

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
Center for Consumer Information and Insurance Oversight
200 Independence Avenue SW
Washington, DC 20201

OFFICE OF INSURANCE PROGRAMS

Date: March 23, 2011

To: Federal High Risk Pool Contractors

From: Richard Popper, Director, Office of Insurance Programs

Subject: Pre-Existing Condition Insurance Plan Eligibility and Access to Other Creditable Coverage (Policy Letter #5)

The purpose of this memorandum is to clarify the statutory and regulatory requirements governing Pre-Existing Condition Insurance Plans (PCIPs). Specifically, it is not permissible to deny eligibility or disenroll otherwise eligible individuals who may have access to other creditable coverage but are not enrolled in that coverage.

The PCIP program was established under section 1101 of the Affordable Care Act as a transitional program to 2014 to provide immediate access to health coverage to individuals with pre-existing conditions who have been locked out of the private insurance market. In accordance with section 1101(b)(2)(C) of the Affordable Care Act, each State-administered PCIP operates a qualified high risk pool for eligible individuals who are defined in subsection (d) of this section as individuals who are U.S. citizens or nationals or are otherwise lawfully present; have been without creditable coverage for a six-month period prior to applying for PCIP; and have a pre-existing condition as determined under guidance issued by the Secretary of HHS. Additionally, in accordance with 45 C.F.R. § 152.14(a)(4), an individual must be a resident of one of the 50 States or the District of Columbia which constitutes, or is within the service area of, the PCIP.

While State-administered PCIPs are permitted to deny eligibility based on an applicant's enrollment in creditable coverage, or enrollment in creditable coverage during the six-month period prior to applying for PCIP, there is no authority for a PCIP to deny otherwise eligible individuals coverage on the ground that they have access to another source of health coverage in which they are not enrolled. This includes coverage through an employer or a spouse's employer and potential eligibility for, but not enrollment in, Medicare, Medicaid and the Children's Health Insurance Program. PCIPs remain free to inform applicants about the availability of other State and private coverage options that would provide the applicant similar or better coverage at a lower cost and to use joint applications for their health coverage programs, including their State high risk pool and PCIP. However, if an applicant that otherwise meets all PCIP eligibility criteria chooses to proceed with applying for enrollment with the PCIP even though he or she may also be eligible under other programs, the PCIP must accept such an individual (subject to budget constraints and other requirements established by HHS under section 1101(g) of the

Affordable Care Act). If an individual instead elects to enroll in other creditable coverage, the PCIP is required to deny the application or disenroll him or her pursuant to 45 C.F.R. § 152.15(b)(3)(ii).

We request that you contact your designated HHS account manager to discuss changes that can be implemented to resolve any discrepancies with previously approved procedures and this guidance if your PCIP currently prohibits enrollment or disenrolls individuals who are eligible, but do not enroll into the other source of credible coverage.