

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 163

Short Title: Establish High Risk Pool. (Public)

Sponsors: Senators Berger of Franklin; Atwater, Boseman, Clodfelter, Cowell, Dalton, Dannelly, Dorsett, Forrester, Goss, Graham, Jones, Kinnaird, Malone, Nesbitt, Purcell, Shaw, Snow, and Weinstein.

Referred to: Commerce, Small Business and Entrepreneurship.

February 14, 2007

A BILL TO BE ENTITLED

1 AN ACT TO ESTABLISH THE NORTH CAROLINA HEALTH INSURANCE RISK
2 POOL.
3

4 The General Assembly of North Carolina enacts:

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

7 "Part 7. North Carolina Health Insurance Risk Pool.

8 **"§ 58-50-245. Definitions.**

9 For the purposes of this Part:

- 10 (1) "Administrator" means the Pool Administrator selected by the
11 Executive Director in accordance with this Part.
- 12 (2) "Benefit plan" means coverage offered by the Pool to eligible
13 individuals.
- 14 (3) "Board" means the Board of Directors of the Pool.
- 15 (4) "Commissioner" means the Commissioner of Insurance.
- 16 (5) "Covered person" means any individual resident of this State,
17 excluding dependents, who is eligible to receive health benefits from
18 any insurer.
- 19 (6) "Church plan" has the meaning given that term under section 3(33) of
20 the Employee Retirement Income Security Act of 1974.
- 21 (7) "Creditable coverage" has the same meaning as prescribed in
22 G.S. 58-68-30(c)(1).
- 23 (8) "Dependent" means a resident spouse or unmarried child under the age
24 of 19 years, a child who is a full-time student under the age of 23 years
25 and who is financially dependent upon the parent, a child who is over
26 18 years of age and for whom a person may be obligated to pay child

- 1 support, or a child of any age who is disabled and dependent upon the
2 parent.
- 3 (9) "Executive Director" means the Executive Administrator of the
4 Teachers' and State Employees' Comprehensive Major Medical Plan.
- 5 (10) "Family member" means a parent, grandparent, brother, sister, or child
6 of a dependent residing with the insured.
- 7 (11) "Federally defined eligible individual" has the same meaning as
8 "eligible individual" as prescribed in G.S. 58-68-60(b).
- 9 (12) "Governmental plan" has the same meaning as prescribed in
10 G.S. 58-68-60(h)(2).
- 11 (13) "Group health plan" means an employee welfare benefit plan as
12 defined in section 3(1) of the Employee Retirement Income Security
13 Act of 1974 to the extent that the plan provides medical care, including
14 items and services paid for as medical care to employees or their
15 dependents, as defined under the terms of the plan directly or through
16 insurance, reimbursement, or otherwise.
- 17 (14) "Health insurance coverage" shall have the same meaning as
18 prescribed in G.S. 58-68-25(a)(5). Health insurance coverage does not
19 include benefits described in G.S. 58-68-25(b).
- 20 (15) "Insurance arrangement" means a plan, program, contract, or other
21 arrangement through which health care services are provided by an
22 employer to its officers or employees but does not include health care
23 services covered through an insurer.
- 24 (16) "Insured" means an individual who is eligible to receive benefits from
25 the Pool. The term "insured" includes dependents and family members,
26 as applicable.
- 27 (17) "Insurer" means any entity that provides health insurance coverage in
28 this State. For the purposes of this Part, insurer includes:
- 29 a. An insurance company;
30 b. A hospital or medical service corporation;
31 c. A health maintenance organization;
32 d. A multiple employer welfare arrangement;
33 e. A third-party administrator or claims processor;
34 f. An administrative service organization;
35 g. Any other nongovernmental entity providing a health benefit
36 plan subject to State insurance regulation; and
- 37 (18) "Medical care" means amounts paid for:
- 38 a. The diagnosis, cure, mitigation, treatment, or prevention of
39 disease, or amounts paid for the purpose of affecting any
40 structure or function of the body;
- 41 b. Transportation primarily for and essential to medical care
42 referred to in sub-subdivision a. of this subdivision; and
- 43 c. Insurance covering medical care referred to in sub-subdivisions
44 a. and b. of this subdivision.

- 1 (19) "Plan of Operation" means the articles, bylaws, and operating rules
2 and procedures adopted by the Board in accordance with this Part.
- 3 (20) "Pool" means the North Carolina Health Insurance Risk Pool.
- 4 (21) "Resident" means an individual who is in the country legally 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 (22) "Significant break in coverage" means a period of 63 consecutive days
16 during all of which the individual does not have any creditable
17 coverage, except that neither a waiting period nor an affiliation period
18 is taken into account in determining a significant break in coverage.
- 19 (23) "State Health Plan" means the Teachers' and State Employees'
20 Comprehensive Major Medical Plan as set forth in Parts 1, 2, and 3 of
21 Article 3 of Chapter 135 of the General Statutes.
- 22 (24) "Trade Adjustment Assistance Program" (TAA) means Title II of the
23 Trade Act of 2002, P.L. 107-210.

24 **"§ 58-50-250. Risk Pool established; board of directors; plan of operation.**

25 (a) High-Risk Pool Established. – There is hereby created within the Teachers'
26 and State Employees' Comprehensive Major Medical Plan the North Carolina Health
27 Insurance Risk Pool. The Pool shall operate under the supervision and control of the
28 Board of Directors of the Pool.

29 (b) Board Appointment; Membership. – The Board of the North Carolina Health
30 Insurance Risk Pool shall consist of the Commissioner of Insurance, who shall serve as
31 an ex officio nonvoting member of the Board, and 11 members appointed as follows:

- 32 (1) One member who represents an insurer, as appointed by the Governor.
- 33 (2) Two members of the general public who are not employed by or
34 affiliated with an insurance company or plan, group hospital, or other
35 health care provider, and can reasonably be expected to qualify for
36 coverage in the Pool. Members of the general public include
37 individuals whose only affiliation with health insurance or health care
38 coverage is as a covered member. The two members of the general
39 public shall be appointed as follows:
- 40 a. One member upon the recommendation of the President Pro
41 Tempore of the Senate.
- 42 b. One member upon the recommendation of the Speaker of the
43 House of Representatives.
- 44 (3) Eight members appointed by the Commissioner, as follows:

- 1 a. One insurer who sells individual health insurance policies.
- 2 b. One insurer who covers the largest number of persons in the
3 State.
- 4 c. One who is licensed to sell health insurance in this State.
- 5 d. Two who represent the medical provider community, one as
6 recommended by the North Carolina Medical Society and one
7 as recommended by the North Carolina Hospital Association.
- 8 e. One who represents business, as recommended by the North
9 Carolina Citizens for Business and Industry.
- 10 f. One who represents small business, as recommended by the
11 National Federation of Independent Business.
- 12 g. One who is either a health policy researcher or a health
13 economist with experience relating to the operation of high-risk
14 insurance pools.

15 (c) Board; Terms of Appointment; Vacancies; Compensation. – The initial Board
16 members shall be appointed as follows: three of the members to serve a term of three
17 years; four of the members to serve a term of one year; and four of the members to serve
18 a term of two years. Subsequent Board members shall serve for terms of three years. A
19 Board member's term shall continue until the member's successor is appointed. The
20 Commissioner shall appoint a chair to serve for the initial two years of the Plan's
21 operation. Subsequent chairs shall be elected by a majority vote of the Board members
22 and shall serve for two-year terms. The Commissioner shall fill vacancies in
23 membership and may remove members from the Board for cause. Board members shall
24 not be compensated in their capacity as Board members but shall be reimbursed for
25 reasonable expenses incurred in the necessary performance of their duties.

26 (d) Plan of Operation. – The Executive Director shall submit to the Board a Plan
27 of Operation for the Pool and any amendments necessary or suitable to assure the fair,
28 reasonable, and equitable administration of the Plan of Operation. The Plan of
29 Operation shall become effective upon approval by the majority of the Board consistent
30 with the date on which the coverage under this Part must be made available. The
31 Executive Director shall submit a suitable Plan of Operation within 180 days after the
32 appointment of the Board. The Plan of Operation shall:

- 33 (1) Establish procedures for operation of the Pool.
- 34 (2) Establish procedures for selecting a Pool Administrator in accordance
35 with G.S. 58-50-255.
- 36 (3) Establish procedures to create a fund for administrative expenses,
37 which shall be managed by the Board.
- 38 (4) Establish procedures for the collection, handling, disbursing,
39 accounting, assessing, and auditing of assets, monies, and claims of the
40 Pool and the Pool Administrator.
- 41 (5) Develop and implement a program to publicize the existence of the
42 Pool, the eligibility requirements, procedures for enrollment, and
43 availability of State premium subsidies, and to maintain public
44 awareness of the Pool.

- 1 (6) Establish procedures under which applicants and participants may
2 have grievances reviewed by a grievance committee appointed by the
3 Executive Director in accordance with G.S. 58-50-295.
- 4 (7) Establish procedures for identifying and confirming income levels of
5 applicants for Pool coverage who are eligible to receive a State
6 premium subsidy, if a State premium subsidy is available.
- 7 (8) Provide for other matters as may be necessary and proper for the
8 execution of the Executive Director's powers, duties, and obligations
9 under this Part.
- 10 (e) The Pool shall have the general powers and authority granted under the laws
11 of this State to health insurers and the specific authority to do all of the following:
- 12 (1) Enter into contracts as are necessary or proper to carry out the
13 provisions and purposes of this Part, including the authority, with the
14 approval of the Executive Director in collaboration with the Board, to
15 enter into contracts with similar plans of other states for the joint
16 performance of common administrative functions or with persons or
17 other organizations for the performance of administrative functions.
- 18 (2) Sue or be sued, including taking any legal actions necessary or proper
19 to recover or collect assessments due the Pool.
- 20 (3) Take legal action as necessary to:
- 21 a. Avoid the payment of improper claims against the Pool or the
22 coverage provided by or through the Plan.
- 23 b. Recover any amounts erroneously or improperly paid by the
24 Plan.
- 25 c. Recover any amounts paid by the Pool as a result of mistake of
26 fact or law.
- 27 d. Recover other amounts due the Pool.
- 28 (4) Establish rates and rate schedules in accordance with this Part.
- 29 (5) Issue policies of insurance in accordance with the requirements of this
30 Part.
- 31 (6) Appoint appropriate legal, actuarial, and other committees as
32 necessary to provide technical assistance in the operation of the Pool,
33 policy, and other contract design, and any other function within the
34 Pool's authority.
- 35 (7) Borrow money to effect the purposes of the Pool. Any notes or other
36 evidence of indebtedness of the Pool not in default are legal
37 investments for insurers and may be carried as admitted assets.
- 38 (8) Establish policies, conditions, and procedures for reinsuring risks of
39 participating insurers desiring to issue Pool coverage in their own
40 name. Provision of reinsurance shall not subject the Pool to any of the
41 capital or surplus requirements, if any, otherwise applicable to
42 reinsurers.
- 43 (9) Employ and fix the compensation of employees.

- 1 (10) Prepare and distribute certificate of eligibility forms and enrollment
2 instruction forms to insurance producers and to the general public.
- 3 (11) Provide for reinsurance of risks incurred by the Pool.
- 4 (12) Issue additional types of health insurance policies to provide optional
5 coverage, including Medicare supplemental insurance coverage.
- 6 (13) 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 (14) 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 (15) 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 (16) Assess all insurers and the State Health Plan in accordance with
20 G.S. 58-50-290.

21 (f) The Executive Director, with the approval of the Board, shall operate the Pool
22 in a manner so that the estimated cost of providing health insurance coverage during any
23 fiscal year is not anticipated to exceed the total income the Pool expects to receive from
24 policy premiums and other revenue available to the Pool. The Board may impose a cap
25 on enrollment or may suspend enrollment for an indefinite period if the Board finds that
26 estimated costs are anticipated to exceed income, except that any enrollment cap or
27 suspension shall not apply to federally defined eligible individuals who are eligible to
28 enroll in the Pool pursuant to G.S. 58-50-265(5).

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

35 (h) Neither the Board nor the employees of the Pool are liable for any obligations
36 of the Pool. There shall be no liability on the part of and no cause of action of any
37 nature shall arise against the Pool or its agents or employees, the Board, the Executive
38 Director, the Commissioner, or his representatives for any action taken by them in good
39 faith in the performance of their powers and duties under this Part. The Pool and the
40 Teachers' and State Employees' Comprehensive Major Medical Plan may provide in
41 their bylaws or rules for indemnification of, and legal representation for, their members
42 and employees.

43 (i) The members of the Board shall comply with the provisions of G.S. 14-234
44 prohibiting conflicts of interest.

1 **"§ 58-50-255. Administrator.**

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

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

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

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

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

13 (5) Financial condition and stability.

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

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

24 (1) Verification of eligibility.

25 (2) Payment of claims.

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

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

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

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

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

39 **"§ 58-50-260. Risk Pool rates and policy forms.**

40 (a) The Pool shall adopt and modify, as appropriate, rates, rate schedules, rate
41 adjustments, expense allowances, agents' referral fees, claim reserve formulas, and any
42 other actuarial function appropriate to the operation of the Pool. Rates and rate
43 schedules may be adjusted for appropriate factors such as age, sex, and geographic

1 variation in claim cost and shall take into consideration appropriate rating factors in
2 accordance with established actuarial and underwriting practices.

3 (b) The Pool shall determine the standard risk rate by considering the premium
4 rates charged by other insurers offering health insurance coverage to individuals. The
5 standard risk rate shall be established using reasonable actuarial techniques and shall
6 reflect anticipated experience and expenses for the coverage. Pool rates shall be one
7 hundred fifty percent (150%) of rates established as applicable for individual standard
8 rates.

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

14 (d) Provider reimbursement rates under Pool coverage shall be limited to the
15 rates allowed for providers under the Medicare Program.

16 (e) The Pool shall submit all rates and rate schedules and amendments thereto to
17 the Commissioner for approval, and the Commissioner shall approve the rates and rate
18 schedules before the Pool may use them. The Commissioner, in evaluating the rates and
19 rate schedules, shall consider the factors provided in this section. The Pool shall provide
20 all individuals enrolled in the Pool with at least 45 days' notice of any change in Pool
21 rates or rate schedules.

22 (f) The Pool shall submit all policy forms to the Commissioner for approval, and
23 the Commissioner shall approve the forms before the Pool may use them. Except for
24 any provisions that are specifically treated otherwise under this Part, the provisions of
25 this Chapter that apply to benefit plans and policy forms of health insurers generally
26 shall apply to the benefit plans offered and policy forms used by the Pool.

27 **"§ 58-50-265. Eligibility for Pool coverage.**

28 (a) Any individual who is and continues to be a resident of this State is eligible
29 for Pool coverage if evidence is provided of:

30 (1) A notice of rejection or refusal to issue substantially similar health
31 insurance coverage for health reasons by an insurer. A rejection or
32 refusal by an insurer offering only stop-loss, excess loss, or
33 reinsurance coverage with respect to the applicant is not sufficient
34 evidence of eligibility;

35 (2) An offer to issue health insurance coverage only with a conditional
36 rider that limits coverage for the individual's high-risk medical
37 condition;

38 (3) A refusal by an insurer to issue health insurance coverage except at a
39 rate exceeding the Pool rate;

40 (4) A diagnosis of the individual with one of the medical or health
41 conditions listed by the Board in accordance with this section. An
42 individual diagnosed with one or more of these conditions is eligible
43 for Pool coverage without applying for other health insurance
44 coverage;

- 1 (5) In the case of a federally defined eligible individual, the individual's
2 maintenance of health insurance coverage, of which the most recent
3 coverage was through an employer-sponsored plan, for the previous 18
4 months with no gap in coverage greater than 63 days and exhaustion of
5 any available COBRA or State continuation benefits; or
6 (6) An individual who is legally domiciled in this State and is eligible for
7 the credit for health insurance costs under the Trade Adjustment
8 Assistance Reform Act of 2002, section 35 of the Internal Revenue
9 Code of 1986.
- 10 (b) The Board, upon approval of the Executive Director, shall adopt a list of
11 medical or health conditions for which a person shall be eligible for Pool coverage
12 without applying for health insurance pursuant to subsection (a) of this section. The
13 Board may amend the list as the Board considers appropriate.
- 14 (c) Each dependent of an individual who is eligible for Pool coverage shall also
15 be eligible for Pool coverage.
- 16 (d) An individual is not eligible for coverage under the Pool if:
- 17 (1) The individual has or obtains health insurance coverage substantially
18 similar to or more comprehensive than a Pool policy, or would be
19 eligible to have coverage if the person elected to obtain it, except that:
- 20 a. An individual may maintain other coverage for the period of
21 time the individual is satisfying any preexisting condition
22 waiting period under a Pool policy; and
- 23 b. An individual may maintain Pool coverage for the period of
24 time the individual is satisfying a preexisting condition waiting
25 period under another health insurance policy intended to replace
26 the Pool policy.
- 27 (2) The individual is determined to be eligible for enrollment in the State
28 Medical Assistance Plan.
- 29 (3) The individual has previously terminated Pool coverage unless 12
30 months have lapsed since the termination, except that this subdivision
31 shall not apply with respect to an applicant who is a federally defined
32 eligible individual or to an applicant eligible for or receiving benefits
33 under the Trade Adjustment Assistance Program.
- 34 (4) The individual is an inmate or resident of a public institution, except
35 that this subdivision shall not apply with respect to an applicant who is
36 a federally defined eligible individual.
- 37 (5) The individual's premiums are paid for or reimbursed under any
38 government-sponsored program or by any government agency or
39 health care provider, except as an otherwise qualifying full-time
40 employee, or dependent thereof, of a government agency or health care
41 provider. This subdivision shall not apply for individuals receiving
42 benefits under the Trade Adjustment Assistance Program or to
43 individuals receiving premium subsidies made available by the State
44 based on individual income levels.

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

3 (e) Coverage under the Pool shall cease:

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

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

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

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

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

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

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

16 **"§ 58-50-270. Unfair referral to Pool.**

17 It is an unfair trade practice under Article 63 of this Chapter for an insurer, insurance
18 producer, as defined in G.S. 58-33-10(7), or third-party administrator to refer an
19 individual employee to the Pool or arrange for an individual employee to apply to the
20 Pool for the purpose of separating that employee from group health insurance coverage
21 provided in connection with the employee's employment or for the purpose of
22 separating an individual covered by health insurance offered in the individual market.

23 **"§ 58-50-275. Minimum Pool benefits.**

24 (a) The Pool shall offer at least two types of health insurance coverage for
25 individuals eligible under G.S. 58-50-265, including preferred provider organizations
26 with different levels of deductibles and cost-sharing, and at least one choice of a health
27 savings account. The covered services and benefit levels may vary between the types of
28 coverage, but at least two types of coverage must, at a minimum, cover the benefits and
29 services outlined in the National Association of Insurance Commissioners' (NAIC)
30 Model Health Pool for Uninsurable Individuals Act and be consistent with
31 comprehensive coverage generally available to persons who are eligible for health
32 insurance other than Medicare. All health insurance products offered by the Pool shall
33 include disease or case management services.

34 (b) Health insurance products offered by the Pool shall include not less than one
35 million dollars (\$1,000,000) lifetime limit and an annual limit of up to five thousand
36 dollars (\$5,000) on out-of-pocket expenses. The Board, upon recommendation of the
37 Executive Director, shall adjust limitations at least once every five years to reflect
38 changes in the medical component of the Consumer Price Index.

39 **"§ 58-50-280. Preexisting conditions.**

40 (a) Except as otherwise provided by law, Pool coverage shall exclude charges or
41 expenses incurred during the first 12 months following the effective date of coverage as
42 to any condition for which medical advice, care, or treatment was recommended or
43 received as to such conditions during the 12-month period immediately preceding the

1 effective date of coverage, except that no preexisting condition exclusion shall be
2 applied to a federally defined eligible individual.

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

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

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

12 **"§ 58-50-285. Nonduplication of benefits.**

13 (a) The Pool shall be payor of last resort of benefits whenever any other benefit
14 or source of third-party payment is available. Benefits otherwise payable under
15 coverage shall be reduced by all amounts paid or payable through any other health
16 insurance coverage and by all hospital and medical expense benefits paid or payable
17 under any workers' compensation coverage, automobile medical payment, or liability
18 insurance, whether provided on the basis of fault or no-fault, and by any hospital or
19 medical benefits paid or payable under or provided pursuant to any State or federal law
20 or program.

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

25 **"§ 58-50-290. Assessments.**

26 (a) For the purposes of providing the funds necessary to carry out the powers and
27 duties of the Pool, the Pool shall assess all insurers and the State Health Plan at such
28 time and for such amounts as the Board finds necessary. Assessments shall be due in not
29 less than 30 days after prior written notice to the insurers and shall accrue interest at
30 twelve percent (12%) per annum on and after the due date.

31 (b) Except with respect to special assessments authorized under this section, the
32 Pool shall assess each insurer and the State Health Plan in an amount not to exceed two
33 dollars (\$2.00) per covered individual insured or reinsured by each insurer or the State
34 Health Plan per month. The assessment shall be based on actual and expected losses,
35 actuarially appropriate reserves, and administrative expenses in excess of expected and
36 collected premiums and federal loss reimbursements, if any, received by the Pool. Each
37 insurer and the State Health Plan shall not be assessed an amount exceeding eight
38 dollars (\$8.00) per family policy for each family insured or reinsured per month.

39 In addition to the assessment, the Pool may impose on each insurer and the State
40 Health Plan a special assessment only when enrollment in the Pool has been capped or
41 suspended. A special assessment may be made to cover only the additional losses of the
42 Pool that are expected to result from the continued entry into the Pool by federally
43 defined eligible individuals during the time that enrollment is closed to all other
44 individuals eligible under G.S. 58-50-265. The special assessment shall be based on

1 actual and expected losses, actuarially appropriate reserves, and administrative expenses
2 in excess of expected and collected premiums for the federally defined eligible
3 individuals who enrolled or are expected to enroll while the suspension of enrollment is
4 in effect.

5 (b1) Except with respect to special assessments authorized under this section, the
6 Pool shall assess each insurer and the State Health Plan an amount not to exceed the
7 following limitations for each covered individual insured per month:

8 (1) Seventy cents (70¢) for the 2007-2008 fiscal year.

9 (2) One dollar (\$1.00) for the 2008-2009 fiscal year.

10 (3) One dollar and thirty cents (\$1.30) for the 2009-2010 fiscal year.

11 (4) One dollar and seventy cents (\$1.70) for the 2010-2011 fiscal year.

12 (5) Two dollars (\$2.00) for the 2011-2012 fiscal year and all years
13 thereafter.

14 (c) The Pool shall make reasonable efforts designed to ensure that each covered
15 individual is counted only once with respect to any assessment. For that purpose, the
16 Pool shall require each insurer that obtains excess or stop-loss insurance to include in its
17 count of covered individuals all individuals whose coverage is insured (including by
18 way of excess or stop-loss coverage) in whole or in part, except that lives covered under
19 the Pool and reinsured or administered by a third-party administrator shall not be
20 included in the count. The Pool shall allow a reinsurer to exclude from its number of
21 covered individuals those individuals who have been counted by the primary insurer or
22 by the primary reinsurer or primary excess or stop-loss insurer for the purposes of
23 determining its assessment under this section.

24 (d) The Pool may verify each insurer's assessment based on annual statements
25 and other reports deemed to be necessary by the Pool. The Pool may use any reasonable
26 method of estimating the number of covered individuals of an insurer if the specific
27 number is unknown.

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

32 (f) The Commissioner may suspend or revoke, after notice and hearing, the
33 license to transact insurance in this State of any insurer that fails to pay an assessment.
34 As an alternative, the Commissioner may levy a forfeiture on any insurer that fails to
35 pay an assessment when due. The forfeiture may not exceed five percent (5%) of the
36 unpaid assessment per month, but no forfeiture shall be less than one hundred dollars
37 (\$100.00) per month.

38 **"§ 58-50-295. Complaint procedures.**

39 An applicant or participant in coverage from the Pool is entitled to have complaints
40 against the Pool reviewed by a grievance committee appointed by the Executive
41 Director. Members of the Board shall not serve on the grievance committee. The
42 grievance process shall comply with G.S. 58-50-62. The grievance committee shall
43 report to the Board after completion of the review of each complaint. The Executive
44 Director shall retain all written complaints regarding the Pool at least until the third

1 anniversary of the date the Pool received the complaint. An applicant or participant may
2 file for external review of the applicant's grievance after having exhausted the Pool's
3 internal grievance procedure. External review, including eligibility determinations, shall
4 be conducted in accordance with Part 4 of this Article.

5 **"§ 58-50-300. Audit.**

6 An audit of the Pool shall be conducted annually under the oversight of the State
7 Auditor. The cost of the audit shall be reimbursed to the State Auditor from the Special
8 Reserve for the North Carolina Health Insurance Risk Pool.

9 **"§ 58-50-305. Taxation.**

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

11 **"§ 58-50-310. Rules.**

12 The Executive Director, in collaboration with the Board, may adopt rules, including
13 temporary rules, to implement this Part. The Executive Director, in collaboration with
14 the Board, and the Commissioner may adopt rules to carry out their respective powers
15 and duties under this Part.

16 **"§ 58-50-315. Collective action.**

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

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

26 **SECTION 1.3.** The Board of Directors of the North Carolina Health
27 Insurance Risk Pool, as appointed under Section 1.1 of this act, shall monitor methods
28 of financing the Pool to ensure a stable funding source and allow for its continued
29 operation. This monitoring shall include supplementary sources of funding, such as
30 funds obtained from public and private not-for-profit foundations, insurer assessments
31 including special assessments, or other appropriate and available State or non-State
32 funds. The Board shall also review on a regular basis:

- 33 (1) The number of individuals in this State who are uninsured as of a date
34 certain because of high-risk conditions.
- 35 (2) The number of uninsured individuals who would qualify for coverage
36 under the Pool based on G.S. 58-50-265 and its Plan of Operation.
- 37 (3) The cost of coverage under each of the health insurance plans
38 developed by the Board, including administrative costs.
- 39 (4) The extent to which assessments meet or exceed amounts necessary
40 for coverage and Board operations.
- 41 (5) The status of a request by the State to the Centers for Medicare and
42 Medicaid Services for approval of the North Carolina Health Insurance
43 Risk Pool to be considered an acceptable "alternative mechanism"

1 under the federal Health Insurance Portability and Accountability Act
2 in accordance with 45 C.F.R. § 148.128(e).

3 The Board shall report its findings and recommendations to the General
4 Assembly on March 1, 2007, and annually thereafter.

5 **SECTION 1.4.** The North Carolina Health Insurance Risk Pool
6 Administrator shall study methods for encouraging healthy behaviors and report its
7 findings to the Board and to the General Assembly not later than one year after initial
8 implementation of the Pool.

9 **SECTION 1.5.** Notwithstanding G.S. 58-50-280(a), individuals enrolling in
10 the North Carolina Health Insurance Risk Pool within six months of the date that
11 enrollment into the Pool first begins shall be subject to a six-month preexisting
12 condition waiting period.

13 **SECTION 1.6.** G.S. 135-38 is amended by adding a new subsection to read:

14 "(e) The Executive Administrator shall routinely report to the Committee and
15 shall provide the Committee with any information or assistance requested by the
16 Committee as relates to the North Carolina Health Insurance Risk Pool, as established
17 under Part 7 of Article 50 of Chapter 58 of the General Statutes."

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

19 "(a) The Joint Legislative Health Care Oversight Committee shall review, on a
20 continuing basis, the provision of health care and health care coverage to the citizens of
21 this State, in order to make ongoing recommendations to the General Assembly on ways
22 to improve health care for North Carolinians. To this end, the Committee shall study the
23 delivery, availability, and cost of health care in North Carolina. The Committee shall
24 also review, on a continuing basis, the implementation of the State Health Insurance
25 Program for Children established under Part 8 of Article 2 of Chapter 108A of the
26 General Statutes. As part of its review, the Committee shall advise and consult with the
27 Department of Health and Human Services as provided under G.S. 108A-70.21. The
28 Committee shall review, on a continuing basis, the implementation of the North
29 Carolina Health Insurance Risk Pool established under Part 7 of Article 50 of Chapter
30 58 of the General Statutes. As part of its review, the Committee shall advise and consult
31 with the Executive Director of the North Carolina Health Insurance Risk Pool as
32 provided under G.S. 58-50-250. The Committee may also study other matters related to
33 health care and health care coverage in this State."

34 **SECTION 2.** There is established in the Teachers' and State Employees'
35 Comprehensive Major Medical Plan the Reserve for the North Carolina Health
36 Insurance Risk Pool ("Reserve"). The sum of one million dollars (\$1,000,000) is
37 transferred from the Public Employee Health Benefit Fund ("Fund") to the Reserve for
38 the 2007-2008 fiscal year. These funds may be used to support reasonable expenses for
39 personnel to carry out the Board's responsibilities under the North Carolina Health
40 Insurance Risk Pool and shall be allocated for the reasonable expenses of the Board in
41 conducting its duties under Section 1 of this act that are incurred on or before July 1,
42 2009. The Reserve is subject to the Executive Budget Act, except that Article 3C of
43 Chapter 143 of the General Statutes does not apply to G.S. 58-50-250(e).

1 Transfer of the funds from the Fund to the Reserve is contingent upon
2 successful application for and award of federal grant funds to implement the North
3 Carolina Health Insurance Risk Pool. Federal funds received for this purpose shall be
4 deposited to the Reserve. Upon receipt of the federal funds, the Board shall, from
5 Reserve funds, reimburse the Fund in the amount of one million dollars (\$1,000,000). It
6 is the intent of the General Assembly that in the event the State is not awarded the
7 federal funds anticipated, the Fund shall be held harmless.

8 **SECTION 3.** Section 2 of this act becomes effective July 1, 2007. The
9 remainder of this act is effective when it becomes law. G.S. 58-50-290(b1), as enacted
10 by Section 1.1 of this act, is repealed January 1, 2014. Enrollment in the North Carolina
11 Health Insurance Risk Pool shall commence no later than January 1, 2009.