

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