

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
Committee Substitute #4 Favorable 4/18/07

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.

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

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

- 1 a. Has been legally domiciled in this State for a period of at least
2 30 days, except that for a federally defined eligible individual,
3 there shall not be a 30-day requirement;
4 b. Is legally domiciled in this State on the date of application to
5 the Pool and who is eligible for enrollment in the Pool as a
6 result of the Health Insurance Portability and Accountability
7 Act of 1996; or
8 c. Is legally domiciled in this State on the date of application to
9 the Pool and is eligible for the credit for health insurance costs
10 under Section 35 of the Internal Revenue Code of 1986.

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

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

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

18 **"§ 58-50-180. Risk Pool established; board of directors; plan of operation.**

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

22 (b) The Board of the North Carolina Health Insurance Risk Pool shall consist of
23 the Commissioner, who shall serve as an ex officio nonvoting member of the Board, and
24 11 members appointed as follows:

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

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

33 a. One member upon the recommendation of the President Pro
34 Tempore of the Senate.

35 b. One member upon the recommendation of the Speaker of the
36 House of Representatives.

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

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

39 b. One who represents the insurance industry, as recommended by
40 the insurer who covers the largest number of persons in the
41 State.

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

- 1 d. Two who represent the medical provider community, one as
2 recommended by the North Carolina Medical Society and one
3 as recommended by the North Carolina Hospital Association.
4 e. One who represents business, as recommended by the North
5 Carolina Citizens for Business and Industry.
6 f. One who represents small business, as recommended by the
7 National Federation of Independent Business.
8 g. One who is either a health policy researcher or a health
9 economist with experience relating to the operation of high-risk
10 insurance pools.

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

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

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

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

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

- 41 (1) Establish procedures for operation of the Pool.
42 (2) Establish procedures for selecting a Pool Administrator in accordance
43 with G.S. 58-50-185.

- 1 (3) Establish procedures to create a fund for administrative expenses,
2 which shall be managed by the Board.
- 3 (4) Establish procedures for the collection, handling, disbursing,
4 accounting, assessing, and auditing of assessments, assets, monies, and
5 claims of the Pool and the Pool Administrator.
- 6 (5) Develop and implement a program to publicize the existence of the
7 Pool, the eligibility requirements, procedures for enrollment, and
8 availability of State premium subsidies and to maintain public
9 awareness of the Pool.
- 10 (6) Establish procedures under which applicants and participants may
11 have grievances reviewed by a grievance committee appointed by the
12 Executive Director in accordance with G.S. 58-50-230.
- 13 (7) Establish procedures for identifying and confirming income levels of
14 applicants for Pool coverage who are eligible to receive a State
15 premium subsidy, if a State premium subsidy is available.
- 16 (8) Provide for other matters as may be necessary and proper for the
17 execution of the Executive Director's powers, duties, and obligations
18 under this Part.
- 19 (e) The Pool shall have the general powers and authority granted under the laws
20 of this State to health insurers and the specific authority to do all of the following:
- 21 (1) Enter into contracts as are necessary or proper to carry out the
22 provisions and purposes of this Part, including the authority, with the
23 approval of the Executive Director in collaboration with the Board, to
24 enter into contracts with similar plans of other states for the joint
25 performance of common administrative functions or with persons or
26 other organizations for the performance of administrative functions.
- 27 (2) Sue or be sued, including taking any legal actions necessary or proper
28 to recover or collect assessments due the Pool.
- 29 (3) Take legal action as necessary to:
- 30 a. Avoid the payment of improper claims against the Pool or the
31 coverage provided by or through the Plan.
- 32 b. Recover any amounts erroneously or improperly paid by the
33 Plan.
- 34 c. Recover any amounts paid by the Pool as a result of mistake of
35 fact or law.
- 36 d. Recover other amounts due the Pool.
- 37 (4) Establish rates and rate schedules in accordance with this Part.
- 38 (5) Issue policies of insurance in accordance with the requirements of this
39 Part.
- 40 (6) Appoint appropriate legal, actuarial, and other committees as
41 necessary to provide technical assistance in the operation of the Pool,
42 policy, and other contract design, and any other function within the
43 Pool's authority.

- 1 (7) Establish policies, conditions, and procedures for reinsuring risks of
2 participating health insurers, as defined in G.S. 58-68-25(a), desiring
3 to issue Pool coverage in their own name. Provision of reinsurance
4 shall not subject the Pool to any of the capital or surplus requirements,
5 if any, otherwise applicable to reinsurers.
- 6 (8) Employ and fix the compensation of employees.
- 7 (9) Prepare and distribute certificate of eligibility forms and enrollment
8 instruction forms to insurance producers and to the general public.
- 9 (10) Provide for reinsurance for the Pool.
- 10 (11) Issue additional types of health insurance policies to provide optional
11 coverage, including Medicare supplemental insurance coverage.
- 12 (12) Provide for and employ cost containment measures and requirements
13 including preadmission screening, second surgical opinion, concurrent
14 utilization review, disease management, individual case management,
15 and other commonly used benefit plan design features for the purpose
16 of making health insurance coverage offered by the Pool more
17 cost-effective.
- 18 (13) Design, utilize, contract, or otherwise arrange for the delivery of
19 cost-effective health care services, including establishing or
20 contracting with preferred provider organizations, health maintenance
21 organizations, and other limited network provider arrangements.
- 22 (14) Adopt bylaws, policies, and procedures as may be necessary or
23 convenient for the implementation of this Part and the operation of the
24 Pool.
- 25 (15) Assess all insurers in accordance with G.S. 58-50-220.
- 26 (f) The Executive Director, with the approval of the Board, shall operate the Pool
27 in a manner so that the estimated cost of providing the benefit plans offered during any
28 calendar year is not anticipated to exceed the total income the Pool expects to receive
29 from policy premiums and other revenue available to the Pool. The Board may impose a
30 cap on enrollment or may suspend enrollment for an indefinite period if the Board finds
31 that estimated costs are anticipated to exceed income, except that any enrollment cap or
32 suspension shall not apply to federally defined eligible individuals who are eligible to
33 enroll in the Pool pursuant to G.S. 58-50-195(a)(5).
- 34 (g) The Executive Director shall make an annual report to the Speaker of the
35 House of Representatives, the President Pro Tempore of the Senate, the Commissioner,
36 the Joint Legislative Health Care Oversight Committee, and the Committee on
37 Employee Hospital and Medical Benefits. The report shall summarize the activities of
38 the Pool in the preceding calendar year, including the net written and earned premiums,
39 benefit plan enrollment, the expense of administration, and the paid and incurred losses.
- 40 (h) Neither the Board nor the employees of the Pool are liable for any obligations
41 of the Pool. There shall be no liability on the part of, and no cause of action of any
42 nature shall arise against, the Pool or its agents or employees, the Board, the Executive
43 Director, or the Commissioner or the Commissioner's representatives for any action

1 taken by them in good faith in the performance of their powers and duties under this
2 Part.

3 (i) The members of the Board are public servants under G.S. 138A-3(30) and are
4 subject to the provisions of Chapter 138A of the General Statutes.

5 **"§ 58-50-185. Administrator.**

6 (a) The Executive Director, in collaboration with the Board, shall select through
7 a competitive bidding process one or more insurers to administer the Pool. The
8 Executive Director shall evaluate bids submitted based on criteria established by the
9 Board. The criteria shall allow for the comparison of information about each bidding
10 administrator and selection of a Pool Administrator based on at least the following:

11 (1) Proven ability to handle health insurance coverage to individuals.

12 (2) Efficiency and timeliness of the claim processing procedures.

13 (3) Estimated total charges for administering the Pool.

14 (4) Ability to apply effective cost containment programs and procedures
15 and to administer the Pool in a cost-efficient manner.

16 (5) Financial condition and stability.

17 (6) Evidence of authority to provide third-party administrative services in
18 North Carolina.

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

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

29 (1) Verification of eligibility.

30 (2) Payment of claims.

31 (3) Establishment of a premium billing procedure for collection of
32 premiums from individuals covered under the Pool.

33 (4) Other necessary functions to assure timely payment of benefits to
34 covered persons under the Pool.

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

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

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

44 **"§ 58-50-190. Risk Pool rates and policy forms.**

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

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

13 (c) The Executive Director, with the approval of the Board and the
14 Commissioner, shall have the authority to develop incentive programs with premium
15 discounts. The Pool may provide for premium surcharges for covered individuals who
16 are smokers. Premium surcharge rates shall be established by the Executive Director, in
17 collaboration with the Board, subject to the approval of the Commissioner.

18 (d) Provider reimbursement rates under Pool coverage shall be limited to the
19 rates allowed for providers under the Medicare Program for those services covered by
20 Medicare. The Board shall establish reimbursement rates for services for which
21 Medicare has not established an allowed rate. Providers rendering medical care to an
22 insured shall accept payment of the amount established under this subsection, including
23 any applicable deductible, coinsurance, or co-payment amounts, as payment in full for
24 services rendered.

25 (e) The Pool shall submit all premium rates and premium rate schedules and
26 amendments to the Commissioner for approval. The Pool shall not use any premium
27 rates, premium rate schedules or amendments to the rates and schedules unless the
28 Commissioner has approved them. The Commissioner, in evaluating the premium rates
29 and premium rate schedules, shall consider the factors provided in this section. The Pool
30 shall provide all individuals enrolled in the Pool with at least 45 days' notice of any
31 change in Pool premium rates or premium rate schedules.

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

39 **"§ 58-50-195. Eligibility for Pool coverage.**

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

- 42 (1) A notice of rejection or refusal to issue substantially similar health
43 insurance coverage for health reasons by an insurer. A rejection or
44 refusal by an insurer offering only stop-loss, excess loss, or

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

1 eligible individual or to an applicant eligible for or receiving benefits
2 under the Trade Adjustment Assistance Program.

3 (4) The individual is an inmate or resident of a public institution, except
4 that this subdivision shall not apply with respect to an applicant who is
5 a federally defined eligible individual.

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

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

16 (d) Coverage under the Pool shall cease:

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

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

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

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

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

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

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

29 **"§ 58-50-200. Unfair referral to Pool.**

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

38 **"§ 58-50-205. Minimum Pool benefits.**

39 (a) The Pool shall offer at least two types of benefit plans for individuals eligible
40 under G.S. 58-50-195, including preferred provider organizations with different levels
41 of deductibles and cost-sharing, and at least one choice of a health savings account. The
42 covered services and benefit levels may vary between the types of benefit plans, but at
43 least two types of benefit plans must, at a minimum, cover the benefits and services
44 outlined in the National Association of Insurance Commissioners' (NAIC) Model

1 Health Pool for Uninsurable Individuals Act and be consistent with comprehensive
2 coverage generally available to persons who are eligible for individual health insurance
3 other than Medicare. All benefit plans offered by the Pool shall include disease or case
4 management services.

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

13 **"§ 58-50-210. Preexisting conditions.**

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

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

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

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

29 **"§ 58-50-215. Nonduplication of benefits.**

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

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

42 **"§ 58-50-220. Assessments.**

43 (a) For the purposes of providing the funds necessary to carry out the powers and
44 duties of the Pool, and except as provided in subsection (c) of this section, the Pool shall

1 assess all insurers at such time and for such amounts as the Board finds necessary to
2 ensure effective and efficient operation of the Pool. Assessments shall be due in not less
3 than 30 days after prior written notice to the insurers and shall accrue interest at twelve
4 percent (12%) per annum on and after the due date.

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

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

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

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

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

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

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

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

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

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

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

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

10 **"§ 58-50-225. Reserve created.**

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

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

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

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

23 **"§ 58-50-230. Complaint procedures.**

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

34 **"§ 58-50-235. Audit.**

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

38 **"§ 58-50-240. Taxation.**

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

40 **"§ 58-50-245. Rules.**

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

43 **"§ 58-50-250. Collective action.**

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

4 **"§ 58-50-255. Pool financing; Board reporting.**

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

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

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

28 **§§ 58-50-260 through 265: Reserved for future codification purposes.**

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

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

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

40 In addition to the assessment, the Pool may impose on each insurer a special
41 assessment only when enrollment in the Pool has been capped or suspended. A special
42 assessment may be made to cover only the additional losses of the Pool that are
43 expected to result from the continued entry into the Pool by federally defined eligible
44 individuals during the time that enrollment is closed to all other individuals eligible

1 under G.S. 58-50-195. The special assessment shall be based on actual or expected
2 losses, actuarially appropriate reserves, and administrative expenses in excess of
3 expected and collected premiums for the federally defined eligible individuals who
4 enrolled or are expected to enroll while the suspension of enrollment is in effect."

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

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

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

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

20 "(a) The Joint Legislative Health Care Oversight Committee shall review, on a
21 continuing basis, the provision of health care and health care coverage to the citizens of
22 this State, in order to make ongoing recommendations to the General Assembly on ways
23 to improve health care for North Carolinians. To this end, the Committee shall study the
24 delivery, availability, and cost of health care in North Carolina. The Committee shall
25 also review, on a continuing basis, the implementation of the State Health Insurance
26 Program for Children established under Part 8 of Article 2 of Chapter 108A of the
27 General Statutes. As part of its review, the Committee shall advise and consult with the
28 Department of Health and Human Services as provided under G.S. 108A-70.21. The
29 Committee shall review, on a continuing basis, the implementation of the North
30 Carolina Health Insurance Risk Pool established under Part 6 of Article 50 of Chapter
31 58 of the General Statutes. As part of its review, the Committee shall advise and consult
32 with the Executive Director of the North Carolina Health Insurance Risk Pool as
33 provided under G.S. 58-50-180. The Committee may also study other matters related to
34 health care and health care coverage in this State."

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

- 38 (1) The Start-up Reserve – State Funds. State funds appropriated to this
39 Fund shall be used to support reasonable expenses for personnel to
40 carry out the Board's responsibilities under the Pool, including
41 contracting a third-party administrator. Funds shall be allocated from
42 this Fund contingent upon the successful application to and award of
43 federal funds for the purposes of this section. Funds shall be allocated
44 by the Commissioner of Insurance for the reasonable expenses of the

1 Board in conducting its duties under this Article that are incurred on or
2 before July 1, 2009. At the end of the fiscal year, any interest or
3 investment income earned on these funds shall be transferred to the
4 General Fund.

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

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

15 **SECTION 3.** 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 4.** This act becomes effective upon appropriation by the General
19 Assembly of funds to the Start-Up Reserve – State Funds established under Section 2.1
20 of this act. Nothing in this act shall require the General Assembly to appropriate any
21 funds to implement this act. Sections 2.1 and 2.2 of this act expire July 1, 2009. In the
22 event this bill becomes law, enrollment in the Pool shall commence no later than
23 January 1, 2009.