

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 265
Committee Substitute Favorable 2/27/07
Committee Substitute #2 Favorable 3/6/07
Committee Substitute #3 Favorable 3/29/07

Short Title: Establish High-Risk Pool.

(Public)

Sponsors:

Referred to:

February 20, 2007

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE NORTH CAROLINA HEALTH INSURANCE RISK
POOL AND TO APPROPRIATE FUNDS.

The General Assembly of North Carolina enacts:

SECTION 1.1. Article 50 of Chapter 58 of the General Statutes is amended
by adding a new Part to read:

"Part 6. North Carolina Health Insurance Risk Pool.

"§ 58-50-175. Definitions.

The following definitions apply to this Part:

- (1) "Administrator" – The Pool Administrator selected by the Executive Director in accordance with this Part.
- (2) "Benefit plan" – The coverage offered by the Pool to eligible individuals.
- (3) "Board" – The Board of Directors of the Pool.
- (4) "Commissioner" – The Commissioner of Insurance of North Carolina or the Commissioner's authorized designee.
- (5) "Covered person" – Any individual resident of this State, excluding dependents, who is eligible to receive medical care benefits from any insurer.
- (6) "Creditable coverage" – The same meaning as defined in G.S. 58-68-30(c)(1).
- (7) "Dependent" – A resident spouse, an unmarried child under the age of 19 years, a child who is a full-time student under the age of 23 years and who is financially dependent upon the parent or guardian, a child who is over 18 years of age and for whom a person may be obligated to pay child support, or a child of any age who is disabled and dependent upon the parent or guardian.

- 1 (8) "Executive Director" – The individual selected by a majority vote of
2 the Board members and hired to serve as the Executive Director of the
3 Pool.
- 4 (9) "Federally defined eligible individual" – The same meaning as the
5 defined term "eligible individual" in G.S. 58-68-60(b).
- 6 (10) "Health insurance coverage" – The same meaning as defined in
7 G.S. 58-68-25(a)(5) but does not include benefits described in
8 G.S. 58-68-25(b).
- 9 (11) "Insurance arrangement" – The plan, program, contract, or other
10 arrangement through which medical care is provided by an employer
11 to its officers or employees but does not include medical care covered
12 through an insurer.
- 13 (12) "Insured" – An individual who is eligible to receive benefits from the
14 Pool.
- 15 (13) "Insurer" – Any entity, other than the Pool, that provides medical care
16 benefits, including excess or stop-loss insurance, that covers medical
17 care or administers medical care on any individual in this State. For the
18 purposes of this Part, insurer includes:
- 19 a. An insurance company;
20 b. A hospital or medical service corporation;
21 c. A health maintenance organization;
22 d. A multiple employer welfare arrangement;
23 e. A third-party administrator or claims processor;
24 f. The State Health Plan; and
25 g. Any other nongovernmental entity providing a health benefit
26 plan subject to State insurance regulation.
- 27 (14) "Medical care" – All of the following:
- 28 a. The diagnosis, cure, mitigation, treatment, or prevention of
29 disease, or amounts paid for the purpose of affecting any
30 structure or function of the body;
- 31 b. Transportation primarily for and essential to medical care
32 referred to in sub-subdivision a. of this subdivision; and
- 33 c. Insurance covering medical care referred to in sub-subdivisions
34 a. and b. of this subdivision.
- 35 (15) "Plan of Operation" – The articles, bylaws, and operating rules and
36 procedures adopted by the Board in accordance with this Part.
- 37 (16) "Pool" – The North Carolina Health Insurance Risk Pool.
- 38 (17) "Provider" – An individual or entity that provides medical care to
39 individuals residing in this State.
- 40 (18) "Resident" – An individual who has legal status in the United States
41 and who:
- 42 a. Has been legally domiciled in this State for a period of at least
43 30 days, except that for a federally defined eligible individual,
44 there shall not be a 30-day requirement;

- 1 b. Is legally domiciled in this State on the date of application to
2 the Pool and who is eligible for enrollment in the Pool as a
3 result of the Health Insurance Portability and Accountability
4 Act of 1996; or
5 c. Is legally domiciled in this State on the date of application to
6 the Pool and is eligible for the credit for health insurance costs
7 under Section 35 of the Internal Revenue Code of 1986.

8 (19) "Reserve" – The Reserve for the North Carolina Health Insurance Risk
9 Pool.

10 (20) "State Health Plan" – The Teachers' and State Employees'
11 Comprehensive Major Medical Plan as set forth in Parts 1, 2, and 3 of
12 Article 3 of Chapter 135 of the General Statutes.

13 (21) "Trade Adjustment Assistance Program" (TAA) – Title II of the Trade
14 Act of 2002, P.L. 107-210.

15 **"§ 58-50-180. Risk Pool established; board of directors; plan of operation.**

16 (a) There is hereby created a nonprofit entity to be known as the North Carolina
17 Health Insurance Risk Pool. The Pool shall operate under the supervision and control of
18 the Board.

19 (b) The Board of the North Carolina Health Insurance Risk Pool shall consist of
20 the Commissioner, who shall serve as an ex officio nonvoting member of the Board, and
21 11 members appointed as follows:

22 (1) One member who represents an insurer, as appointed by the Governor.

23 (2) Two members of the general public who are not employed by or
24 affiliated with an insurance company or plan, group hospital, or other
25 health care provider and can reasonably be expected to qualify for
26 coverage in the Pool. Members of the general public include
27 individuals whose only affiliation with health insurance or health care
28 coverage is as a covered member. The two members of the general
29 public shall be appointed by the General Assembly, as follows:

30 a. One member upon the recommendation of the President Pro
31 Tempore of the Senate.

32 b. One member upon the recommendation of the Speaker of the
33 House of Representatives.

34 (3) Eight members appointed by the Commissioner, as follows:

35 a. One insurer who sells individual health insurance policies.

36 b. One who represents the insurance industry, as recommended by
37 the insurer who covers the largest number of persons in the
38 State.

39 c. One who is licensed to sell health insurance in this State.

40 d. Two who represent the medical provider community, one as
41 recommended by the North Carolina Medical Society and one
42 as recommended by the North Carolina Hospital Association.

43 e. One who represents business, as recommended by the North
44 Carolina Citizens for Business and Industry.

- 1 f. One who represents small business, as recommended by the
2 National Federation of Independent Business.
3 g. One who is either a health policy researcher or a health
4 economist with experience relating to the operation of high-risk
5 insurance pools.

6 (c) The initial appointments by the Governor and the General Assembly upon the
7 recommendation of the Speaker of the House of Representatives and the President Pro
8 Tempore of the Senate shall serve a term of three years. The initial appointments by the
9 Commissioner under subdivisions a., b., and d. of subsection (b) of this section shall be
10 for a term of two years. The initial appointments by the Commissioner under
11 subdivisions c., e., f., and g. of subsection (b) of this section shall be for a term of one
12 year. All succeeding appointments shall be for terms of three years. Members shall not
13 serve for more than two successive terms.

14 A Board member's term shall continue until the member's successor is appointed by
15 the original appointing authority. Vacancies shall be filled by the appointing authority
16 for the unexpired portion of the term in which they occur. A Board member may be
17 removed by the appointing authority for cause.

18 The Board shall meet at least quarterly upon the call of the chair. A majority of the
19 total membership of the Commission shall constitute a quorum.

20 The Commissioner shall appoint a chair to serve for the initial two years of the
21 Plan's operation. Subsequent chairs shall be elected by a majority vote of the Board
22 members and shall serve for two-year terms. Board members shall receive travel
23 allowances under G.S. 138-6 when traveling to and from meetings of the Board, but
24 shall not receive any subsistence allowance or per diem under G.S. 138-5.

25 (d) The Board shall submit to the Commissioner a Plan of Operation for the Pool
26 and any amendments necessary or suitable to assure the fair, reasonable, and equitable
27 administration of the Plan of Operation. The Plan of Operation shall become effective
28 upon approval in writing by the Commissioner consistent with the date on which the
29 coverage under this Part must be made available. If the Board fails to submit a suitable
30 Plan of Operation within 180 days after the appointment of the Board, or at any time
31 thereafter fails to submit suitable amendments to the Plan of Operation, the
32 Commissioner shall adopt temporary rules necessary or advisable to effectuate the
33 provisions of this section. The rules shall continue in force until modified by the
34 Commissioner or superseded by a Plan of Operation submitted by the Board and
35 approved by the Commissioner. The Plan of Operation shall:

- 36 (1) Establish procedures for operation of the Pool.
37 (2) Establish procedures for selecting a Pool Administrator in accordance
38 with G.S. 58-50-185.
39 (3) Establish procedures to create a fund for administrative expenses,
40 which shall be managed by the Board.
41 (4) Establish procedures for the collection, handling, disbursing,
42 accounting, assessing, and auditing of assessments, assets, monies, and
43 claims of the Pool and the Pool Administrator.

- 1 (5) Develop and implement a program to publicize the existence of the
2 Pool, the eligibility requirements, procedures for enrollment, and
3 availability of State premium subsidies and to maintain public
4 awareness of the Pool.
- 5 (6) Establish procedures under which applicants and participants may
6 have grievances reviewed by a grievance committee appointed by the
7 Executive Director in accordance with G.S. 58-50-230.
- 8 (7) Establish procedures for identifying and confirming income levels of
9 applicants for Pool coverage who are eligible to receive a State
10 premium subsidy, if a State premium subsidy is available.
- 11 (8) Provide for other matters as may be necessary and proper for the
12 execution of the Executive Director's powers, duties, and obligations
13 under this Part.
- 14 (e) The Pool shall have the general powers and authority granted under the laws
15 of this State to health insurers and the specific authority to do all of the following:
- 16 (1) Enter into contracts as are necessary or proper to carry out the
17 provisions and purposes of this Part, including the authority, with the
18 approval of the Executive Director in collaboration with the Board, to
19 enter into contracts with similar plans of other states for the joint
20 performance of common administrative functions or with persons or
21 other organizations for the performance of administrative functions.
- 22 (2) Sue or be sued, including taking any legal actions necessary or proper
23 to recover or collect assessments due the Pool.
- 24 (3) Take legal action as necessary to:
- 25 a. Avoid the payment of improper claims against the Pool or the
26 coverage provided by or through the Plan.
- 27 b. Recover any amounts erroneously or improperly paid by the
28 Plan.
- 29 c. Recover any amounts paid by the Pool as a result of mistake of
30 fact or law.
- 31 d. Recover other amounts due the Pool.
- 32 (4) Establish rates and rate schedules in accordance with this Part.
- 33 (5) Issue policies of insurance in accordance with the requirements of this
34 Part.
- 35 (6) Appoint appropriate legal, actuarial, and other committees as
36 necessary to provide technical assistance in the operation of the Pool,
37 policy, and other contract design, and any other function within the
38 Pool's authority.
- 39 (7) Establish policies, conditions, and procedures for reinsuring risks of
40 participating health insurers, as defined in G.S. 58-68-25(a), desiring
41 to issue Pool coverage in their own name. Provision of reinsurance
42 shall not subject the Pool to any of the capital or surplus requirements,
43 if any, otherwise applicable to reinsurers.
- 44 (8) Employ and fix the compensation of employees.

- 1 (9) Prepare and distribute certificate of eligibility forms and enrollment
2 instruction forms to insurance producers and to the general public.
- 3 (10) Provide for reinsurance for the Pool.
- 4 (11) Issue additional types of health insurance policies to provide optional
5 coverage, including Medicare supplemental insurance coverage.
- 6 (12) Provide for and employ cost containment measures and requirements
7 including preadmission screening, second surgical opinion, concurrent
8 utilization review, disease management, individual case management,
9 and other commonly used benefit plan design features for the purpose
10 of making health insurance coverage offered by the Pool more
11 cost-effective.
- 12 (13) Design, utilize, contract, or otherwise arrange for the delivery of
13 cost-effective health care services, including establishing or
14 contracting with preferred provider organizations, health maintenance
15 organizations, and other limited network provider arrangements.
- 16 (14) Adopt bylaws, policies, and procedures as may be necessary or
17 convenient for the implementation of this Part and the operation of the
18 Pool.
- 19 (15) Assess all insurers in accordance with G.S. 58-50-220.
- 20 (f) The Executive Director, with the approval of the Board, shall operate the Pool
21 in a manner so that the estimated cost of providing the benefit plans offered during any
22 calendar year is not anticipated to exceed the total income the Pool expects to receive
23 from policy premiums and other revenue available to the Pool. The Board may impose a
24 cap on enrollment or may suspend enrollment for an indefinite period if the Board finds
25 that estimated costs are anticipated to exceed income, except that any enrollment cap or
26 suspension shall not apply to federally defined eligible individuals who are eligible to
27 enroll in the Pool pursuant to G.S. 58-50-195(a)(5).
- 28 (g) The Executive Director shall make an annual report to the Speaker of the
29 House of Representatives, the President Pro Tempore of the Senate, the Commissioner,
30 the Joint Legislative Health Care Oversight Committee, and the Committee on
31 Employee Hospital and Medical Benefits. The report shall summarize the activities of
32 the Pool in the preceding calendar year, including the net written and earned premiums,
33 benefit plan enrollment, the expense of administration, and the paid and incurred losses.
- 34 (h) Neither the Board nor the employees of the Pool are liable for any obligations
35 of the Pool. There shall be no liability on the part of, and no cause of action of any
36 nature shall arise against, the Pool or its agents or employees, the Board, the Executive
37 Director, or the Commissioner or the Commissioner's representatives for any action
38 taken by them in good faith in the performance of their powers and duties under this
39 Part.
- 40 (i) The members of the Board are public servants under G.S. 138A-3(30) and are
41 subject to the provisions of Chapter 138A of the General Statutes.
- 42 **§ 58-50-185. Administrator.**
- 43 (a) The Executive Director, in collaboration with the Board, shall select through
44 a competitive bidding process one or more insurers to administer the Pool. The

1 Executive Director shall evaluate bids submitted based on criteria established by the
2 Board. The criteria shall allow for the comparison of information about each bidding
3 administrator and selection of a Pool Administrator based on at least the following:

- 4 (1) Proven ability to handle health insurance coverage to individuals.
- 5 (2) Efficiency and timeliness of the claim processing procedures.
- 6 (3) Estimated total charges for administering the Pool.
- 7 (4) Ability to apply effective cost containment programs and procedures
8 and to administer the Pool in a cost-efficient manner.
- 9 (5) Financial condition and stability.
- 10 (6) Evidence of authority to provide third-party administrative services in
11 North Carolina.

12 (b) The Administrator shall serve for a period specified in the contract between
13 the Pool and the Administrator subject to removal for cause and subject to any terms,
14 conditions, and limitations of the contract between the Pool and the Administrator. At
15 least one year before the expiration of each period of service by an Administrator, the
16 Executive Director shall invite eligible entities, including the current Administrator,
17 unless the current Administrator was removed for cause, to submit bids to serve as the
18 Administrator. Selection of the Administrator for the succeeding period shall be made at
19 least six months before the end of the current period.

20 (c) The Administrator shall perform such functions relating to the Pool as may be
21 assigned to it, including:

- 22 (1) Verification of eligibility.
- 23 (2) Payment of claims.
- 24 (3) Establishment of a premium billing procedure for collection of
25 premiums from individuals covered under the Pool.
- 26 (4) Other necessary functions to assure timely payment of benefits to
27 covered persons under the Pool.

28 (d) The Administrator shall submit regular reports to the Executive Director and
29 the Board regarding the operation of the Pool. The contract between the Pool and the
30 Administrator shall specify the frequency, content, and form of the report.

31 (e) Following the close of each calendar year, the Administrator shall determine
32 net written and earned premiums, the expense of administration, and the paid and
33 incurred losses for the year and report this information to the Executive Director and the
34 Board on a form prescribed by the Executive Director.

35 (f) The Administrator shall be paid as provided in the contract between the Pool
36 and the Administrator.

37 **"§ 58-50-190. Risk Pool rates and policy forms.**

38 (a) The Pool shall adopt and modify, as appropriate, rates, rate schedules, rate
39 adjustments, expense allowances, agent referral fees, claim reserve formulas, and any
40 other actuarial function appropriate to the operation of the Pool. Rates and rate
41 schedules may be adjusted for appropriate factors such as age, sex, and geographic
42 variation in claim cost and shall take into consideration appropriate rating factors in
43 accordance with established actuarial and underwriting practices.

1 **(b)** The Pool shall determine the standard risk rate by considering the premium
2 rates charged by other insurers offering health insurance coverage to individuals. The
3 standard risk rate shall be established using reasonable actuarial techniques and shall
4 reflect anticipated experience and expenses for the coverage. Pool rates shall be one
5 hundred seventy-five percent (175%) of rates established as applicable for individual
6 standard rates and shall be adjusted annually, at the time of annual renewal.

7 **(c)** The Executive Director, with the approval of the Board and the
8 Commissioner, shall have the authority to develop incentive programs with premium
9 discounts. The Pool may provide for premium surcharges for covered individuals who
10 are smokers. Premium surcharge rates shall be established by the Executive Director, in
11 collaboration with the Board, subject to the approval of the Commissioner.

12 **(d)** Provider reimbursement rates under Pool coverage shall be limited to the
13 rates allowed for providers under the Medicare Program for those services covered by
14 Medicare. The Board shall establish reimbursement rates for services for which
15 Medicare has not established an allowed rate. Providers rendering medical care to an
16 insured shall accept payment of the amount established under this subsection, less any
17 applicable deductible, coinsurance, or co-payment amounts, as payment in full for
18 services rendered.

19 **(e)** The Pool shall submit all premium rates and premium rate schedules and
20 amendments to the Commissioner for approval. The Pool shall not use any premium
21 rates, premium rate schedules or amendments to the rates and schedules unless the
22 Commissioner has approved them. The Commissioner, in evaluating the premium rates
23 and premium rate schedules, shall consider the factors provided in this section. The Pool
24 shall provide all individuals enrolled in the Pool with at least 45 days' notice of any
25 change in Pool premium rates or premium rate schedules.

26 **(f)** The Pool shall submit all policy forms, riders, endorsements, and applications
27 for coverage to the Commissioner for approval. The Pool shall not use any policy forms,
28 riders, endorsements, or applications for coverages unless the Commissioner has
29 approved them. Except for any provisions that are specifically treated otherwise under
30 this Part, the provisions of this Chapter that apply to benefit plans and policy forms of
31 health insurers generally shall apply to the benefit plans offered and policy forms used
32 by the Pool.

33 **"§ 58-50-195. Eligibility for Pool coverage.**

34 **(a)** Any individual who is and continues to be a resident of this State is eligible
35 for Pool coverage if the individual provides evidence of any of the following:

36 **(1)** A notice of rejection or refusal to issue substantially similar health
37 insurance coverage for health reasons by an insurer. A rejection or
38 refusal by an insurer offering only stop-loss, excess loss, or
39 reinsurance coverage with respect to the applicant is not sufficient
40 evidence of eligibility.

41 **(2)** An offer to issue health insurance coverage only with a conditional
42 rider that limits coverage for the individual's high-risk medical
43 condition.

- 1 (3) A refusal by an insurer to issue health insurance coverage except at a
2 rate exceeding the Pool rate.
- 3 (4) A diagnosis of the individual with one of the medical or health
4 conditions listed by the Board in accordance with this section. An
5 individual diagnosed with one or more of these conditions is eligible
6 for Pool coverage without applying for other health insurance
7 coverage.
- 8 (5) Qualification as a federally defined eligible individual, whether or not
9 currently covered by an insurer under that qualification.
- 10 (6) An individual who is legally domiciled in this State and is eligible for
11 the credit for health insurance costs under the Trade Adjustment
12 Assistance Reform Act of 2002, section 35 of the Internal Revenue
13 Code of 1986. Each dependent of an individual who is eligible for Pool
14 coverage under this subdivision shall also be eligible for Pool
15 coverage.
- 16 (7) The individual has current individual health insurance coverage at a
17 rate exceeding the Pool rate.
- 18 (b) The Board, upon recommendation of the Executive Director, shall adopt a list
19 of medical or health conditions for which a person shall be eligible for Pool coverage
20 under subdivision (a)(4) of this section. The Board may amend the list as the Board
21 considers appropriate.
- 22 (c) An individual is not eligible for coverage under the Pool if:
- 23 (1) The individual has or obtains medical care benefits substantially
24 similar to or more comprehensive than the benefit plan offered by the
25 Pool, or would be eligible to have coverage if the person elected to
26 obtain it, except that:
- 27 a. An individual may maintain other coverage for the period of
28 time the individual is satisfying any preexisting condition
29 waiting period under a Pool policy; and
- 30 b. An individual may maintain Pool coverage for the period of
31 time the individual is satisfying a preexisting condition waiting
32 period under another health insurance policy intended to replace
33 the Pool policy.
- 34 (2) The individual is determined to be eligible for enrollment in the State
35 Medical Assistance Plan.
- 36 (3) The individual has previously terminated Pool coverage unless 12
37 months have lapsed since the termination, except that this subdivision
38 shall not apply with respect to an applicant who is a federally defined
39 eligible individual or to an applicant eligible for or receiving benefits
40 under the Trade Adjustment Assistance Program.
- 41 (4) The individual is an inmate or resident of a public institution, except
42 that this subdivision shall not apply with respect to an applicant who is
43 a federally defined eligible individual.

1 (5) The individual's premiums are paid for or reimbursed under any
2 government-sponsored program or by any government agency or
3 health care provider, except as an otherwise qualifying full-time
4 employee, or dependent thereof, of a government agency or health care
5 provider. This subdivision shall not apply for individuals receiving
6 benefits under the Trade Adjustment Assistance Program or to
7 individuals receiving premium subsidies made available by the State
8 based on individual income levels.

9 (6) The individual has in effect on the date Pool coverage takes effect
10 health insurance coverage from an insurer or insurance arrangement.

11 (d) Coverage under the Pool shall cease:

12 (1) On the date an individual is no longer a resident of this State.

13 (2) On the date an individual requests coverage to end.

14 (3) Upon the death of the covered individual.

15 (4) On the date State law requires cancellation of the Pool policy.

16 (5) At the option of the Pool, 30 days after the Pool makes any inquiry
17 concerning the individual's eligibility or residence to which the
18 individual does not reply.

19 (6) Because the individual has failed to make the payments required under
20 this Part.

21 (e) Except as provided in subsection (d) of this section, an individual who ceases
22 to meet the eligibility requirements of this section may be terminated at the end of the
23 Pool policy period for which the necessary premiums have been paid.

24 **"§ 58-50-200. Unfair referral to Pool.**

25 It is an unfair trade practice under Article 63 of this Chapter and under Chapter 75 of
26 the General Statutes for an employer, an insurer, an insurance producer, as defined in
27 G.S. 58-33-10(7), or a third-party administrator to refer an individual employee to the
28 Pool or arrange for an individual employee to apply to the Pool for the purpose of
29 separating that employee from a group medical care benefit plan provided in connection
30 with the employee's employment. This section shall not prohibit an insurer or insurance
31 producer from informing an individual of other coverage options, including coverage
32 provided by the Pool.

33 **"§ 58-50-205. Minimum Pool benefits.**

34 (a) The Pool shall offer at least two types of benefit plans for individuals eligible
35 under G.S. 58-50-195, including preferred provider organizations with different levels
36 of deductibles and cost-sharing, and at least one choice of a health savings account. The
37 covered services and benefit levels may vary between the types of benefit plans, but at
38 least two types of benefit plans must, at a minimum, cover the benefits and services
39 outlined in the National Association of Insurance Commissioners' (NAIC) Model
40 Health Pool for Uninsurable Individuals Act and be consistent with comprehensive
41 coverage generally available to persons who are eligible for individual health insurance
42 other than Medicare. All benefit plans offered by the Pool shall include disease or case
43 management services.

1 (b) The Board, upon the recommendation of the Executive Director shall adopt
2 rules regarding the lifetime limits and per individual combined coinsurance and
3 deductibles for the health insurance products offered by the Pool. The initial rules shall
4 include not less than one million dollars (\$1,000,000) lifetime limit and a combined
5 annual limit of up to five thousand dollars (\$5,000) per individual on coinsurance and
6 deductibles. The Board, upon recommendation of the Executive Director, shall adopt
7 rules adjusting these limitations at least once every five years to reflect changes in the
8 medical component of the Consumer Price Index.

9 **"§ 58-50-210. Preexisting conditions.**

10 (a) Except as otherwise provided by law, Pool coverage shall exclude charges or
11 expenses incurred during the first 12 months following the effective date of coverage as
12 to any condition for which medical advice, care, or treatment was recommended or
13 received as to such conditions during the 12-month period immediately preceding the
14 effective date of coverage, except that no preexisting condition exclusion shall be
15 applied to a federally defined eligible individual.

16 (b) Subject to subsection (a) of this section, the preexisting condition exclusions
17 shall be waived to the extent that similar exclusions, if any, have been satisfied under
18 any prior health insurance coverage that was involuntarily terminated, provided that:

19 (1) Application for Pool coverage is made not later than 63 days following
20 the involuntary termination, and in such case coverage in the Pool
21 shall be effective from the date on which the prior coverage was
22 terminated; and

23 (2) The applicant is not eligible for continuation or conversion rights that
24 would provide coverage substantially similar to Pool coverage.

25 **"§ 58-50-215. Nonduplication of benefits.**

26 (a) The Pool shall be payor of last resort of benefits whenever any other benefit
27 or source of third-party payment is available. Benefits otherwise payable under
28 coverage shall be reduced by all amounts paid or payable through any other medical
29 care benefits and by all hospital and medical expenses paid or payable under any
30 workers' compensation coverage notwithstanding any provision of law to the contrary,
31 automobile medical payment, or liability insurance, whether provided on the basis of
32 fault or no-fault, and by any hospital or medical benefits paid or payable under or
33 provided pursuant to any State or federal law or program.

34 (b) The Pool shall have a cause of action against an eligible person for the
35 recovery of the amount of benefits paid that are not for covered expenses. Benefits due
36 from the Pool may be reduced or refused as a setoff against any amount recoverable
37 under this subsection.

38 **"§ 58-50-220. Assessments.**

39 (a) For the purposes of providing the funds necessary to carry out the powers and
40 duties of the Pool, and except as provided in subsection (c) of this section, the Pool shall
41 assess all insurers at such time and for such amounts as the Board finds necessary to
42 ensure effective and efficient operation of the Pool. Assessments shall be due in not less
43 than 30 days after prior written notice to the insurers and shall accrue interest at twelve
44 percent (12%) per annum on and after the due date.

1 (b) Except with respect to special assessments authorized under this section, and
2 except as otherwise provided in subsection (c) of this section, the Pool shall assess each
3 insurer in an amount not to exceed two dollars (\$2.00) per covered individual insured or
4 reinsured or for whom medical care benefits are administered by each insurer per
5 month. The assessment shall be based on actual or expected losses, actuarially
6 appropriate reserves, and administrative expenses in excess of expected or collected
7 premiums and federal loss reimbursements, if any, received by the Pool.

8 In addition to the assessment, the Pool may impose on each insurer a special
9 assessment only when enrollment in the Pool has been capped or suspended. A special
10 assessment may be made to cover only the additional losses of the Pool that are
11 expected to result from the continued entry into the Pool by federally defined eligible
12 individuals during the time that enrollment is closed to all other individuals eligible
13 under G.S. 58-50-195. The special assessment shall be based on actual or expected
14 losses, actuarially appropriate reserves, and administrative expenses in excess of
15 expected and collected premiums for the federally defined eligible individuals who
16 enrolled or are expected to enroll while the suspension of enrollment is in effect.

17 (c) Except with respect to special assessments authorized under this section, the
18 Pool shall assess each insurer an amount not to exceed the following limitations for each
19 covered individual insured, reinsured, or for whom medical care benefits are
20 administered, per month:

21 (1) Seventy cents (70¢) for the 2008 and 2009 calendar years.

22 (2) One dollar (\$1.00) for the 2010 calendar year.

23 (3) One dollar and thirty cents (\$1.30) for the 2011 calendar year.

24 (4) One dollar and seventy cents (\$1.70) for the 2012 calendar year.

25 (5) Two dollars (\$2.00) for the 2013 calendar year and all years thereafter.

26 (d) The Pool shall make reasonable efforts designed to ensure that each covered
27 individual is counted only once with respect to any assessment. For that purpose, the
28 Pool shall require each insurer to include in its count of covered individuals all
29 individuals whose coverage it insures (including by way of excess or stop-loss
30 coverage) in whole or in part and regardless of any reinsurance on those lives that it
31 may obtain, except that lives covered under the Pool and reinsured or administered by a
32 third-party administrator shall not be included in the count. The Pool shall allow a
33 reinsurer to exclude from its number of covered individuals those individuals who have
34 been counted by the primary insurer or by the primary reinsurer or primary excess or
35 stop-loss insurer for the purposes of determining its assessment under this section.

36 (e) The Pool may verify each insurer's assessment based on annual statements
37 and other reports deemed to be necessary by the Pool. The Pool may use any reasonable
38 method of estimating the number of covered individuals of an insurer if the specific
39 number is unknown.

40 (f) If assessments and other receipts by the Pool exceed the actual losses and
41 administrative expenses of the Pool, the excess shall be held at interest and used by the
42 Pool to offset future losses or to reduce Pool premiums. Future losses include reserves
43 for claims incurred but not reported.

1 (g) The Commissioner may suspend or revoke, after notice and hearing, the
2 license of any insurer that fails to pay an assessment. As an alternative, the
3 Commissioner may levy a forfeiture on any insurer that fails to pay an assessment when
4 due. The forfeiture may not exceed five percent (5%) of the unpaid assessment per
5 month, but no forfeiture shall be less than one hundred dollars (\$100.00) per month.

6 **"§ 58-50-225. Reserve created.**

7 (a) There is hereby established a reserve, to be known as the Reserve for the
8 North Carolina Health Insurance Risk Pool.

9 All premiums, fees, charges, rebates, refunds, or any other receipts including, but not
10 limited to, earnings on investments, occurring or arising in connection with the Pool, as
11 established by this Article, shall be deposited into the Reserve. Disbursements from the
12 Reserve shall include any and all amounts required to pay the claims, benefits, and
13 administrative costs as may be determined by the Executive Director and the Board.

14 The Reserve shall be deposited with the State Treasurer and invested as provided in
15 G.S. 147-69.2 and G.S. 147-69.3.

16 (b) Disbursement from the Reserve may be made by warrant drawn on the State
17 Treasurer by the Executive Director, or the Executive Director and the Board may by
18 contract authorize the Administrator to draw the warrant.

19 **"§ 58-50-230. Complaint procedures.**

20 An applicant or participant in coverage from the Pool is entitled to have complaints
21 against the Pool reviewed by a grievance committee appointed by the Executive
22 Director. Members of the Board shall not serve on the grievance committee. The
23 grievance process shall comply with G.S. 58-50-62. The grievance committee shall
24 report to the Board after completion of the review of each complaint. The Executive
25 Director shall retain all written complaints regarding the Pool at least until the third
26 anniversary of the date the Pool received the complaint. Independent review of an
27 appeal decision upholding a noncertification or a second-level grievance review
28 decision upholding a noncertification shall be subject to review pursuant to Part 4 of this
29 Article.

30 **"§ 58-50-235. Audit.**

31 An audit of the Pool shall be conducted annually under the oversight of the State
32 Auditor. The cost of the audit shall be reimbursed to the State Auditor from the Reserve
33 for the North Carolina Health Insurance Risk Pool.

34 **"§ 58-50-240. Taxation.**

35 The Pool established under this Part is exempt from any and all State taxes.

36 **"§ 58-50-245. Rules.**

37 The Board and the Commissioner may adopt rules pursuant to Chapter 150B of the
38 General Statutes, including temporary rules, to implement this Part.

39 **"§ 58-50-250. Collective action.**

40 The establishment of rates, forms, or procedures, and any other joint or collective
41 action required by this Part may not be the basis of any legal action or criminal or civil
42 liability or penalty against the Pool or any insurer.

43 **"§ 58-50-255. Pool financing; Board reporting.**

1 (a) The Board shall monitor methods of financing the Pool to ensure a stable
2 funding source and allow for its continued operation. This monitoring shall include
3 supplementary sources of funding, such as funds obtained from public and private
4 not-for-profit foundations, or other appropriate and available State or non-State funds.
5 The Board shall also review on a regular basis:

- 6 (1) The number of individuals in this State who are uninsured as of a date
7 certain because of high-risk conditions.
8 (2) The number of uninsured individuals who would qualify for coverage
9 under the Pool based on G.S. 58-50-195 and its Plan of Operation.
10 (3) The cost of coverage under each of the health insurance plans
11 developed by the Board, including administrative costs.
12 (4) The extent to which assessments meet or exceed amounts necessary
13 for coverage and Board operations.
14 (5) The status of a request by the State to the Centers for Medicare and
15 Medicaid Services for approval of the North Carolina Health Insurance
16 Risk Pool to be considered an acceptable "alternative mechanism"
17 under the federal Health Insurance Portability and Accountability Act
18 in accordance with 45 C.F.R. § 148.128(e).
19 (6) Methods for providing a premium subsidy on a sliding scale basis for
20 individuals with incomes up to three hundred percent (300%) of the
21 federal poverty guidelines.

22 (b) The Board shall report its findings and recommendations to the General
23 Assembly on March 1, 2008, and annually thereafter."

24 **§§ 58-50-260 through 265: Reserved for future codification purposes.**

25 **SECTION 1.2.** Effective January 1, 2014, G.S. 58-50-220(c) as enacted in
26 Section 1.1 of this act is repealed.

27 **SECTION 1.3.** Effective January 1, 2014, G.S. 58-50-220(b) as enacted in
28 Section 1.1 of this act reads as rewritten:

29 "(b) Except with respect to special assessments authorized under this section, ~~and~~
30 ~~except as otherwise provided in subsection (c) of this section,~~ the Pool shall assess each
31 insurer in an amount not to exceed two dollars (\$2.00) per covered individual insured or
32 reinsured or for whom medical care benefits are administered by each insurer per
33 month. The assessment shall be based on actual or expected losses, actuarially
34 appropriate reserves, and administrative expenses in excess of expected or collected
35 premiums and federal loss reimbursements, if any, received by the Pool.

36 In addition to the assessment, the Pool may impose on each insurer a special
37 assessment only when enrollment in the Pool has been capped or suspended. A special
38 assessment may be made to cover only the additional losses of the Pool that are
39 expected to result from the continued entry into the Pool by federally defined eligible
40 individuals during the time that enrollment is closed to all other individuals eligible
41 under G.S. 58-50-195. The special assessment shall be based on actual or expected
42 losses, actuarially appropriate reserves, and administrative expenses in excess of
43 expected and collected premiums for the federally defined eligible individuals who
44 enrolled or are expected to enroll while the suspension of enrollment is in effect."

1 **SECTION 1.4.** On or before January 1, 2008, the Executive Director shall
2 notify the Centers for Medicare and Medicaid Services that the State has established the
3 North Carolina Health Insurance Risk Pool and shall request that the North Carolina
4 Health Insurance Risk Pool be approved as an acceptable "alternative mechanism"
5 under the federal Health Insurance Portability and Accountability Act in accordance
6 with 45 C.F.R. § 148.128(e). The Executive Director shall notify the Commissioner
7 when the Centers for Medicare and Medicaid Services approve the request.

8 **SECTION 1.5.** The Executive Director shall study methods for encouraging
9 healthy behaviors among the Pool's insureds and report the Executive Director's
10 findings to the Board and to the General Assembly not later than one year after initial
11 implementation of the Pool.

12 **SECTION 1.6.** Notwithstanding G.S. 58-50-210(a), individuals enrolling in
13 the Pool within six months of the date that enrollment into the Pool first begins shall be
14 subject to a six-month preexisting condition waiting period.

15 **SECTION 1.7.** G.S. 120-70.111(a) reads as rewritten:

16 "(a) The Joint Legislative Health Care Oversight Committee shall review, on a
17 continuing basis, the provision of health care and health care coverage to the citizens of
18 this State, in order to make ongoing recommendations to the General Assembly on ways
19 to improve health care for North Carolinians. To this end, the Committee shall study the
20 delivery, availability, and cost of health care in North Carolina. The Committee shall
21 also review, on a continuing basis, the implementation of the State Health Insurance
22 Program for Children established under Part 8 of Article 2 of Chapter 108A of the
23 General Statutes. As part of its review, the Committee shall advise and consult with the
24 Department of Health and Human Services as provided under G.S. 108A-70.21. The
25 Committee shall review, on a continuing basis, the implementation of the North
26 Carolina Health Insurance Risk Pool established under Part 6 of Article 50 of Chapter
27 58 of the General Statutes. As part of its review, the Committee shall advise and consult
28 with the Executive Director of the North Carolina Health Insurance Risk Pool as
29 provided under G.S. 58-50-180. The Committee may also study other matters related to
30 health care and health care coverage in this State."

31 **SECTION 2.1.** In addition to the Reserve for the North Carolina Health
32 Insurance Risk Pool established under G.S. 58-50-225, as enacted in this act, there is
33 established in the Department of Insurance two separate funds, as follows:

- 34 (1) The Start-up Reserve – State Funds. State funds appropriated to this
35 Fund shall be used to support reasonable expenses for personnel to
36 carry out the Board's responsibilities under the Pool, including
37 contracting a third-party administrator. Funds shall be allocated from
38 this Fund contingent upon the successful application to and award of
39 federal funds for the purposes of this section. Funds shall be allocated
40 by the Commissioner of Insurance for the reasonable expenses of the
41 Board in conducting its duties under this Article that are incurred on or
42 before July 1, 2009. At the end of the fiscal year, any interest or
43 investment income earned on these funds shall be transferred to the
44 General Fund.

1 (2) The Start-up Reserve – Federal Funds. Federal funds received in lump
2 sum or as a draw-down grant for the purposes of this Article shall be
3 deposited to this Reserve. The Commissioner of Insurance shall, at the
4 end of the fiscal year in which federal funds have been received,
5 transfer from this Reserve to the General Fund an amount not to
6 exceed the amount of State appropriations made for these purposes
7 from the Start-up Reserve – State Funds.

8 **SECTION 2.2.** It is the intent of the General Assembly that in the event the
9 State is not awarded the federal funds anticipated, the General Fund shall be held
10 harmless.

11 **SECTION 3.** There is appropriated from the General Fund to the Start-up
12 Reserve – State Funds established under Section 2.1 of this act, the sum of eight
13 hundred fifty thousand dollars (\$850,000) for the 2007-2008 fiscal year. These funds
14 shall be allocated for the purposes of and in accordance with Section 2.1 of this act.

15 **SECTION 4.** The provisions of this act are severable. If any provision of
16 this act is held invalid by a court of competent jurisdiction, the invalidity does not affect
17 other provisions of the act that can be given effect without the invalid provision.

18 **SECTION 5.** Sections 2.1, 2.2, and 3 of this act become effective July 1,
19 2007, and expire July 1, 2009. The remainder of this act is effective when it becomes
20 law. Enrollment in the Pool shall commence no later than January 1, 2009.