support to States to establish invisible high-risk pool or reinsurance programs.

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IN THE SENATE OF THE UNITED STATES

JUNE 13, 2019

Ms. COLLINS (for herself and Mr. MANCHIN) introduced the following bill;  
which was read twice and referred to the Committee on Finance

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## A BILL

To provide support to States to establish invisible high-risk pool or reinsurance programs.

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.**

4       This Act may be cited as the “Premium Reduction  
5       Act of 2019”.

6       **SEC. 2. INVISIBLE HIGH-RISK POOL AND REINSURANCE**  
7       **PROGRAMS.**

8       (a) STATE GRANTS UNDER WAIVERS.—Section  
9       1332(a) of the Patient Protection and Affordable Care Act  
10      (42 U.S.C. 18052(a)) is amended—

(1) by redesignating paragraphs (4), (5), and (6) as paragraphs (6), (7), and (8), respectively; and

(2) by inserting after paragraph (3) the following:

“(4) FEDERAL FUNDING FOR INVISIBLE HIGH-RISK POOL AND REINSURANCE PROGRAMS.—

“(A) ALLOCATIONS.—

“(i) METHODOLOGY.—Not later than 45 days after the date of enactment of this Act, the Secretary, in consultation with the National Association of Insurance Commissioners, shall specify an allocation methodology for determining the amount of funds appropriated under section 2(b) of the Premium Reduction Act of 2019 for a fiscal year to be allocated for each State for purposes of subparagraph (B) and section 2(c) of the Premium Reduction Act of 2019.

“(ii) ANNUAL DETERMINATIONS.—

The Secretary shall determine the allocations to States described in clause (i) for each calendar year, using the methodology determined under clause (i) and taking into consideration the experiences of other States with respect to participation in an

1 Exchange and premium tax credits, cost-  
2 sharing reductions, or small business cred-  
3 its under sections 36B of the Internal Rev-  
4 enue Code of 1986 or under part I of sub-  
5 title E provided to residents of such  
6 States.

7 “(B) STATE GRANTS.—From amounts ap-  
8 propriated under section 2(b)(1) of the Pre-  
9 mium Reduction Act of 2019 for a fiscal year,  
10 the Secretary shall award grants to States for  
11 each of fiscal years 2020 through 2023, in  
12 amounts determined under subparagraph  
13 (A)(ii), for the following purposes:

14 “(i) For each of fiscal years 2020  
15 through 2024, out of amounts appro-  
16 priated under subparagraph (A) of such  
17 section 2(b)(1), for administrative costs of  
18 the State associated with preparing and  
19 submitting information described in para-  
20 graph (1)(B) that includes an invisible  
21 high-risk pool or reinsurance program that  
22 meets the requirements of subsection  
23 (f)(2), or costs associated with the estab-  
24 lishment of such invisible high-risk pool or  
25 reinsurance program.

1                   “(ii) For each of fiscal years 2021  
 2                   through 2023, out of amounts appro-  
 3                   priated under subparagraph (B) of such  
 4                   section 2(b)(1), for the establishment or  
 5                   maintenance of invisible high-risk pools  
 6                   and reinsurance programs that meet the  
 7                   requirements of subsection (f)(2) and for  
 8                   which the State has received a waiver  
 9                   under this section.

10                  “(C)     BUDGET     NEUTRALITY.—Funds  
 11                  awarded to a State under a grant awarded  
 12                  under subparagraph (B) shall not be taken into  
 13                  account for purposes of determining under  
 14                  paragraph (1) whether the State waiver is  
 15                  budget neutral, or determining under subsection  
 16                  (b)(1) whether the State waiver increases the  
 17                  Federal deficit.

18                  “(5)    RECONCILIATION    OF    PASS    THROUGH  
 19                  FUNDING AND FUNDING FOR INVISIBLE HIGH-RISK  
 20                  POOL AND REINSURANCE PROGRAMS.—In allocating  
 21                  amounts under paragraphs (3) and (4), the Sec-  
 22                  retary—

23                         “(A) not later than November 1 of each  
 24                         year, shall estimate the allocation for each

1 State under such paragraphs for the upcoming  
2 calendar year;

3 “(B) not later than June 1 of each year,  
4 shall revise the estimate of the allocations under  
5 subparagraph (A) for each State for the current  
6 calendar year; and

7 “(C) shall reconcile amounts to be paid to  
8 each State under such paragraphs for the fol-  
9 lowing calendar year by adjusting each State’s  
10 allocation for the following calendar year to ac-  
11 count for the revisions made under subpara-  
12 graph (B).”.

13 (b) APPROPRIATIONS.—

14 (1) IN GENERAL.—There are authorized to be  
15 appropriated, and there are appropriated, to the  
16 Secretary of Health and Human Services (referred  
17 to in this section as the “Secretary”), for the pur-  
18 poses described in section 1332(a)(4)(B) of the Pa-  
19 tient Protection and Affordable Care Act (as amend-  
20 ed by subsection (a)) and subsection (c) of this sec-  
21 tion, out of any funds in the Treasury not otherwise  
22 appropriated—

23 (A) \$500,000,000 for fiscal year 2020; and

24 (B) \$5,000,000,000 for each of fiscal years  
25 2021 through 2023.

1           (2) AVAILABLE UNTIL EXPENDED.—Amounts  
 2           appropriated under this subsection shall remain  
 3           available until expended.

4           (c) DEFAULT FEDERAL SAFEGUARD.—

5           (1) IN GENERAL.—For purposes of plan year  
 6           2021, in the case of a State that does not, by a date  
 7           specified by the Secretary for each such year, in con-  
 8           sultation with the National Association of Insurance  
 9           Commissioners, have in effect a waiver under section  
 10          1332 of the Patient Protection and Affordable Care  
 11          Act (42 U.S.C. 18052) that includes an invisible  
 12          high-risk pool or reinsurance program that meets  
 13          the requirements of subsection (f)(2) of such section  
 14          1332, the Secretary shall, from amounts appro-  
 15          priated under subsection (b), use the allocation de-  
 16          termined for the State under subsection (a)(4)(A) of  
 17          such section 1332 for plan year 2021 for the pur-  
 18          pose described in paragraph (2). Such allocation  
 19          shall be increased by the amount of pass through  
 20          funding that would be available under section  
 21          1332(a)(3) of the Patient Protection and Affordable  
 22          Care Act if the State obtained a waiver for an invis-  
 23          ible high-risk pool or reinsurance program under  
 24          such section.

1           (2) REQUIRED USE FOR MARKET STABILIZA-  
 2           TION PAYMENTS TO ISSUERS.—The Secretary shall  
 3           use any allocation for a State made pursuant to  
 4           paragraph (1) to help stabilize premiums for health  
 5           insurance coverage in the individual market in such  
 6           State by providing payments to health insurance  
 7           issuers, using payment parameters and a method-  
 8           ology determined by the Secretary.

9           (d) INVISIBLE HIGH-RISK POOLS AND REINSURANCE  
 10          PROGRAMS.—

11           (1) IN GENERAL.—Section 1332 of the Patient  
 12          Protection and Affordable Care Act (42 U.S.C.  
 13          18052) is amended by adding at the end the fol-  
 14          lowing:

15          “(f) INVISIBLE HIGH-RISK POOLS AND REINSUR-  
 16          ANCE PROGRAMS.—

17           “(1) FUNDING.—With respect to a State that  
 18          has received a waiver under this section to establish  
 19          an invisible high-risk pool or reinsurance program  
 20          described in paragraph (2), the State may fund such  
 21          program, in whole or in part, using one or both of  
 22          the following:

23           “(A) Amounts received through a grant de-  
 24          scribed in subsection (a)(4)(B).

1           “(B) All of, or a portion of, the payments  
 2           made to the State as described in subsection  
 3           (a)(3), consistent with the information the  
 4           State provides under subsection (a)(1)(B).

5           “(2) PROGRAM DESIGN.—An invisible high-risk  
 6           pool or reinsurance program described in this para-  
 7           graph is a program that meets any of the following:

8           “(A) An invisible high-risk pool, as defined  
 9           by the State, under which health insurance  
 10          issuers, with respect to designated individuals  
 11          who experience higher than average health costs  
 12          as determined by the State, and are enrolled in  
 13          health insurance coverage offered in the indi-  
 14          vidual market, cede risk to the pool, without af-  
 15          fecting the premium paid by the designated in-  
 16          dividuals or their terms of coverage. With re-  
 17          spect to such pool, the State, or an entity oper-  
 18          ating the pool on behalf of the State, shall es-  
 19          tablish—

20                  “(i) the premium amount the ceding  
 21                  issuer shall pay to the reinsurance pool;

22                  “(ii) the applicable attachment points  
 23                  or coinsurance percentages if the ceding  
 24                  issuer retains any portion of the risk under  
 25                  ceded policies; and



1 “(iii) the mechanism by which high-  
 2 risk individuals are designated for cession  
 3 to the pool, which may include a list of  
 4 designated high-cost health conditions.

5 “(B) A reinsurance program, as defined by  
 6 the State, that assumes a portion of the risk for  
 7 individuals who experience higher than average  
 8 health costs as determined by the State, in a  
 9 manner substantially similar to the reinsurance  
 10 program that operated in the State in accord-  
 11 ance with section 1341.

12 “(C) A reinsurance program established by  
 13 the State not otherwise described in this para-  
 14 graph.

15 “(D) A program based on another State’s  
 16 reinsurance program—

17 “(i) described in subparagraph (A),  
 18 (B), or (C), for which an application has  
 19 been approved under this subsection; or

20 “(ii) which was implemented prior to  
 21 September 1, 2019, and which the Sec-  
 22 retary determines meets the requirements  
 23 of subparagraph (A).

24 “(3) EXPEDITED APPROVAL.—

1 “(A) IN GENERAL.—The Secretary shall  
2 provide an expedited approval process for an  
3 application under subsection (a)(1)—

4 “(i) with respect to an invisible high-  
5 risk pool or reinsurance program described  
6 in subparagraph (A), (B), or (D) of para-  
7 graph (2); or

8 “(ii) that uses a template form de-  
9 signed by the Administrator of the Centers  
10 for Medicare & Medicaid Services, in con-  
11 sultation with the Secretary of the Treas-  
12 ury, for an application based on a program  
13 that is the same or substantially the same  
14 as a program implemented in accordance  
15 with an application previously approved  
16 under this subsection.

17 “(B) TIMEFRAME.—The Secretary shall  
18 make a determination on an application eligible  
19 for expedited review under subparagraph (A)  
20 not later than 90 days after receipt of such ap-  
21 plication.

22 “(C) STANDARD OF REVIEW.—Nothing in  
23 this paragraph shall be construed as affecting  
24 the requirements under subsection (a)(1) with  
25 respect to an application approved in accord-

1           ance with the process under subparagraph  
2           (A).”.

3           (2) APPLICATION.—Section 1332(a)(1)(B)(i) of  
4           the Patient Protection and Affordable Care Act (42  
5           U.S.C. 18052(a)(1)(B)(i)) is amended by inserting  
6           “, including, as applicable, a description of the  
7           State’s plan to use any amounts awarded to the  
8           State under paragraph (4) to support an invisible  
9           high-risk pool or reinsurance program consistent  
10          with subsection (f) and such information about such  
11          program as the Secretary may require” before the  
12          semicolon.

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