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Short Title: Small Group Health Ins. Technical Changes.

(Public)

Sponsors:

Referred to:

April 10, 2013

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL CHANGES TO THE SMALL EMPLOYER GROUP HEALTH COVERAGE REFORM ACT TO MITIGATE THE EFFECTS OF THE FEDERAL AFFORDABLE CARE ACT ON NORTH CAROLINA'S SMALL BUSINESSES AND TO CODIFY A COURT FINDING.

The General Assembly of North Carolina enacts:

SECTION 1. Corrections to small group act. – No small employer carrier shall be required to issue the basic or standard health benefit plan as described in G.S. 58-50-125(a). Any basic or standard health benefit plans described in G.S. 58-50-125(a) that are not "grandfathered health plans," as that term is used under Section 1251 of the Affordable Care Act, P.L. 11-148, as amended, shall be terminated on the next anniversary date on or after January 1, 2014, and the small employer carrier shall offer the employer replacement coverage from available small group health benefit plans pursuant to and in accordance with all applicable State and federal laws and regulations. The termination shall be preceded by a 90-day notice to the Commissioner, the employer policyholder, the participants, and the beneficiaries. If the plan is issued to a self-employed individual, as defined in G.S. 58-50-110(21a), then the small employer carrier shall offer (i) replacement coverage from available individual health benefit plans or (ii) if the small employer carrier does not offer individual health benefit plans in this State, then individual conversion coverage pursuant to G.S. 58-53-45.

SECTION 2.(a) The following are repealed: G.S. 58-50-126, 58-50-127, 58-50-135, 58-50-155, and 58-50-156.

SECTION 2.(b) G.S. 58-50-110 reads as rewritten:

"§ 58-50-110. Definitions.

As used in this Act:

...

(10a) "Grandfathered health plan" means a health benefit plan providing coverage considered grandfathered health coverage described in 45 C.F.R. §147.140(a).

...

(22) "Small employer" means any individual actively engaged in business that, on at least fifty percent (50%) of its working days during the preceding calendar quarter, employed no more than 50 eligible employees, the majority of whom are employed within this State, and is not formed primarily for purposes of buying health insurance and in which a bona fide



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1 employer-employee relationship exists. In determining the number of
 2 eligible employees, companies that are affiliated companies, or that are
 3 eligible to file a combined tax return for purposes of taxation by this State,
 4 shall be considered one employer. Subsequent to the issuance of a health
 5 benefit plan to a small employer and for the purpose of determining
 6 eligibility, the size of a small employer shall be determined annually. Except
 7 as otherwise specifically provided, the provisions of this Act that apply to a
 8 small employer shall continue to apply until the plan anniversary following
 9 the date the small employer no longer meets the requirements of this
 10 definition. For purposes of this ~~Act, subsection~~, the term small employer
 11 includes self-employed individuals. Effective January 1, 2014, this definition
 12 shall apply only to grandfathered group health plans subject to this Act.

13 (22a) "Small employer" means, in connection with a non-grandfathered group
 14 health plan with respect to a calendar year and a plan year, an employer that
 15 employed an average of at least one but not more than 50 employees on
 16 business days during the preceding calendar year and that employs at least
 17 one employee on the first day of the plan year. The number of employees
 18 shall be determined using the method set forth in section 4980H(c)(2) of the
 19 Internal Revenue Code.

20"

21 **SECTION 2.(c)** G.S. 58-50-115 reads as rewritten:

22 **"§ 58-50-115. Health benefit plans subject to Act.**

23 (a) A health benefit plan is subject to this Act if it provides health benefits for small
 24 employers ~~or self-employed individuals~~ and if any of the following conditions are met:

- 25 (1) Any part of the premiums or benefits is paid by a small employer or any
 26 covered individual is reimbursed, whether through wage or adjustments or
 27 otherwise, by a small employer for any portion of the premium;
 28 (2) The health benefit plan is treated by the employer ~~or any of the covered~~
 29 ~~self-employed individuals~~ as part of a plan or program for the purpose of
 30 sections 106, 125, or 162 of the United States Internal Revenue Code; or
 31 (3) The small employer ~~or self-employed individuals~~ have ~~has~~ permitted payroll
 32 deductions for the eligible enrollees for the health benefit plans.

33 (b) Repealed by Session Laws 1993, c. 529, s. 3.5."

34 **SECTION 2.(d)** G.S. 58-50-125(d) reads as rewritten:

35 ~~"(d) As a condition of transacting business as a small employer carrier in this State, the~~
 36 ~~carrier shall either offer small employers at least one basic and one standard health care plan or~~
 37 ~~the alternative coverages provided in G.S. 58-50-126. Every small employer that elects to be~~
 38 ~~covered under such a plan and agrees to make the required premium payments and to satisfy~~
 39 ~~the other provisions of the plan shall be issued such a plan by the small employer carrier. The~~
 40 ~~premium payment requirements used in connection with basic and standard health care plans~~
 41 ~~may address the potential credit risk of small employers that elect coverage in accordance with~~
 42 ~~this subsection by means of payment security provisions that are reasonably related to the risk~~
 43 ~~and are uniformly applied.~~

44 If a small employer carrier offers coverage to a small employer, the small employer carrier
 45 shall offer coverage to all eligible employees of a small employer and their dependents. A small
 46 employer carrier shall not offer coverage to only certain individuals in a small employer group
 47 except in the case of late enrollees as provided in G.S. 58-50-130(a)(4b). A small employer
 48 carrier shall not modify any health benefit plan with respect to a small employer, any eligible
 49 employee, or dependent through riders, endorsements, or otherwise, in order to restrict or
 50 exclude coverage for certain diseases or medical conditions otherwise covered by the health
 51 benefit plan. In the case of an eligible employee or dependent of an eligible employee who,

1 before the effective date of the plan, was excluded from coverage or denied coverage by a small
2 employer carrier in the process of providing a health benefit plan to an eligible small employer,
3 the small employer carrier shall provide an opportunity for the eligible employee or dependent
4 of an eligible employee to enroll in the health benefit plan currently held by the small
5 employer."

6 **SECTION 2.(e)** Effective January 1, 2015, subsections (a) and (a1) of
7 G.S. 58-50-125 are repealed.

8 **SECTION 2.(f)** G.S. 58-50-130 reads as rewritten:

9 **"§ 58-50-130. Required health care plan provisions.**

10 ...

11 (b) For all small employer health benefit plans that are grandfathered health benefit
12 plans and that are subject to this section, the premium rates are subject to all of the following
13 provisions:

14"

15 **SECTION 2.(g)** G.S. 58-50-130 is amended by adding the following new
16 subsections to read:

17 **"(b1)** For all small employer health benefit plans that are not grandfathered health benefit
18 plans and that are subject to this section, the premium rates are subject to all of the following
19 provisions:

20 (1) A small employer carrier shall use a method to develop premiums for small
21 employer group health benefit plans that are not grandfathered health plans
22 which spreads financial risk across a large population and allows
23 adjustments for only the following factors:

24 a. Age, except that the rate shall not vary by more than three to one for
25 adults.

26 b. Whether the plan or coverage covers individual or family.

27 c. Geographic rating areas.

28 d. Tobacco use, except that the rate shall not vary by more than one and
29 one-half to one due to tobacco use.

30 With respect to family coverage under a health benefit plan, the rating
31 variations for age and tobacco use shall be applied based on the portion of
32 premium that is attributable to each family member covered under the plan.

33 (2) A small employer carrier shall consider the claims experience of all
34 enrollees in all small employer group health benefit plans that are not
35 grandfathered health plans offered by the insurer in the small employer
36 group market in this State to be members of a single risk pool. No small
37 employer carrier shall consider claims experience of grandfathered health
38 plans in developing the single risk pool.

39 ...

40 (i) A small employer carrier shall not modify the premium rate charged to a small
41 group non-grandfathered health benefit plan or a small employer group member, including
42 changes in rates related to the increasing age of a group member, for 12 months from the initial
43 issue date or renewal date."

44 **SECTION 3.(a)** G.S. 58-50-110(22a) is repealed.

45 **SECTION 3.(b)** G.S. 58-50-110 reads as rewritten:

46 **"§ 58-50-110. Definitions.**

47 As used in this Act:

48 ...

49 (22b) "Small employer" means, in connection with a non-grandfathered group
50 health plan with respect to a calendar year and a plan year, an employer who
51 employed an average of at least one but not more than 100 employees on

1 business days during the preceding calendar year and who employs at least
2 one employee on the first day of the plan year. The number of employees
3 shall be determined using the method set forth in section 4980H(c)(2) of the
4 Internal Revenue Code.

5"

6 **SECTION 4.** The Department of Insurance shall adopt rules to implement this Act.

7 **SECTION 4.1.(a)** The intent of this section is to codify the finding of the Superior
8 Court, Wake County, in issuing a preliminary injunction in the case of *Rockford-Cohen Group,*
9 *LLC, v. North Carolina Department of Insurance, et al.,* 12-CVS-12379 (*prelim. injunction*
10 *issued* Oct. 1, 2012). The Superior Court's order preliminarily enjoined the defendants from
11 enforcing S.L. 2012-183 in part because it found that the session law violated Sections 32 and
12 33 of Article 1 of the North Carolina Constitution.

13 **SECTION 4.1.(b)** S.L. 2012-183 is repealed.

14 **SECTION 4.1.(c)** This section is retroactively effective October 1, 2012.

15 **SECTION 5.** Section 1 of this Act is effective when it becomes law. Except as
16 otherwise provided in that section, Section 2 of this Act becomes effective January 1, 2014, and
17 applies to all insurance contracts and policies issued, renewed, or amended on or after that date.
18 Section 3 of this Act becomes effective January 1, 2016. Except as otherwise provided, the
19 remainder of this act is effective when it becomes law.