



THE SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D.C. 20201

April 2, 2010

Dear Governor:

As you are aware, on March 23, 2010, the President signed into law H.R. 3590, the Patient Protection and Affordable Care Act (Public Law 111-148). As the Department of Health and Human Services (HHS) begins the monumental task of implementing this historic legislation, I look forward to working in partnership with you as we transform the nation's health care system. I would like to draw your attention to one of the immediate changes that will be implemented this year. Section 1101 of the new law establishes a "temporary high risk health insurance pool program" to provide health insurance coverage to currently uninsured individuals with pre-existing conditions. The law directs HHS to carry out the program directly or through contracts with states or private, non-profit entities.

We are interested in building upon existing state programs in this important initiative to provide expanded access to health coverage for individuals who cannot otherwise obtain health insurance. **To that end, I am writing you today to request an expression of your state's interest in participating in this temporary high risk pool program, consistent with one of the implementation options described below.** We understand that final decisions in this regard may be subject to the availability of additional details, approval from your state legislature, and other factors. HHS will engage individually with each state that indicates its intent in response to this letter, both in the preparation of its potential application and during the application review process, as appropriate.

The new statute establishes some specific requirements surrounding the eligibility, benefits, and funding for the new high risk pool program. Specific statutory requirements include but are not limited to:

Eligible Individuals Must:

- Be a citizen or national of the United States or lawfully present in the United States;
- Not have been covered under creditable coverage (as defined in Section 2701(c)(1) of the Public Health Service Act) for the previous 6 months before applying for coverage; and
- Have a pre-existing condition, as determined in a manner consistent with guidance issued by the Secretary.

Benefits/Coverage Must Have:

- An actuarial value of at least equal 65 percent of total allowed costs;
- An out-of-pocket limit no greater than the applicable amount for high-deductible health plans linked to health savings accounts, described in section 223(c)(2) of the Internal Revenue Code of 1986 (that is, \$5,950 for an individual); and
- No pre-existing condition exclusions.

Premiums Must:

- Be established at a standard rate for a standard population (that is, not exceed 100 percent of the standard non-group rate); and
- Not have age rating greater than 4 to 1.

Beyond the minimum statutory requirements, HHS's goal is to grant the flexibility needed to permit successful and expeditious implementation of the program by interested states. For example, we recognize that there are different avenues for states to carry out the statutory requirements for a high risk pool program. A state could consider the following options:

- Operate a new high risk pool alongside a current state high risk pool;
- Establish a new high risk pool (in a state that does not currently have a high risk pool);
- Build upon other existing coverage programs designed to cover high risk individuals;
- Contract with a current HIPAA carrier of last resort or other carrier, to provide subsidized coverage for the eligible population; or
- Do nothing, in which case HHS would carry out a coverage program in the state.

In reviewing the existing state high risk pools, there is much common ground in the benefits currently provided. Since HHS is considering establishing a floor set of benefits that all the new high risk pool programs must cover, we anticipate that these benefit requirements would take into account benefit lists currently used by existing state high risk pools. Similarly, states would have the option to follow pre-existing condition criteria for determining eligibility established by the Secretary, or propose their own, subject to Secretarial approval. We are committed to working with states to identify other areas where flexibility is appropriate.

The law appropriates \$5 billion of federal funds to support the new high risk pool program. It will be available beginning on July 1, the start of many state fiscal years, until the program ends on January 1, 2014. HHS anticipates allocating these funds to states based on population as well as state costs (similar to the allocation method used for the Children's Health Insurance Program), with a reallocation of unused funds after 2 years. More details regarding the potential funding available to states will be made available prior to the deadline for applications. HHS will also hold a conference call in mid-April to provide a forum for learning additional details about the anticipated structure of the program and the anticipated application requirements, as well as to respond to any questions you may have regarding this program. We ask that your state's primary contact for the high risk pool program participate in this call.

To begin the process of implementing this program, HHS is asking that each state do the following:

1. Submit the name of a primary contact person to highriskpools@cms.hhs.gov by April 9, 2010. We also strongly encourage the advance submission of questions that you may have to the same mailbox, to facilitate a productive exchange of information during the conference call.
2. Submit a letter of intent by April 30, 2010, that indicates whether you intend to submit an application to contract with HHS to operate a high risk pool program under the new law. This letter should include the anticipated timing for establishment of the program, as well

as information on any State legislative decisions that would be needed in order to participate in the new high risk pool program. This information should be submitted to the same email box, with the subject line, "Notice of intent."

In addition, we would particularly appreciate an advance indication of which of the potential implementation options appears to be most likely for states to use to carry out their program, including available additional details (such as outlines of programs, or other ideas about potential mechanisms of providing coverage under the new law).

In order to determine the extent to which we will carry out our obligations directly, or under contracts with States or other entities, it is critical that HHS receive States' indication of intent to participate and requested preliminary information by April 30, 2010. I appreciate your assistance in ensuring that your state provides this information by the specified deadlines. This information will be critical in helping successfully implement the high risk health insurance pool program. HHS intends on establishing an option for eligible individuals in States that do not indicate their intent to participate. A State that indicates its intent but does not follow through with a successful application could be delaying assistance for its residents.

We look forward to working with you to bring affordable health care to individuals in your State through the new high risk pool program.

Sincerely,

A handwritten signature in black ink, appearing to read "Kathleen Sebelius". The signature is fluid and cursive, with the first name "Kathleen" written in a larger, more prominent script than the last name "Sebelius".

Kathleen Sebelius