

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 1895
Committee Substitute Favorable 6/12/06
Committee Substitute #2 Favorable 7/10/06

Short Title: Establish High-Risk Pool.

(Public)

Sponsors:

Referred to:

May 11, 2006

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH THE NORTH CAROLINA HEALTH INSURANCE RISK
3 POOL AND TO APPROPRIATE FUNDS THEREFOR.

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
27 support, or a child of any age who is disabled and dependent upon the
28 parent.

- 1 (9) "Executive Director" means the Executive Administrator of the
2 Teachers' and State Employees' Comprehensive Major Medical Plan.
- 3 (10) "Family member" means a parent, grandparent, brother, sister, or child
4 of a dependent residing with the insured.
- 5 (11) "Federally defined eligible individual" has the same meaning as
6 "eligible individual" as prescribed in G.S. 58-68-60(b).
- 7 (12) "Governmental plan" has the same meaning as prescribed in
8 G.S. 58-68-60(h)(2).
- 9 (13) "Group health plan" means an employee welfare benefit plan as
10 defined in section 3(1) of the Employee Retirement Income Security
11 Act of 1974 to the extent that the plan provides medical care, including
12 items and services paid for as medical care to employees or their
13 dependents, as defined under the terms of the plan directly or through
14 insurance, reimbursement, or otherwise.
- 15 (14) "Health insurance coverage" shall have the same meaning as
16 prescribed in G.S. 58-68-25(a)(5). Health insurance coverage does not
17 include benefits described in G.S. 58-68-25(b).
- 18 (15) "Insurance arrangement" means a plan, program, contract, or other
19 arrangement through which health care services are provided by an
20 employer to its officers or employees but does not include health care
21 services covered through an insurer.
- 22 (16) "Insured" means an individual who is eligible to receive benefits from
23 the Pool. The term "insured" includes dependents and family members,
24 as applicable.
- 25 (17) "Insurer" means any entity that provides health insurance coverage in
26 this State. For the 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;
32 f. An administrative service organization;
33 g. Any other nongovernmental entity providing a health benefit
34 plan subject to State insurance regulation; and
35 h. The Teachers' and State Employees' Comprehensive Major
36 Medical Plan as set forth in Parts 1, 2, and 3 of Article 3 of
37 Chapter 135 of the General Statutes.
- 38 (18) "Medical care" means amounts paid for:
- 39 a. The diagnosis, cure, mitigation, treatment, or prevention of
40 disease, or amounts paid for the purpose of affecting any
41 structure or function of the body;
42 b. Transportation primarily for and essential to medical care
43 referred to in sub-subdivision a. of this subdivision; and

- 1 c. Insurance covering medical care referred to in sub-subdivisions
2 a. and b. of this subdivision.
- 3 (19) "Plan of Operation" means the articles, bylaws, and operating rules
4 and procedures adopted by the Board in accordance with this Part.
- 5 (20) "Pool" means the North Carolina Health Insurance Risk Pool.
- 6 (21) "Resident" means an individual who is in the country legally and who:
7 a. Has been legally domiciled in this State for a period of at least
8 30 days, except that for a federally defined eligible individual,
9 there shall not be a 30-day requirement;
- 10 b. Is legally domiciled in this State on the date of application to
11 the Pool and who is eligible for enrollment in the Pool as a
12 result of the Health Insurance Portability and Accountability
13 Act of 1996; or
- 14 c. Is legally domiciled in this State on the date of application to
15 the Pool and is eligible for the credit for health insurance costs
16 under section 35 of the Internal Revenue Code of 1986.
- 17 (22) "Significant break in coverage" means a period of 63 consecutive days
18 during all of which the individual does not have any creditable
19 coverage, except that neither a waiting period nor an affiliation period
20 is taken into account in determining a significant break in coverage.
- 21 (23) "Trade Adjustment Assistance Program" (TAA) means Title II of the
22 Trade Act of 2002, P.L. 107-210.

23 **"§ 58-50-250. Risk Pool established; board of directors; plan of operation.**

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

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

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

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

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

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

- 32 (1) Establish procedures for operation of the Pool.
- 33 (2) Establish procedures for selecting a Pool Administrator in accordance
- 34 with G.S. 58-50-255.
- 35 (3) Establish procedures to create a fund for administrative expenses,
- 36 which shall be managed by the Board.
- 37 (4) Establish procedures for the collection, handling, disbursing,
- 38 accounting, assessing, and auditing of assets, monies, and claims of the
- 39 Pool and the Pool Administrator.
- 40 (5) Develop and implement a program to publicize the existence of the
- 41 Pool, the eligibility requirements, procedures for enrollment, and
- 42 availability of State premium subsidies, and to maintain public
- 43 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, to enter into contracts with similar
15 plans of other states for the joint performance of common
16 administrative functions or with persons or other organizations for the
17 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 (f) The Board shall operate the Pool in a manner so that the estimated cost of
20 providing health insurance coverage during any fiscal year is not anticipated to exceed
21 the total income the Pool expects to receive from policy premiums and other revenue
22 available to the Pool. The Board may impose a cap on enrollment or may suspend
23 enrollment for an indefinite period if the Board finds that estimated costs are anticipated
24 to exceed income, except that any enrollment cap or suspension shall not apply to
25 federally defined eligible individuals who are eligible to enroll in the Pool pursuant to
26 G.S. 58-50-265(5).

27 (g) The Board shall make an annual report to the Speaker of the House of
28 Representatives and to the President Pro Tempore of the Senate. The report shall
29 summarize the activities of the Pool in the preceding calendar year, including the net
30 written and earned premiums, benefit plan enrollment, the expense of administration,
31 and the paid and incurred losses.

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

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

41 **"§ 58-50-255. Administrator.**

42 (a) The Board shall select through a competitive bidding process one or more
43 authorized insurers or a third-party administrator to administer the Pool. The Board
44 shall evaluate bids submitted based on criteria established by the Board. The criteria

1 shall allow for the comparison of information about each bidding administrator and
2 selection of a Pool Administrator based on at least the following:

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

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

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

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

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

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

32 (f) The Administrator shall be paid as provided in the contract between the
33 Executive Director and the Administrator.

34 **"§ 58-50-260. Risk Pool rates and policy forms.**

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

41 (b) The Pool shall determine the standard risk rate by considering the premium
42 rates charged by other insurers offering health insurance coverage to individuals. The
43 standard risk rate shall be established using reasonable actuarial techniques and shall
44 reflect anticipated experience and expenses for the coverage. Pool rates shall be one

1 hundred fifty percent (150%) of rates established as applicable for individual standard
2 rates.

3 (c) The Pool shall provide for premium discounts for covered individuals who
4 are nonsmokers or who are actively participating in a smoking cessation program.
5 Approval of smoking cessation programs, criteria for active participation in smoking
6 cessation programs, and discount rates shall be established by the Board, subject to the
7 approval of the Commissioner.

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

10 (e) The Pool shall submit all rates and rate schedules and amendments thereto to
11 the Commissioner for approval, and the Commissioner shall approve the rates and rate
12 schedules before the Pool may use them. The Commissioner, in evaluating the rates and
13 rate schedules, shall consider the factors provided in this section. The Pool shall provide
14 all individuals enrolled in the Pool with at least 45 days notice of any change in Pool
15 rates or rate schedules.

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

21 **"§ 58-50-265. Eligibility for Pool coverage.**

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

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

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

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

34 (4) A diagnosis of the individual with one of the medical or health
35 conditions listed by the Board in accordance with this section. An
36 individual diagnosed with one or more of these conditions is eligible
37 for Pool coverage without applying for other health insurance
38 coverage;

39 (5) In the case of a federally defined eligible individual, the individual's
40 maintenance of health insurance coverage, of which the most recent
41 coverage was through an employer-sponsored plan, for the previous 18
42 months with no gap in coverage greater than 63 days and exhaustion of
43 any available COBRA or State continuation benefits; or

1 (6) An individual who is legally domiciled in this State and is eligible for
2 the credit for health insurance costs under the Trade Adjustment
3 Assistance Reform Act of 2002, section 35 of the Internal Revenue
4 Code of 1986.

5 (b) The Board shall adopt a list of medical or health conditions for which a
6 person shall be eligible for Pool coverage without applying for health insurance
7 pursuant to subsection (a) of this section. The Board may amend the list as the Board
8 considers appropriate.

9 (c) Each dependent of an individual who is eligible for Pool coverage shall also
10 be eligible for Pool coverage.

11 (d) An individual is not eligible for coverage under the Pool if:

12 (1) The individual has or obtains health insurance coverage substantially
13 similar to or more comprehensive than a Pool policy, or would be
14 eligible to have coverage if the person elected to obtain it, except that:

15 a. An individual may maintain other coverage for the period of
16 time the individual is satisfying any preexisting condition
17 waiting period under a Pool policy; and

18 b. An individual may maintain Pool coverage for the period of
19 time the individual is satisfying a preexisting condition waiting
20 period under another health insurance policy intended to replace
21 the Pool policy.

22 (2) The individual is determined to be eligible for enrollment in the State
23 Medical Assistance Plan.

24 (3) The individual has previously terminated Pool coverage unless 12
25 months have lapsed since the termination, except that this subdivision
26 shall not apply with respect to an applicant who is a federally defined
27 eligible individual or to an applicant eligible for or receiving benefits
28 under the Trade Adjustment Assistance Program.

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

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

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

42 (e) Coverage under the Pool shall cease:

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

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

- 1 (3) Upon the death of the covered individual.
2 (4) On the date State law requires cancellation of the Pool policy.
3 (5) At the option of the Pool, 30 days after the Pool makes any inquiry
4 concerning the individual's eligibility or residence to which the
5 individual does not reply.
6 (6) Because the individual has failed to make the payments required under
7 this Part.

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

11 **"§ 58-50-270. Unfair referral to Pool.**

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

18 **"§ 58-50-275. Minimum Pool benefits.**

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

29 (b) Health insurance products offered by the Pool shall include not less than one
30 million dollars (\$1,000,000) lifetime limit and a sliding scale annual limit of two
31 thousand dollars (\$2,000) to five thousand dollars (\$5,000) on out-of-pocket expenses.
32 The sliding scale shall be based on family income. The Board shall adjust limitations at
33 least once every five years to reflect changes in the medical component of the Consumer
34 Price Index.

35 **"§ 58-50-280. Preexisting conditions.**

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

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

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

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

7 **"§ 58-50-285. Nonduplication of benefits.**

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

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

20 **"§ 58-50-290. Assessments.**

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

26 (b) Except with respect to special assessments authorized under this section, each
27 insurer shall be assessed in an amount not to exceed two dollars (\$2.00) per covered
28 individual insured or reinsured by each insurer per month. The assessment shall be
29 based on actual and expected losses, actuarially appropriate reserves, and administrative
30 expenses in excess of expected and collected premiums and federal loss
31 reimbursements, if any, received by the Pool.

32 In addition to the assessment, the Board may impose on each insurer a special
33 assessment only when enrollment in the Pool has been capped or suspended. A special
34 assessment may be made to cover only the additional losses of the Pool that are
35 expected to result from the continued entry into the Pool by federally defined eligible
36 individuals during the time that enrollment is closed to all other individuals eligible
37 under G.S. 58-50-265. The special assessment shall be based on actual and expected
38 losses, actuarially appropriate reserves, and administrative expenses in excess of
39 expected and collected premiums for the federally defined eligible individuals who
40 enrolled or are expected to enroll while the suspension of enrollment is in effect.

41 (b1) Except with respect to special assessments authorized under this section, each
42 insurer shall be assessed an amount not to exceed the following limitations for each
43 covered individual insured per month:

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

- 1 (2) One dollar (\$1.00) for the 2008-2009 fiscal year.
2 (3) One dollar and thirty cents (\$1.30) for the 2009-2010 fiscal year.
3 (4) One dollar and seventy cents (\$1.70) for the 2010-2011 fiscal year.
4 (5) Two dollars (\$2.00) for the 2011-2012 fiscal year and all years
5 thereafter.

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

16 (d) The Board may verify each insurer's assessment based on annual statements
17 and other reports deemed to be necessary by the Board. The Board may use any
18 reasonable method of estimating the number of covered individuals of an insurer if the
19 specific number is unknown.

20 (e) If assessments and other receipts by the Pool, Board, or administering insurer
21 exceed the actual losses and administrative expenses of the plan, the excess shall be
22 held at interest and used by the Board to offset future losses or to reduce plan premiums.
23 Future losses include reserves for claims incurred but not reported.

24 (f) The Commissioner may suspend or revoke, after notice and hearing, the
25 license to transact insurance in this State of any insurer that fails to pay an assessment.
26 As an alternative, the Commissioner may levy a forfeiture on any insurer that fails to
27 pay an assessment when due. The forfeiture may not exceed five percent (5%) of the
28 unpaid assessment per month, but no forfeiture shall be less than one hundred dollars
29 (\$100.00) per month.

30 **"§ 58-50-295. Complaint procedures.**

31 An applicant or participant in coverage from the Pool is entitled to have complaints
32 against the Pool reviewed by a grievance committee appointed by the Board. Members
33 of the Board shall not serve on the grievance committee. The grievance process shall
34 comply with G.S. 58-50-62. The grievance committee shall report to the Board after
35 completion of the review of each complaint. The Board shall retain all written
36 complaints regarding the Pool at least until the third anniversary of the date the Pool
37 received the complaint. An applicant or participant may file for external review of the
38 applicant's grievance after having exhausted the Pool's internal grievance procedure.
39 External review, including eligibility determinations, shall be conducted in accordance
40 with Part 4 of this Article.

41 **"§ 58-50-300. Audit.**

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

1 **"§ 58-50-305. Taxation.**

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

3 **"§ 58-50-310. Rules.**

4 The Executive Director may adopt rules, including temporary rules, to implement
5 this Part. The Executive Director and the Commissioner may adopt rules to carry out
6 their respective powers and duties under this Part.

7 **"§ 58-50-315. Collective action.**

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

11 **SECTION 1.2.** On or before January 1, 2007, the Department of Insurance
12 shall notify the Centers for Medicare and Medicaid Services that the State has
13 established the North Carolina Health Insurance Risk Pool and shall request that the
14 North Carolina Health Insurance Risk Pool be approved as an acceptable "alternative
15 mechanism" under the federal Health Insurance Portability and Accountability Act in
16 accordance with 45 C.F.R. § 148.128(e).

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

- 24 (1) The number of individuals in this State who are uninsured as of a date
25 certain because of high-risk conditions.
- 26 (2) The number of uninsured individuals who would qualify for coverage
27 under the Pool based on G.S. 58-50-265 and its Plan of Operation.
- 28 (3) The cost of coverage under each of the health insurance plans
29 developed by the Board, including administrative costs.
- 30 (4) The extent to which assessments meet or exceed amounts necessary
31 for coverage and Board operations.
- 32 (5) The status of a request by the State to the Centers for Medicare and
33 Medicaid Services for approval of the North Carolina Health Insurance
34 Risk Pool to be considered an acceptable "alternative mechanism"
35 under the federal Health Insurance Portability and Accountability Act
36 in accordance with 45 C.F.R. § 148.128(e).

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

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

43 **SECTION 1.5.** Notwithstanding G.S. 58-50-280(a), individuals enrolling in
44 the North Carolina Health Insurance Risk Pool within six months of the date that

1 enrollment into the Pool first begins shall be subject to a six-month preexisting
2 condition waiting period.

3 **SECTION 2.** There is established in the Teachers' and State Employees'
4 Comprehensive Major Medical Plan the Reserve for the North Carolina Health
5 Insurance Risk Pool ("Reserve"). The sum of one million dollars (\$1,000,000) is
6 transferred from the Public Employee Health Benefit Fund ("Fund") to the Reserve for
7 the 2006-2007 fiscal year. These funds may be used to support one additional full-time
8 position to carry out the Executive Director's responsibilities under the North Carolina
9 Health Insurance Risk Pool, and shall be allocated for the reasonable expenses of the
10 Board in conducting its duties under Section 1 of this act that are incurred on or before
11 July 1, 2008. The Reserve is subject to the Executive Budget Act, except that Article 3C
12 of Chapter 143 of the General Statutes does not apply to G.S. 58-50-250(e).

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

20 **SECTION 3.** Section 2 of this act becomes effective July 1, 2006. The
21 remainder of this act is effective when it becomes law. G.S. 58-50-290(b1), as enacted
22 by Section 1.1 of this act, is repealed January 1, 2013. Enrollment in the North Carolina
23 Health Insurance Risk Pool shall commence no later than January 1, 2008.