

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 265
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Committee Substitute #4 Favorable 4/18/07
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Senate Commerce, Small Business and Entrepreneurship Committee Substitute
Adopted 7/23/07

Short Title: Establish Health Insurance 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 FUND THE NORTH CAROLINA HEALTH INSURANCE RISK
POOL FROM SAVINGS TO THE GENERAL FUND REALIZED FROM THE
REPEAL OF THE TAX CREDIT FOR SMALL BUSINESS EMPLOYEE
HEALTH BENEFITS AND FROM OTHER SOURCES.

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 receiving or is eligible to receive medical care benefits from any insurer.

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

- 1 (17) "Provider" – An individual or entity that provides medical care to
2 individuals residing in this State.
- 3 (18) "Resident" – An individual who has legal status in the United States
4 and who:
- 5 a. Has been legally domiciled in this State for a period of at least
6 30 days, except that for a federally defined eligible individual,
7 there shall not be a 30-day requirement;
- 8 b. Is legally domiciled in this State on the date of application to
9 the Pool and who is eligible for enrollment in the Pool as a
10 result of the Health Insurance Portability and Accountability
11 Act of 1996; or
- 12 c. Is legally domiciled in this State on the date of application to
13 the Pool and is eligible for the credit for health insurance costs
14 under section 35 of the Internal Revenue Code of 1986.
- 15 (19) "Special Fund." – The North Carolina Health Insurance Risk Pool
16 Special fund.
- 17 (20) "Trade Adjustment Assistance Program" (TAA) – Title II of the Trade
18 Act of 2002, P.L. 107-210.

19 **"§ 58-50-180. Risk Pool established; board of directors; plan of operation.**

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

23 (b) The Board of the North Carolina Health Insurance Risk Pool shall consist of
24 the Commissioner, who shall serve as an ex officio nonvoting member of the Board, and
25 11 members appointed as follows:

- 26 (1) One member who represents an insurer, as appointed by the Governor.
- 27 (2) Two members of the general public who are not employed by or
28 affiliated with an insurance company or plan, group hospital, or other
29 health care provider and can reasonably be expected to qualify for
30 coverage in the Pool. Members of the general public include
31 individuals whose only affiliation with health insurance or health care
32 coverage is as a covered member. The two members of the general
33 public shall be appointed by the General Assembly, as follows:
- 34 a. One member upon the recommendation of the President Pro
35 Tempore of the Senate.
- 36 b. One member upon the recommendation of the Speaker of the
37 House of Representatives.
- 38 (3) Eight members appointed by the Commissioner, as follows:
- 39 a. One insurer who sells individual health insurance policies.
- 40 b. One who represents the insurance industry, as recommended by
41 the insurer who covers the largest number of persons in the
42 State.
- 43 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 health
10 insurance risk 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 sub-subdivisions a., b., and d. of subdivision (b)(3) of this section
15 shall be for a term of two years. The initial appointments by the Commissioner under
16 sub-subdivisions c., e., f., and g. of subdivision (b)(3) of this section shall be for a term
17 of one year. All succeeding appointments shall be for terms of three years. Members
18 shall not 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, and auditing of assets, monies, and claims of the Pool and
5 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.
- 28 (3) Take legal action as necessary to:
- 29 a. Avoid the payment of improper claims against the Pool or the
30 coverage provided by or through the Plan.
- 31 b. Recover any amounts erroneously or improperly paid by the
32 Plan.
- 33 c. Recover any amounts paid by the Pool as a result of mistake of
34 fact or law.
- 35 d. Recover other amounts due the Pool.
- 36 (4) Establish rates and rate schedules in accordance with this Part.
- 37 (5) Issue policies of insurance in accordance with the requirements of this
38 Part.
- 39 (6) Appoint appropriate legal, actuarial, and other committees as
40 necessary to provide technical assistance in the operation of the Pool,
41 policy, and other contract design, and any other function within the
42 Pool's authority.
- 43 (7) Establish policies, conditions, and procedures for reinsuring risks of
44 participating health insurers, as defined in G.S. 58-68-25(a), desiring

1 to issue Pool coverage in their own name. Provision of reinsurance
2 shall not subject the Pool to any of the capital or surplus requirements,
3 if any, otherwise applicable to reinsurers.

4 (8) Employ and fix the compensation of employees.

5 (9) Prepare and distribute certificate of eligibility forms and enrollment
6 instruction forms to insurance producers and to the general public.

7 (10) Provide for reinsurance for the Pool.

8 (11) Issue additional types of health insurance policies to provide optional
9 coverage, including Medicare supplemental insurance coverage.

10 (12) Provide for and employ cost containment measures and requirements
11 including preadmission screening, second surgical opinion, concurrent
12 utilization review, disease management, individual case management,
13 health and wellness programs including a smoking cessation initiative,
14 and other commonly used benefit plan design features for the purpose
15 of making health insurance coverage offered by the Pool more
16 cost-effective.

17 (13) Design, utilize, contract, or otherwise arrange for the delivery of
18 cost-effective health care services, including establishing or
19 contracting with preferred provider organizations, health maintenance
20 organizations, and other limited network provider arrangements.

21 (14) Adopt bylaws, policies, and procedures as may be necessary or
22 convenient for the implementation of this Part and the operation of the
23 Pool.

24 (f) The Executive Director, with the approval of the Board, shall operate the Pool
25 in a manner so that the estimated cost of providing the benefit plans offered during any
26 calendar year is not anticipated to exceed the total income the Pool expects to receive
27 from policy premiums and other revenue available to the Pool. The Board may impose a
28 cap on enrollment or may suspend enrollment for an indefinite period if the Board finds
29 that estimated costs are anticipated to exceed income, except that any enrollment cap or
30 suspension shall not apply to federally defined eligible individuals who are eligible to
31 enroll in the Pool pursuant to G.S. 58-50-195(a)(5).

32 (g) The Executive Director shall make an annual report to the Speaker of the
33 House of Representatives, the President Pro Tempore of the Senate, the Commissioner,
34 the Joint Legislative Health Care Oversight Committee, and the Committee on
35 Employee Hospital and Medical Benefits. The report shall summarize the activities of
36 the Pool in the preceding calendar year, including the net written and earned premiums,
37 benefit plan enrollment, the expense of administration, and the paid and incurred losses.

38 (h) Neither the Board nor the employees of the Pool are liable for any obligations
39 of the Pool. There shall be no liability on the part of, and no cause of action of any
40 nature shall arise against, the Pool or its agents or employees, the Board, the Executive
41 Director, or the Commissioner or the Commissioner's representatives for any action
42 taken by them in good faith in the performance of their powers and duties under this
43 Part.

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

3 **"§ 58-50-185. Administrator.**

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

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

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

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

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

14 (5) Financial condition and stability.

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

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

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

27 (1) Verification of eligibility.

28 (2) Payment of claims.

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

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

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

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

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

42 **"§ 58-50-190. Risk Pool rates and policy forms.**

43 (a) The Pool shall adopt and modify, as appropriate, rates, rate schedules, rate
44 adjustments, expense allowances, agent referral fees, claim reserve formulas, and any

1 other actuarial function appropriate to the operation of the Pool. Rates and rate
2 schedules may be adjusted for appropriate factors such as age, sex, and geographic
3 variation in claim cost and shall take into consideration appropriate rating factors in
4 accordance with established actuarial and underwriting practices.

5 (b) The Pool shall determine the standard risk rate by considering the premium
6 rates charged by other insurers offering health insurance coverage to individuals. The
7 standard risk rate shall be established using reasonable actuarial techniques and shall
8 reflect anticipated experience and expenses for the coverage. Pool rates shall be one
9 hundred fifty percent (150%) to two hundred percent (200%) of rates established as
10 applicable for individual standard rates and shall be adjusted annually, at the time of
11 annual renewal.

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

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

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

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

38 **"§ 58-50-195. Eligibility for Pool coverage.**

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

41 (1) A notice of rejection or refusal to issue substantially similar health
42 insurance coverage for health reasons by an insurer. A rejection or
43 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. When adopting or adjusting lifetime
13 limits the Board may establish categories of diseases that may be more seriously
14 impacted by the lifetime limits than other diseases covered under the Pool.

15 **"§ 58-50-210. Preexisting conditions.**

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

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

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

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

31 **"§ 58-50-215. Nonduplication of benefits.**

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

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

44 **"§ 58-50-220: Reserved for future codification purposes.**

"§ 58-50-225. North Carolina Health Insurance Risk Pool Special Fund.

(a) The North Carolina Health Insurance Risk Pool Special Fund is established as an interest-bearing, non-reverting account in the General Fund. The Special Fund consists of the following revenue:

(1) Premiums, fees, charges, rebates, refunds, and any other receipts occurring or arising in connection with the Pool.

(2) An annual General Fund appropriation of twenty-one million two hundred thousand dollars (\$21,200,000); sixteen million two hundred thousand dollars (\$16,200,000) of this amount represents the savings to the General Fund from repealing the income tax credit for small business employee health benefits.

(3) Gifts, grants, and other appropriations.

(b) Disbursements from the Special Fund shall include the amounts required to pay the claims, benefits, and administrative costs as may be determined by the Executive Director and the Board. Disbursement from the Special Fund may be made by warrant drawn on the State Treasurer by the Executive Director, or the Executive Director and the Board may by contract authorize the Administrator to draw the warrant.

"§ 58-50-230. Complaint procedures.

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

"§ 58-50-235. Audit.

An audit of the Pool shall be conducted annually under the oversight of the State Auditor. The cost of the audit shall be reimbursed to the State Auditor from the Special Fund.

"§ 58-50-240. Taxation.

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

"§ 58-50-245. Rules.

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

"§ 58-50-250. Collective action.

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

"§ 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 status of a request by the State to the Centers for Medicare and
13 Medicaid Services for approval of the North Carolina Health Insurance
14 Risk Pool to be considered an acceptable "alternative mechanism"
15 under the federal Health Insurance Portability and Accountability Act
16 in accordance with 45 C.F.R. § 148.128(e).

17 (5) Methods for providing a premium subsidy on a sliding scale basis for
18 individuals with incomes up to three hundred percent (300%) of the
19 federal poverty guidelines.

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

22 **"§§ 58-50-260 through 265: Reserved for future codification purposes."**

23 **SECTION 1.2.** On or before January 1, 2008, the Executive Director shall
24 notify the Centers for Medicare and Medicaid Services that the State has established the
25 North Carolina Health Insurance Risk Pool and shall request that the North Carolina
26 Health Insurance Risk Pool be approved as an acceptable "alternative mechanism"
27 under the federal Health Insurance Portability and Accountability Act in accordance
28 with 45 C.F.R. § 148.128(e). The Executive Director shall notify the Commissioner
29 when the Centers for Medicare and Medicaid Services approve the request.

30 **SECTION 1.3.** The Executive Director shall study methods for encouraging
31 healthy behaviors among the Pool's insureds and report the Executive Director's
32 findings to the Board and to the General Assembly not later than one year after initial
33 implementation of the Pool.

34 **SECTION 1.4.** Notwithstanding G.S. 58-50-210(a), individuals enrolling in
35 the Pool within six months of the date that enrollment into the Pool first begins shall be
36 subject to a six-month preexisting condition waiting period.

37 **SECTION 1.5.** G.S. 120-70.111(a) reads as rewritten:

38 "(a) The Joint Legislative Health Care Oversight Committee shall review, on a
39 continuing basis, the provision of health care and health care coverage to the citizens of
40 this State, in order to make ongoing recommendations to the General Assembly on ways
41 to improve health care for North Carolinians. To this end, the Committee shall study the
42 delivery, availability, and cost of health care in North Carolina. The Committee shall
43 also review, on a continuing basis, the implementation of the State Health Insurance
44 Program for Children established under Part 8 of Article 2 of Chapter 108A of the

1 General Statutes. As part of its review, the Committee shall advise and consult with the
2 Department of Health and Human Services as provided under G.S. 108A-70.21. The
3 Committee shall review, on a continuing basis, the implementation of the North
4 Carolina Health Insurance Risk Pool established under Part 6 of Article 50 of Chapter
5 58 of the General Statutes. As part of its review, the Committee shall advise and consult
6 with the Executive Director of the North Carolina Health Insurance Risk Pool as
7 provided under G.S. 58-50-180. The Committee may also study other matters related to
8 health care and health care coverage in this State."

9 **SECTION 2.1.** In addition to the North Carolina Health Insurance Risk Pool
10 Special Fund established under G.S. 58-50-225, as enacted in this act, there is
11 established in the Department of Insurance two separate funds, as follows:

12 (1) The Start-Up Reserve – State Funds. State funds appropriated to this
13 Fund shall be used to support reasonable expenses for personnel to
14 carry out the Board's responsibilities under the Pool, including
15 contracting a third-party administrator. Funds shall be allocated by the
16 Commissioner of Insurance for the reasonable expenses of the Board
17 in conducting its duties under this Article that are incurred on or before
18 July 1, 2009. At the end of the fiscal year, any unspent and
19 unencumbered State funds and any interest or investment income
20 earned on these funds shall not revert to the General Fund but shall be
21 transferred to the North Carolina Health Insurance Risk Pool Special
22 Fund.

23 (2) The Start-Up Reserve – Federal Funds. Federal funds received in lump
24 sum or as a draw-down grant for the purposes of this Article shall be
25 deposited to this Reserve and shall be expended and accounted for in
26 accordance with requirements of the federal grant.

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

30 **SECTION 3.** There is appropriated from the General Fund to the Start-Up
31 Reserve – State Funds established under Section 2.1 of this act, the sum of two hundred
32 fifty thousand dollars (\$250,000) for the 2007-2008 fiscal year. These funds shall be
33 allocated for the purposes of and in accordance with Section 2.1 of this act. Unspent
34 and unencumbered funds remaining on June 30, 2008, shall not revert to the General
35 Fund but shall be used for the purposes described in Section 2.1 of this act.

36 **SECTION 4.** G.S. 105-129.16E, credit for small business employee health
37 benefits, is repealed. As provided in G.S. 58-50-225, as enacted in this act, savings to
38 the General Fund from the repeal of the credit for small business employee health
39 insurance will be appropriated on a recurring basis to the North Carolina Health
40 Insurance Risk Pool, as enacted by this act, for claims and other expenses of the North
41 Carolina Health Insurance Risk Pool.

42 **SECTION 5.** Notwithstanding G.S. 143C-9-3(b) and G.S. 147-86.30, of the
43 funds credited to the Health Trust Account from the Master Settlement Agreement
44 pursuant to Section 6(2) of S.L. 1992 during the 2008-2009 fiscal year, the sum of five

1 million dollars (\$5,000,000) for the 2008-2009 fiscal year shall be transferred from the
2 Department of State Treasurer, Budget Code 23460 (Health and Wellness Trust Fund)
3 to the State Controller to be deposited in Nontax Budget Code 19978 (Intra State
4 transfers) to support General Fund appropriations by the 2007 General Assembly,
5 Regular Session 2008, for operations and claims of the North Carolina Health
6 Insurance Risk Pool, as enacted by this act.

7 **SECTION 6.** For the purposes of providing the funds necessary to carry out
8 the powers and duties of the Pool, effective July 1, 2008, the Teachers' and State
9 Employees' Comprehensive Major Medical Plan and any successor Plan shall pay an
10 annual surcharge to the North Carolina Health Insurance Risk Pool Special Fund in the
11 amount of one dollar and fifty cents (\$1.50) per member per month based on enrollment
12 of active employee Plan members and their dependents covered under the Plan.

13 **SECTION 7.** The provisions of this act are severable. If any provision of
14 this act is held invalid by a court of competent jurisdiction, the invalidity does not affect
15 other provisions of the act that can be given effect without the invalid provision.

16 **SECTION 8.** Sections 2.1, 2.2, and 3 of this act become effective July 1,
17 2007, and expire July 1, 2009. The remainder of this act is effective when it becomes
18 law. Enrollment in the Pool shall commence no later than January 1, 2009.