

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Belhaven, Town of, Beaufort County ....	370015	October 27, 1972, Emerg.; May 16, 1977, Reg.; May 15, 2003, Susp.	.....do .....	Do.
Chocowinity, Town of, Beaufort County	370289	June 30, 1997, Reg.; May 15, 2003, Susp ..	.....do .....	Do.
Hyde County, Unincorporated Areas ....	370133	February 8, 1974, Emerg.; February 4, 1987, Reg.; May 15, 2003, Susp.	.....do .....	Do.
Pantego, Town of, Beaufort County .....	370016	November 24, 1975, Emerg.; August 5, 1985, Reg.; May 15, 2003, Susp.	.....do .....	Do.
Washington Park, Town of Beaufort County.	370268	September 29, 1972, Emerg.; November 22, 1976, Reg.; May 15, 2003, Susp.	.....do .....	Do.

**Code for reading third column:** Emerg.—Emergency; Reg.—Regular; Susp—Suspension.

**Anthony S. Lowe,**

*Mitigation Division Director, Emergency Preparedness and Response Directorate.*

[FR Doc. 03-10842 Filed 5-1-03; 8:45 am]

**BILLING CODE 6718-05-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

#### 45 CFR Part 148

[CMS-2179-FC]

RIN 0938-AM42

### Grants to States for Operation of Qualified High Risk Pools

**AGENCY:** Office of the Secretary, HHS.

**ACTION:** Final rule with comment period.

**SUMMARY:** This final rule with comment period implements a provision of the Trade Assistance Reform Act of 2002 by providing \$40 million in Federal fiscal year 2003 and \$40 million in Federal fiscal year 2004 to States that have incurred losses in connection with the operation of qualified high risk pools that meet certain criteria. This grant program implements section 2745 of the Public Health Service Act, as added by the Trade Adjustment Assistance Reform Act of 2002.

**DATES:** Effective date. These regulations are effective on June 2, 2003.

*Public comments:* We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on July 1, 2003.

*Deadline for States to submit an application for losses incurred in their fiscal year 2002:* States must submit an application to us by no later than September 30, 2003.

*Deadline for States to submit an application for losses incurred in their fiscal year 2003:* States must submit an application to us by no later than June 30, 2004.

*Deadline for States to submit an application for losses incurred in their fiscal year 2004:* States must submit an application to us by no later than June 30, 2005.

**ADDRESSES:** *Where to Submit an Application.* All initial applications and supplemental applications must be submitted to:

Centers for Medicare & Medicaid Services, Acquisition and Grants Group, Mail Stop C2-21-15, 7500 Security Boulevard, Baltimore, MD 21244-1850, Attn: Nicole Nicholson.

*Public Comments.* In commenting, please refer to file code CMS-2179-FC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission or e-mail.

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-2179-FC, PO Box 8016, Baltimore, MD 21244-8016.

Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.

If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) to one of the following addresses:

Room 445-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5-14-03, 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 could be considered late.

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

#### **FOR FURTHER INFORMATION CONTACT:**

James Mayhew, (410) 786-9244.

#### **SUPPLEMENTARY INFORMATION:**

*Inspection of Public Comments:* Comments received timely will 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 410-786-7195.

### **I. Background**

#### *A. General*

Section 2745(b) of the Public Health Service Act (PHS Act), as added by section 201(b) of the Trade Adjustment Assistance Reform Act of 2002, authorizes the Secretary to make grants to States for up to 50 percent of the losses they incur in the operation of qualified high risk pools, and appropriates the necessary funds. In order to qualify for a grant, a State's risk pool must meet the definition of a qualified risk pool, as described in section II of this preamble, as well as other applicable eligibility requirements described in that section.

#### *B. Availability and Use of Funds*

The total amount appropriated for these grants is \$80 million (\$40 million each in Federal fiscal years (FY) 2003 and 2004). We have two years to obligate funding for each fiscal year. As directed by the statute, we will allocate

funds in accordance with a formula based upon the number of uninsured individuals in each eligible State. This formula, described in section II of this preamble and in § 148.312(b) of the final rule, was developed using the most accurate and current statistics available on the uninsured in each State. Eligible States may apply for grants for amounts up to 50 percent of losses they incur in connection with the operation of a qualified high risk pool. A State must have a qualified high risk pool that has incurred a loss in order to be eligible for a grant.

## II. Provisions of the Final Rule

We are adding a new subpart E to 45 CFR 148, to provide for grants to States that incur losses in connection with operating qualified high risk pools. This subpart implements section 2745 of the PHS Act. Its purpose is to provide 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.

We are adding § 148.306, which describes the statutory basis and scope of the regulation. We are also adding § 148.308, "Definitions." CMS stands for Centers for Medicare & Medicaid Services. For the purposes of subpart E, a "qualified high risk pool" is a high risk pool that meets the conditions described in § 148.128(a)(2)(ii): (1) It provides to all eligible individuals, as defined in § 148.103, health insurance coverage (or comparable coverage) that does not impose any preexisting condition exclusion or affiliation periods for coverage of an eligible individual; and (2) provides for premium rates and covered benefits for the coverage consistent with the standards included in the National Association of Insurance Commissioners (NAIC) Model Health Plan for Uninsurable Individuals Act (as in effect as of 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.

A "loss" means the difference between expenses incurred by a qualified high risk pool, including payment of claims and administrative expenses, and premiums collected by the pool. A "standard risk rate" means a rate developed by a State using reasonable actuarial techniques and taking into account the premium rates charged by the other insurers offering health insurance coverage to individuals in the same geographical service area to

which the rate applies. The standard rate may be adjusted based upon age, sex, and geographical location.

We are adding § 148.310, which describes eligibility requirements for a grant. A State must meet all of the following requirements to be eligible for a grant:

(a) The State has a qualified high risk pool as defined in § 148.308.

(b) The pool restricts premiums charged under the pool to no more than 150 percent of the premium for applicable standard risk rates for the State.

(c) The pool offers a choice of two or more coverage options through the pool.

(d) The pool has in effect a mechanism reasonably designed to ensure continued funding of losses incurred by the State after the end of fiscal year 2004 in connection with the operation of the pool.

(e) The pool has incurred a loss in a period described in § 148.314.

We are adding § 148.312, which describes the amount of a grant payment. Paragraph (a) provides that an eligible State may receive a grant to fund up to 50 percent of the losses incurred in the operation of its qualified high risk pool during the period for which it is applying. Paragraph (b) provides that we will allocate funds to each eligible State in accordance with the following formula:

(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. For grants based upon State fiscal years 2002 and 2003, a 3-year average will be calculated using numbers available as of May 1, 2003. For grants based upon State fiscal year 2004, a 3-year average will be calculated using numbers available as of March 1, 2005. Calculation of the State 3-year average will be done by the Census Bureau and provided to CMS.

(2) Based upon the CPS numbers, the State's percentage of the total uninsured population of eligible States is calculated and then multiplied by \$40 million to determine the State's maximum allotment for the fiscal year in question. For example, if the most current 3-year average of uninsured individuals in State A is one million, and the 3-year average of uninsured individuals for all eligible States was 10 million, State A would have 10 percent of the uninsured population of the eligible States. Accordingly, State A's allotment would be 10 percent of \$40 million, or \$4 million, for the fiscal year in question.

Paragraph (c) states that the amount awarded to each eligible State will be the lesser of the 50 percent of losses incurred by its qualified risk pool for the fiscal year in question or its allotment under the formula.

We are adding § 148.314, which describes the periods for which eligible States may apply for grants; application deadlines; and allocation methodology. Under paragraph (a), an eligible State may apply for a grant to fund losses incurred in the operation of its qualified risk pool during the State's fiscal year 2002, 2003, or 2004. A State may apply for losses incurred in a partial fiscal year if a partial year audit is done. Under paragraph (b), an eligible State may only be awarded a maximum of two grants, with one grant per fiscal year. A grant for a partial fiscal year counts as a full grant. We also explain how we determine which grants will be funded out of which Federal fiscal year funds. This will depend in part on when the State submits its initial application.

In paragraph (c), we indicate that the deadlines for submitting grant applications are stated in § 148.316(d).

In paragraph (d), we explain how Federal funds will be distributed to States that may qualify at different points in time. The first group of States are those that submit applications for their fiscal year 2002 losses. (We will refer to those States as "02 States.") These States, that meet all the eligibility requirements and incur losses in connection with a qualified high risk pool in State fiscal year 2002, may submit a grant request, which must be received by September 30, 2003. The first year grant for these States will be funded with Federal fiscal year 2003 funds. The 02 States may be eligible for a second grant to fund their fiscal year 2003 losses. The deadline for those grant requests will be June 30, 2004. As explained below, these grants will be funded with Federal fiscal year 2004 funds. (If a State does not receive a grant for State fiscal year 2003, however, it still might qualify for its fiscal year 2004, as discussed below.)

The second group of States are those that do not submit applications for their 2002 fiscal years (or do submit applications but do not qualify) and that first qualify with respect to losses incurred in their fiscal year 2003. (We will refer to these States as "03 States.") These States may submit a grant request, which must be received by June 30, 2004. The first year grant for these States will be funded with Federal fiscal year 2003 funds. The 03 States (or any 02 States that did not apply or receive approval for losses incurred during State fiscal year 2003) may be eligible

for a second grant to fund their fiscal year 2004 losses. The deadline for those grant requests will be June 30, 2005. Those grants will be funded with Federal fiscal year 2004 funds. The third group of States are those that first qualify with respect to losses incurred in their fiscal year 2004. (We will refer to these States as "04 States"). These States may submit a grant request, which must be received by June 30, 2005. The first year grant for these States will be funded with Federal fiscal year 2004 funds. The 04 States will not be eligible for a second grant because the availability of Federal funds will have expired.

In paragraph (e), we explain how excess funds will be redistributed. The initial grants to the 02 States and the 03 States will come from the Federal fiscal year 2003 funds. After the deadline for 02 grants, we will determine how many States have submitted applications for grants. We will estimate, based upon contacts with other States, how many requests are likely to be received from 03 States. We will make an initial allotment for 02 States based upon these estimates. In other words, we will reserve some of the Federal fiscal year 2003 funds after the 02 States grant requests have been received in anticipation of requests being made by 03 States. Based upon expressions of interest we have received from States, we believe we have a reasonable estimate of the States that are likely to first qualify in their fiscal year 2003. We will hold in reserve our best estimate of the maximum amount of funds needed to provide full allotments to these States. If there are excess reserves (that is, the Department withholds more money than was necessary to provide grants to the 03 States), the excess funds will be proportionally redistributed to the 02 States and the 03 States, but not to exceed 50 percent of losses incurred by the States. In other words, the size of the first year grants will be increased retroactively for these States. In the unlikely event that the Department should underestimate the reserve needed to fund grants to all eligible 03 States, money will be taken from the Federal fiscal year 2004 funds to assure that all eligible 03 States receive grants on an equivalent basis. We do not expect it to have a major impact on funding of the additional grants from the Federal fiscal year 2004 funds. Similarly, the Department will reserve some of the Federal fiscal year 2004 money to fund the second year grants for 02 and 03 States and the first year grants for the 04 States.

We believe that this method of distribution of the Federal funds is the

fairest because it allows for States that qualified for a grant in their fiscal year 2002 to immediately apply for funding and it also allows for the States who may not immediately qualify to enact the changes needed in order to qualify and apply for funding in either their fiscal year 2003 or fiscal year 2004. In other words, this method is set up to accommodate as many States as possible.

We are adding § 148.316, which describes the application package that the individual State must submit to document that it has met the requirements for a grant. At a minimum, the package must include a completed standard form application kit (see paragraph (b) of this section) along with the following information:

(1) *History and description of the qualified high risk pool.* Provide a detailed description of the qualified high risk pool that includes the following:

(i) Brief history, including date of inception.

(ii) Enrollment criteria (including provisions for the admission of eligible individuals, as defined in § 148.103) and number of enrollees.

(iii) Description of how coverage is provided administratively in the qualified high risk pool (that is, self-insured, through a private carrier, etc.).

(iv) Benefits options and packages offered in the qualified high risk pool to both eligible individual (as defined in § 148.103) and other applicants.

(v) Outline of plan benefits and coverage offered in the pool and the plan benefits and coverage of the two most popular policies in the State's private individual market.

(vi) Premiums charged (in terms of dollars and in percentage of standard risk rate) and other cost-sharing mechanisms, such as co-pays and deductibles, imposed on enrollees (both eligible individuals (as defined in § 148.103) and non-eligible individuals if a distinction is made).

(vii) How the standard risk rate for the State is calculated and when it was last calculated.

(viii) Revenue sources for the qualified high risk pool, including current funding mechanisms and, if different, future funding mechanisms. Provide current projections of future income.

(ix) Copies of all governing authorities of the pool, including statutes, regulations, and plan of operation.

(2) *Accounting of risk pool losses.*

Provide a detailed accounting of claims paid, administrative expenses, and premiums collected for the fiscal year for which the grant is being requested.

Indicate the timing of the fiscal year upon which the accounting is based. Provide the methodology of projecting losses and expenses, and include current projections of future operating losses (this information is needed to judge compliance with the requirement in § 148.310(d) of this final rule).

(3) *Contact person.* Identify the name, position title, address, e-mail address, and telephone number of the person to contact for further information and questions.

In paragraph (b)(1) of § 148.316, the following standard forms must be completed with an original signature and enclosed as part of the proposal:

SF-424 Application for Federal Assistance  
SF-424A Budget Information  
SF-424B Assurances—Non-Construction Program  
SF-LLL Disclosure of Lobbying Activities  
Biographical Sketch  
Additional Assurances

These forms can be downloaded from the following Web site: <http://www.cms.hhs.gov/researchers/priorities/grants.asp>.

Paragraph (b)(2) specifies that all other narrative in the application must be submitted on 8½ x 11" white paper.

In paragraph (c), we describe what applicants are required to submit. Applicants are required to submit an original and two copies of the application. Submissions by facsimile (fax) transmissions will not be accepted.

Applications mailed through the U.S. Postal Service or a commercial delivery service will be considered "on time" if received by the close of business on the closing date, or postmarked (first class mail) by the date specified in the **DATES** section of this final rule. If express, certified, or registered mail is used, the applicant should obtain a legible dated mailing receipt from the U.S. Postal Service. Private metered postmarks are not acceptable as proof of timely mailings.

In paragraph (d), we describe the deadlines States must meet for submitting an application for losses they incur in a specified fiscal year.

(1) *Deadline for States to submit an application for losses incurred in their fiscal year 2002.* States must submit an application to us by no later than September 30, 2003.

(2) *Deadline for States to submit an application for losses incurred in their fiscal year 2003.* States must submit an application to us by no later than June 30, 2004.

(3) *Deadline for States to submit an application for losses incurred in their fiscal year 2004.* States must submit an application to us by no later than June 30, 2005.

In paragraph (e), we indicate where to submit an application. All initial applications and supplemental applications must be submitted to:

Centers for Medicare & Medicaid Services, Acquisition and Grants Group, Mail Stop C2-21-15, 7500 Security Boulevard, Baltimore, MD 21244-1850, Attn: Nicole Nicholson.

We added § 148.318, which describes how we will review grant applications. Paragraph (a) indicates that this grant program is not listed by the Secretary under 45 CFR 100.3, and therefore the grant program is not subject to review by States under 45 CFR part 100, which implements Executive Order 12372, "Intergovernmental Review of Federal Programs."

Paragraph (b) states that a team consisting of staff from CMS and the Department of Health and Human Services will review all applications. The team will meet as necessary on an ongoing basis as applications are received.

Paragraph (c) describes the eligibility criteria. To be eligible for a grant, a State must submit sufficient documentation to demonstrate that its high risk pool meets the eligibility requirements described in § 148.310. A State must include sufficient documentation of the losses incurred in the operation of the qualified high risk pool in the period for when it is applying. Paragraph (d) indicates that if the review team determines that a State meets the eligibility requirements described in § 148.310, the review team will use the following additional criteria in reviewing the applications:

(1) *Documentation of expenses incurred during operation of the qualified high risk pool.* The losses and expenses incurred in the operation of a State's pool are sufficiently documented.

(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 fiscal year 2004.

We added § 148.320, which describes our grant award process. Paragraph (a) provides that we will notify each State applicant in writing of CMS' decision on its application. If we award a grant to the State applicant, the award letter will contain the following terms and conditions:

(i) All funds awarded to the grantee under this program must be used exclusively for the operation of a qualified high risk pool that meets the

eligibility requirements for this program.

(ii) The grantee must keep sufficient records of the grant expenditures for audit purposes (see 45 CFR part 92).

(iii) The grantee may be required to submit quarterly progress and financial reports under 45 CFR 92.

Paragraph (b) specifies that an applicant that receives a grant award must submit a letter of acceptance to CMS' Acquisition and Grants Group within 30 days of the date of the award agreeing to the terms and conditions of the award letter.

### III. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on the proposed rule. 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 instance, we find that notice-and-comment is contrary to the public interest because it is beneficial to the eligible States and to the uninsured population in the eligible States that funding for qualified high risk pool is available as quickly as possible. The sooner the funds become available for States to fund losses incurred in the operation of the qualified high risk pools, the sooner that the pools can expand their eligibility to provide coverage to more uninsured individuals.

Therefore, we find good cause to waive the notice of proposed rulemaking and to issue this final rule on an interim basis. We are providing a 60-day public comment period.

### IV. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, 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, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

### V. Collection of Information Requirements

Under the Paperwork Reduction Act (PRA) of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information 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 PRA 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 section that contains information collection requirements.

#### *Sections 148.316 Grant Application Instructions*

This section requires an applicant to submit the application in writing and states what it must contain.

#### *Sections 148.320 Grant Awards*

Paragraph (b) of this section requires an applicant that is granted an award to send CMS a letter of acceptance.

These two information collection requirements together have been estimated to take 40 hours per applicant/grantee to fulfill, for a total of 800 hours per year, based on a maximum of 20 applicants. This burden has been approved by the Office of Management and Budget under approval number 0938-0887 through June 2003.

#### *Section 148.320 Grant Awards*

Paragraph (a)(2)(iii) of this section states that the grantee may be required to submit quarterly progress and financial reports under pursuant to part 92 of this title.

The burden associated with requirement is the time it will take the grantee to complete the reports, if requested. At a maximum, a grantee would have to complete 8 reports; however, we anticipate that the grantees will need to file only semi-annually, thus completing only four reports. We estimate that a progress report will take 30 minutes to complete and a financial

report 30 minutes as well. This would total 2 hours per grantee per year, or 40 hours per year (2 hrs. × 20 grantees).

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, DRDI, DRD-B, Attn: Julie Brown, Room C5-16-03, 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: Brenda Aguilar, CMS Desk Officer.

## VI. Regulatory Impact Statement

### A. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96-354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), and Executive Order 13132.

Executive Order 12866 (as amended by Executive Order 13258, which merely reassigns responsibility of duties) 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). Since the amount of appropriations under this rule will not total more than \$40 million per fiscal year, it is not 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 government agencies. 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. Since this rule is implementing a grant program for the States, this rule will not have a significant impact on small businesses.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a

significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. Again, since this rule is implementing a grant program for the States, it will not have a significant impact on small hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of \$110 million. Since this rule is strictly an appropriation, there are no unfunded mandates included in the rule.

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 rule is strictly an appropriation of \$80 million to the States to fund losses incurred in the operation of qualified high risk pools, it will have a beneficial impact on State governments since the funds will be used to provide health insurance coverage to uninsured individuals and will not impose any direct requirement costs on State and local governments.

### B. Anticipated Effects

This rule will have a positive impact on approximately 22 States that currently operate qualified high risk pools in that it will make funds available to those States to fund losses incurred in the operation of their high risk pools. Additionally, in order to be eligible for funding, the high risk pools will have to lower or maintain their premium cap at no higher than 150 percent of the standard rate in the private market. These grants, therefore, will serve as an incentive for States to keep their risk pool premiums at a level that will be affordable and accessible to more uninsured individuals. It will not significantly impact upon other entities, including providers, nor will it have any significant impact on the Medicare and Medicaid programs.

### C. Alternatives Considered

The Trade Adjustment Assistance Reform Act of 2002 was very prescriptive in its criteria for eligibility for operation grants to high risk pools.

It also provided a specific definition of a high risk pool and outlined the allocation formula for the grants. In addition to following the statute, we had to comply with the Department grant award procedure requirements. Because of these requirements, and because we wanted to make the money available as quickly as possible, we did not consider other major alternatives on how to award the grants.

### D. Conclusion

For the reasons indicated elsewhere in this section, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

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

### List of Subjects in 45 CFR 148

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

■ For the reasons set forth in the preamble, the Department of Health and Human Services amends 45 CFR subchapter B part 148 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).

■ 2. A new subpart E is added to read as follows:

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

Sec.

148.306	Basis and scope.
148.308	Definitions.
148.310	Eligibility requirements for a grant.
148.312	Amount of grant payment.
148.314	Periods during which eligible States may apply for a grant.
148.316	Grant application instructions.
148.318	Grant application review.
148.320	Grant awards.

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

#### § 148.306 Basis and scope.

This subpart implements section 2745 of the Public Health Service Act (the PHS Act). It provides for 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.

#### **§ 148.308 Definitions.**

For the purposes of this subpart, the following definitions apply:

*CMS* stands for Centers for Medicare & Medicaid Services.

*Loss* means the difference between expenses incurred by a qualified high risk pool, including payment of claims and administrative expenses, and the premiums collected by the pool.

*Qualified high risk pool* means a high risk pool that meets the conditions described in § 148.128(a)(2)(ii):

(1) It provides to all eligible individuals, as defined in § 148.103, health insurance coverage (or comparable coverage) that does not impose any preexisting condition exclusion or affiliation periods for coverage of an eligible individual; and

(2) Provides for premium rates and covered benefits for the coverage consistent with the standards included in the National Association of Insurance Commissioners (NAIC) Model Health Plan for Uninsurable Individuals Act (as in effect as of 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.

*Standard risk rate* means a rate developed by a State using reasonable actuarial techniques and taking into account the premium rates charged by other insurers offering health insurance coverage to individuals in the same geographical service area to which the rate applies. The standard rate may be adjusted based upon age, sex, and geographical location.

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

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

(a) The State has a qualified high risk pool as defined in § 148.308.

(b) The pool restricts premiums charged under the pool to no more than 150 percent of the premium for applicable standard risk rates for the State.

(c) The pool offers a choice of two or more coverage options through the pool.

(d) The pool has in effect a mechanism reasonably designed to ensure continued funding of losses incurred by the State after the end of fiscal year 2004 in connection with the operation of the pool.

(e) The pool has incurred a loss in a period described in § 148.314.

#### **§ 148.312 Amount of grant payment.**

(a) An eligible State may receive a grant to fund up to 50 percent of the losses incurred in the operation of its qualified high risk pool during the period for which it is applying.

(b) Funds will be allocated to each eligible State in accordance with the following formula:

(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. For grants based upon State fiscal years 2002 and 2003, a 3-year average will be calculated using numbers available as of May 1, 2003. For grants based upon State fiscal year 2004, a 3-year average will be calculated using numbers available as of March 1, 2005. Calculation of the State 3-year average will be done by the Census Bureau and provided to CMS.

(2) Based upon the CPS numbers, the State's percentage of the total uninsured population of eligible States is calculated and then multiplied by \$40 million to determine the State's maximum allotment for the fiscal year in question. The following example illustrates the formula in paragraph (b):

(i) The most current 3-year average of uninsured individuals in State A is one million, and the 3-year average of uninsured individuals for all eligible States is 10 million. State A has 10 percent of the uninsured population of the eligible States.

(ii) Under this example, State A's allotment would be 10 percent of \$40 million, or \$4 million, for the fiscal year in question.

(c) The amount awarded to each eligible State will be the lesser of the 50 percent of losses incurred by its qualified risk pool for the fiscal year in question or its allotment under the formula.

#### **§ 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 2002, 2003, or 2004 in connection with the operation of its qualified high risk pool. A State may apply for losses incurred in a partial fiscal year if a partial year audit is done.

(b) *Maximum number of grants.* An eligible State may only be awarded a maximum of two 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) *Initial 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:

(1) *Initial grant applications submitted for losses incurred in State fiscal year 2002 (hereafter referred to as 02 States).* Initial grants to States that submit an application for losses incurred in State fiscal year 2002 will be funded with Federal fiscal year 2003 funds.

(2) *Initial grant applications submitted for losses incurred in State fiscal year 2003 (hereafter referred to as 03 States).* Initial grants to States that did not submit an application for losses in State fiscal year 2002 (or submitted an application but did not qualify) and first qualified for a grant for losses incurred in State fiscal year 2003 will be funded with Federal fiscal year 2003 funds.

(3) *Initial grant allocations.* Initial grant allocations will be determined by taking all grant applications described in paragraphs (d)(1) and (2) of this section, and allocating in accordance with § 148.312.

(4) *Other applications.* All other grants will be funded in the first instance with Federal fiscal year 2004 funds.

(e) *Reallocation of funds.* The initial grants to the 02 States and the 03 States will come from the Federal fiscal year 2003 funds. After the deadline for 02 grants, the Department will determine how many States have submitted applications for grants. The Department will then estimate, based on contacts with other States, how many requests are likely to be received from 03 States. The Department will make an initial allotment for 02 States based on these estimates. The Department will reserve some of the Federal fiscal year 2003 funds after the 02 States grant requests have been received in anticipation of requests being made by 03 States. The Department will hold in reserves adequate funds to provide full allotments to these States. If there are excess reserves (that is, the Department withholds more money than was necessary to provide grants to the 03 States), the excess funds will be proportionally redistributed to the 02 States and the 03 States, but not to exceed 50 percent of losses incurred by the States. The size of the first year grants will be increased retroactively for these States. Similarly, the Department will reserve some of the Federal fiscal

year 2004 money to fund the second year grants for 02 and 03 States and the first year grants for the 04 States (that is, States that initially qualify based upon losses incurred in their fiscal year 2004).

#### **§ 148.316 Grant application instructions.**

(a) *Application package.* The individual States must compile an application package that documents that it has met the requirements for a grant. At a minimum, the package must include a completed standard form application kit (see paragraph (b) of this section) along with the following information:

(1) *History and description of the qualified high risk pool.* Provide a detailed description of the qualified high risk pool that includes the following:

(i) Brief history, including date of inception.

(ii) Enrollment criteria (including provisions for the admission of eligible individuals as defined in § 148.103) and number of enrollees.

(iii) Description of how coverage is provided administratively in the qualified high risk pool (that is, self-insured, through a private carrier, etc.).

(iv) Benefits options and packages offered in the qualified high risk pool to both eligible individual (as defined in § 148.103) and other applicants.

(v) Outline of plan benefits and coverage offered in the pool and the plan benefits and coverage of the two most popular policies in the State's private individual market.

(vi) Premiums charged (in terms of dollars and in percentage of standard risk rate) and other cost-sharing mechanisms, such as co-pays and deductibles, imposed on enrollees (both eligible individuals (as defined in § 148.103) and non-eligible individuals if a distinction is made).

(vii) How the standard risk rate for the State is calculated and when it was last calculated.

(viii) Revenue sources for the qualified high risk pool, including current funding mechanisms and, if different, future funding mechanisms. Provide current projections of future income.

(ix) Copies of all governing authorities of the pool, including statutes, regulations and plan of operation.

(2) *Accounting of risk pool losses.* Provide a detailed accounting of claims paid, administrative expenses, and premiums collected for the fiscal year for which the grant is being requested. Indicate the timing of the fiscal year upon which the accounting is based. Provide the methodology of projecting losses and expenses, and include

current projections of future operating losses (this information is needed to judge compliance with the requirements in § 148.310(d)).

(3) *Contact person.* Identify the name, position title, address, e-mail address, and telephone number of the person to contact for further information and questions.

(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  
Additional Assurances

(ii) These forms can be downloaded from the following Web site:

<http://www.cms.hhs.gov/researchers/priorities/grants.asp>.

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

(c) *Submission of application package.*

(1) Applicants are required to submit an original and two copies of the application. Submissions by facsimile (fax) transmissions will not be accepted.

(2) Applications mailed through the U.S. Postal Service or a commercial delivery service will be considered "on time" if received by the close of business on the closing date, or postmarked (first class mail) by the date specified in the paragraph (d) of this section. If express, certified, or registered mail is used, the applicant should obtain a legible dated mailing receipt from the U.S. Postal Service. Private metered postmarks are not acceptable as proof of timely mailings.

(d) *Application deadlines.*

(1) *Deadline for States to submit an application for losses incurred in their fiscal year 2002.* States must submit an application to us by no later than September 30, 2003.

(2) *Deadline for States to submit an application for losses incurred in their fiscal year 2003.* States must submit an application to us by no later than June 30, 2004.

(3) *Deadline for States to submit an application for losses incurred in their fiscal year 2004.* States must submit an application to us by no later than June 30, 2005.

(e) *Where to submit an application.* All initial applications and supplemental applications must be submitted to:

Centers for Medicare & Medicaid Services,  
Acquisition and Grants Group, Mail Stop

C2-21-15, 7500 Security Boulevard,  
Baltimore, MD 21244-1850, Attn: Nicole  
Nicholson.

#### **§ 148.318 Grant application review.**

(a) *Executive Order 12372.* This grant program is not listed by the Secretary under § 100.3 of this title, and therefore the grant program is not subject to review by States under part 100 of this title, which implements Executive Order 12372, "Intergovernmental Review of Federal Programs" (see part 100 of this title).

(b) *Review team.* A team consisting of staff from CMS and the Department of Health and Human Services will review all applications. The team will meet as necessary on an ongoing basis as applications are received.

(c) *Eligibility criteria.* To be eligible for a grant, a State must submit sufficient documentation that its high risk pool meets the eligibility requirements described in § 148.310. A State must include sufficient documentation of the losses incurred in the operation of the qualified high risk pool in the period for when it is applying.

(d) *Review criteria.* If the review team determines that a State meets the eligibility requirements described in § 148.310, the review team will use the following additional criteria in reviewing the applications:

(1) *Documentation of expenses incurred during operation of the qualified high risk pool.* The losses and expenses incurred in the operation of a State's pool are sufficiently documented.

(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 fiscal year 2004.

#### **§ 148.320 Grant awards.**

(a) *Notification and award letter.*

(1) Each State applicant will be notified in writing of CMS's decision on its application.

(2) If the State applicant is awarded a grant, the award letter will contain the following terms and conditions:

(i) All funds awarded to the grantee under this program must be used exclusively for the operation of a qualified high risk pool that meets the eligibility requirements for this program.

(ii) The grantee must keep sufficient records of the grant expenditures for audit purposes (see part 92 of this title).



(iii) The grantee may be required to submit quarterly progress and financial reports under part 92 of this title.

(b) *Grantees letter of acceptance.* Grantees must submit a letter of acceptance to CMS' Acquisition and Grants Group within 30 days of the date of the award agreeing to the terms and conditions of the award letter.

(Catalog of Federal Domestic Assistance Program No. 93779, Centers for Medicare and Medicaid Services Research, Demonstration, and Evaluations)

Dated: March 16, 2003.

**Thomas A. Scully,**  
*Administrator, Centers for Medicare & Medicaid Services.*

Approved: April 18, 2003.

**Tommy G. Thompson,**  
*Secretary.*  
[FR Doc. 03-10713 Filed 4-28-03; 8:45 am]  
**BILLING CODE 4120-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 1

[WT Docket No. 99-266; FCC 03-51]

#### Practice and Procedure

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Commission clarifies rules relating to tribal lands bidding credits that were established to provide incentives for wireless telecommunications carriers to serve individuals living on tribal lands. In the *Second Report and Order*, the Commission extends the time period during which winning bidders can negotiate with the relevant tribes to obtain the certification needed to obtain the credit. The Commission also clarifies various administrative matters involved in implementing the credit.

**DATES:** Effective July 1, 2003.

**FOR FURTHER INFORMATION CONTACT:** Roger Noel or Linda Chang, Wireless Telecommunications Bureau, at (202) 418-0620.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Federal Communications Commission's *Second Report and Order (2nd R&O)*, FCC 03-51, adopted March 7, 2003, and released March 14, 2003. The full text of the *2nd R&O* is available for public inspection during regular business hours at the FCC Reference Information Center, 445 12th St., SW., Room CY-A257, Washington, DC 20554. The complete text may be purchased from the

Commission's duplicating contractor: Qualex International, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail at [qualexint@aol.com](mailto:qualexint@aol.com).

### Synopsis of Second Report and Order

#### I. Background

1. In June 2000, the Commission adopted bidding credits for use by winning bidders who pledge to deploy facilities and provide service to federally recognized tribal areas that have a telephone service penetration rate at or below 70 percent. In setting out the bidding credit, the Commission noted that communities on tribal lands have had less access to telecommunications services than any other segment of the U.S. population. See *Extending Wireless Telecommunications Services to Tribal Lands*, WT Docket No. 99-266, *Report and Order*, 65 FR 47349 (August 2, 2000) (*R&O*), and *Further Notice of Proposed Rulemaking*, 65 FR 47366 (August 2, 2000) (*FNPRM*).

2. The *R&O* provided that, in order to obtain a bidding credit in a particular market, a winning bidder must indicate on its long-form application (FCC Form 601) that it intends to serve tribal lands in that market. Following the long-form application filing deadline, the applicant has 90 calendar days to amend its application to identify the tribal lands to be served, and provide certification from the tribal government(s) that: (1) It will allow the bidder to site facilities and provide service on its tribal land(s), in accordance with the Commission's rules; (2) it has not and will not enter into an exclusive contract with the applicant precluding entry by other carriers, and will not unreasonably discriminate against any carrier; and (3) its tribal land is a qualifying tribal land as defined in the Commission's rules, *i.e.*, an area that has a telephone penetration rate at or below 70 percent. In addition, at the conclusion of the 90-day period, the applicant must amend its long-form application to file a certification that it will comply with the bidding credit build-out requirement, and that it will consult with the tribal government regarding the siting of facilities and deployment of service on the tribal land. Upon receipt by the Commission of the certifications, the bidding credit is awarded and the applicant makes payment of the final net adjusted bid amount. If the required certifications are not provided at the conclusion of the 90-day period, the bidding credit is not awarded and the

applicant is required to pay the balance on the original gross bid amount in order to be awarded the licenses.

3. In order to ensure that applicants awarded bidding credits actually deploy facilities and provide service to tribal lands, the Commission imposed performance requirements as a condition of obtaining the bidding credit. The Commission required that a licensee construct and operate its system to cover 75 percent of the population of the qualifying tribal land within three years of the grant of the license. While this 75 percent benchmark is higher than the construction benchmarks applicable to auctioned wireless licenses generally, the Commission determined that it would ensure that only carriers that are committed to serving tribal lands will receive bidding credits, and that wireless telecommunications services will be deployed rapidly to underserved tribal areas. In the *R&O*, the Commission required that, at the conclusion of the three-year period, licensees file a notification of construction indicating that they have met the 75 percent construction requirement on the tribal lands for which the credit was awarded. If the licensee fails to comply with any condition, it is required to repay the bidding credit plus interest thirty days after the conclusion of the construction period. In the event the licensee fails to repay the amount, the license automatically cancels.

4. In limiting the scope of the bidding credit to federally recognized tribal areas with telephone penetration rates equal to or less than 70 percent, the Commission concluded that the credits would target the tribal communities with the greatest need for access to telecommunications service. Although the Commission acknowledged that there are some non-tribal areas with penetration rates lower than the national average, it was determined that almost all non-tribal areas have penetration rates greater than 70 percent and that non-tribal areas have penetration rates significantly greater than most tribal areas. Accordingly, the Commission found it appropriate to limit the program to tribal lands with a 70 percent or less penetration rate. The Commission did not, however, foreclose the possibility of extending the credit both to non-tribal areas and to areas with higher penetration rates.

5. In the *FNPRM*, the Commission solicited comment on ways the bidding credit could be extended to encourage further deployment of wireless telecommunications services. The Commission specifically sought