

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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BILL DRAFT 2007-RD-4 [v.5] (12/07)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
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Short Title: Establish High-Risk Pool. (Public)

Sponsors: Representative Insko.

Referred to:

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

"Part 7. North Carolina Health Insurance Risk Pool.

§ 58-50-245. Definitions.

For the purposes of this Part:

- (1) "Administrator" means the Pool Administrator selected by the Executive Director in accordance with this Part.
- (2) "Benefit plan" means coverage offered by the Pool to eligible individuals.
- (3) "Board" means the Board of Directors of the Pool.
- (4) "Commissioner" means the Commissioner of Insurance.
- (5) "Covered person" means any individual resident of this State, excluding dependents, who is eligible to receive health benefits from any insurer.
- (6) "Church plan" has the meaning given that term under section 3(33) of the Employee Retirement Income Security Act of 1974.
- (7) "Creditable coverage" has the same meaning as prescribed in G.S. 58-68-30(c)(1).
- (8) "Dependent" means a resident spouse or unmarried child under the age of 19 years, a child who is a full-time student under the age of 23 years and who is financially dependent upon the parent, a child who is over 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 individual selected by a majority vote
4 of the Board members and hired to serve as the Executive Director of
5 the Pool.
- 6 (10) "Family member" means a parent, grandparent, brother, sister, or child
7 of a dependent residing with the insured.
- 8 (11) "Federally defined eligible individual" has the same meaning as
9 "eligible individual" as prescribed in G.S. 58-68-60(b).
- 10 (12) "Governmental plan" has the same meaning as prescribed in
11 G.S. 58-68-60(h)(2).
- 12 (13) "Group health plan" means an employee welfare benefit plan as
13 defined in section 3(1) of the Employee Retirement Income Security
14 Act of 1974 to the extent that the plan provides medical care, including
15 items and services paid for as medical care to employees or their
16 dependents, as defined under the terms of the plan directly or through
17 insurance, reimbursement, or otherwise.
- 18 (14) "Health insurance coverage" shall have the same meaning as
19 prescribed in G.S. 58-68-25(a)(5). Health insurance coverage does not
20 include benefits described in G.S. 58-68-25(b).
- 21 (15) "Insurance arrangement" means a plan, program, contract, or other
22 arrangement through which health care services are provided by an
23 employer to its officers or employees but does not include health care
24 services covered through an insurer.
- 25 (16) "Insured" means an individual who is eligible to receive benefits from
26 the Pool. The term "insured" includes dependents and family members,
27 as applicable.
- 28 (17) "Insurer" means any entity that provides health insurance coverage in
29 this State. For the purposes of this Part, insurer includes:
30 a. An insurance company;
31 b. A hospital or medical service corporation;
32 c. A health maintenance organization;
33 d. A multiple employer welfare arrangement;
34 e. A third-party administrator or claims processor;
35 f. An administrative service organization;
36 g. Any other nongovernmental entity providing a health benefit
37 plan subject to State insurance regulation; and
- 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) "Reserve" means the Reserve for the North Carolina Health Insurance
- 18 Risk Pool.
- 19 (23) "Significant break in coverage" means a period of 63 consecutive days
- 20 during all of which the individual does not have any creditable
- 21 coverage, except that neither a waiting period nor an affiliation period
- 22 is taken into account in determining a significant break in coverage.
- 23 (24) "State Health Plan" means the Teachers' and State Employees'
- 24 Comprehensive Major Medical Plan as set forth in Parts 1, 2, and 3 of
- 25 Article 3 of Chapter 135 of the General Statutes.
- 26 (25) "Trade Adjustment Assistance Program" (TAA) means Title II of the
- 27 Trade Act of 2002, P.L. 107-210.

28 **"§ 58-50-250. Risk Pool established; board of directors; plan of operation.**

- 29 (a) High-Risk Pool Established. – There is hereby created the North Carolina
- 30 Health Insurance Risk Pool. The Pool shall be established within the Department of
- 31 Insurance for budgetary purposes only. The Pool shall operate under the supervision and
- 32 control of the Board.
- 33 (b) Board Appointment; Membership. – The Board of the North Carolina Health
- 34 Insurance Risk Pool shall consist of the Commissioner of Insurance, who shall serve as
- 35 an ex officio nonvoting member of the Board, and 11 members appointed as follows:
- 36 (1) One member who represents an insurer, as appointed by the Governor.
- 37 (2) Two members of the general public who are not employed by or
- 38 affiliated with an insurance company or plan, group hospital, or other
- 39 health care provider, and can reasonably be expected to qualify for
- 40 coverage in the Pool. Members of the general public include
- 41 individuals whose only affiliation with health insurance or health care
- 42 coverage is as a covered member. The two members of the general
- 43 public shall be appointed as follows:

- 1 a. One member upon the recommendation of the President Pro
2 Tempore of the Senate.
- 3 b. One member upon the recommendation of the Speaker of the
4 House of Representatives.
- 5 (3) Eight members appointed by the Commissioner, as follows:
- 6 a. One insurer who sells individual health insurance policies.
- 7 b. One insurer who covers the largest number of persons in the
8 State.
- 9 c. One who is licensed to sell health insurance in this State.
- 10 d. Two who represent the medical provider community, one as
11 recommended by the North Carolina Medical Society and one
12 as recommended by the North Carolina Hospital Association.
- 13 e. One who represents business, as recommended by the North
14 Carolina Citizens for Business and Industry.
- 15 f. One who represents small business, as recommended by the
16 National Federation of Independent Business.
- 17 g. One who is either a health policy researcher or a health
18 economist with experience relating to the operation of high-risk
19 insurance pools.
- 20 (c) Board; Terms of Appointment; Vacancies; Compensation. – The initial Board
21 members shall be appointed as follows: three of the members to serve a term of three
22 years; four of the members to serve a term of one year; and four of the members to serve
23 a term of two years. Subsequent Board members shall serve for terms of three years. A
24 Board member's term shall continue until the member's successor is appointed. The
25 Commissioner shall appoint a chair to serve for the initial two years of the Plan's
26 operation. Subsequent chairs shall be elected by a majority vote of the Board members
27 and shall serve for two-year terms. The Commissioner shall fill vacancies in
28 membership and may remove members from the Board for cause. Board members shall
29 not be compensated in their capacity as Board members but shall be reimbursed for
30 reasonable expenses incurred in the necessary performance of their duties.
- 31 (d) Plan of Operation. – The Executive Director shall submit to the Board a Plan
32 of Operation for the Pool and any amendments necessary or suitable to assure the fair,
33 reasonable, and equitable administration of the Plan of Operation. The Plan of
34 Operation shall become effective upon approval by the majority of the Board consistent
35 with the date on which the coverage under this Part must be made available. The
36 Executive Director shall submit a suitable Plan of Operation within 180 days after the
37 appointment of the Board. The Plan of Operation shall:
- 38 (1) Establish procedures for operation of the Pool.
- 39 (2) Establish procedures for selecting a Pool Administrator in accordance
40 with G.S. 58-50-255.
- 41 (3) Establish procedures to create a fund for administrative expenses,
42 which shall be managed by the Board.

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

- 1 (8) Establish policies, conditions, and procedures for reinsuring risks of
2 participating insurers desiring to issue Pool coverage in their own
3 name. Provision of reinsurance shall not subject the Pool to any of the
4 capital or surplus requirements, if any, otherwise applicable to
5 reinsurers.
- 6 (9) Employ and fix the compensation of employees.
- 7 (10) Prepare and distribute certificate of eligibility forms and enrollment
8 instruction forms to insurance producers and to the general public.
- 9 (11) Provide for reinsurance of risks incurred by the Pool.
- 10 (12) Issue additional types of health insurance policies to provide optional
11 coverage, including Medicare supplemental insurance coverage.
- 12 (13) Provide for and employ cost containment measures and requirements
13 including preadmission screening, second surgical opinion, concurrent
14 utilization review, disease management, individual case management,
15 and other commonly used benefit plan design features for the purpose
16 of making health insurance coverage offered by the Pool more
17 cost-effective.
- 18 (14) Design, utilize, contract, or otherwise arrange for the delivery of
19 cost-effective health care services, including establishing or
20 contracting with preferred provider organizations, health maintenance
21 organizations, and other limited network provider arrangements.(15)
22 Adopt bylaws, policies, and procedures as may be necessary or
23 convenient for the implementation of this Part and the operation of the
24 Pool.
- 25 (16) Assess all insurers in accordance with G.S. 58-50-290.
- 26 (f) The Executive Director, with the approval of the Board, shall operate the Pool
27 in a manner so that the estimated cost of providing health insurance coverage during any
28 fiscal year is not anticipated to exceed the total income the Pool expects to receive from
29 policy premiums and other revenue available to the Pool. The Board may impose a cap
30 on enrollment or may suspend enrollment for an indefinite period if the Board finds that
31 estimated costs are anticipated to exceed income, except that any enrollment cap or
32 suspension shall not apply to federally defined eligible individuals who are eligible to
33 enroll in the Pool pursuant to G.S. 58-50-265(5).
- 34 (g) The Executive Director shall make an annual report to the Speaker of the
35 House of Representatives, the President Pro Tempore of the Senate, the Joint
36 Legislative Health Care Oversight Committee, and the Committee on Employee
37 Hospital and Medical Benefits. The report shall summarize the activities of the Pool in
38 the preceding calendar year, including the net written and earned premiums, benefit plan
39 enrollment, the expense of administration, and the paid and incurred losses.
- 40 (h) Neither the Board nor the employees of the Pool are liable for any obligations
41 of the Pool. There shall be no liability on the part of and no cause of action of any
42 nature shall arise against the Pool or its agents or employees, the Board, the Executive
43 Director, the Commissioner, or his representatives for any action taken by them in good
44 faith in the performance of their powers and duties under this Part.

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

3 **"§ 58-50-255. Administrator.**

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

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

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

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

- 26 (1) Verification of eligibility.
- 27 (2) Payment of claims.
- 28 (3) Establishment of a premium billing procedure for collection of
29 premiums from individuals covered under the Pool.
- 30 (4) Other necessary functions to assure timely payment of benefits to
31 covered persons under the Pool.

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

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

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

41 **"§ 58-50-260. Risk Pool rates and policy forms.**

42 (a) The Pool shall adopt and modify, as appropriate, rates, rate schedules, rate
43 adjustments, expense allowances, agents' referral fees, claim reserve formulas, and any
44 other actuarial function appropriate to the operation of the Pool. Rates and rate

1 schedules may be adjusted for appropriate factors such as age, sex, and geographic
2 variation in claim cost and shall take into consideration appropriate rating factors in
3 accordance with established actuarial and underwriting practices.

4 (b) The Pool shall determine the standard risk rate by considering the premium
5 rates charged by other insurers offering health insurance coverage to individuals. The
6 standard risk rate shall be established using reasonable actuarial techniques and shall
7 reflect anticipated experience and expenses for the coverage. Pool rates shall not exceed
8 one hundred seventy-five percent (175%) of rates established as applicable for
9 individual standard rates.

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

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

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

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

28 **"§ 58-50-265. Eligibility for Pool coverage.**

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

- 31 (1) A notice of rejection or refusal to issue substantially similar health
32 insurance coverage for health reasons by an insurer. A rejection or
33 refusal by an insurer offering only stop-loss, excess loss, or
34 reinsurance coverage with respect to the applicant is not sufficient
35 evidence of eligibility;
- 36 (2) An offer to issue health insurance coverage only with a conditional
37 rider that limits coverage for the individual's high-risk medical
38 condition;
- 39 (3) A refusal by an insurer to issue health insurance coverage except at a
40 rate exceeding the Pool rate;
- 41 (4) A diagnosis of the individual with one of the medical or health
42 conditions listed by the Board in accordance with this section. An
43 individual diagnosed with one or more of these conditions is eligible

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

1 individuals receiving premium subsidies made available by the State
2 based on individual income levels.

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

5 (e) Coverage under the Pool shall cease:

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

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

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

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

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

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

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

18 **"§ 58-50-270. Unfair referral to Pool.**

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

25 **"§ 58-50-275. Minimum Pool benefits.**

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

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

41 **"§ 58-50-280. Preexisting conditions.**

42 (a) Except as otherwise provided by law, Pool coverage shall exclude charges or
43 expenses incurred during the first 12 months following the effective date of coverage as
44 to any condition for which medical advice, care, or treatment was recommended or

1 received as to such conditions during the 12-month period immediately preceding the
2 effective date of coverage, except that no preexisting condition exclusion shall be
3 applied to a federally defined eligible individual.

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

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

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

13 **"§ 58-50-285. Nonduplication of benefits.**

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

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

26 **"§ 58-50-290. Assessments.**

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

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

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

1 under G.S. 58-50-265. The special assessment shall be based on actual and expected
2 losses, actuarially appropriate reserves, and administrative expenses in excess of
3 expected and collected premiums for the federally defined eligible individuals who
4 enrolled or are expected to enroll while the suspension of enrollment is in effect.

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

8 (1) Seventy cents (70¢) for the 2008-2009 fiscal year.

9 (2) One dollar (\$1.00) for the 2009-2010 fiscal year.

10 (3) One dollar and thirty cents (\$1.30) for the 2010-2011 fiscal year.

11 (4) One dollar and seventy cents (\$1.70) for the 2011-2012 fiscal year.

12 (5) Two dollars (\$2.00) for the 2012-2013 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 **"§ 58-50-291. Reserve created.**

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

41 All premiums, fees, charges, rebates, refunds or any other receipts including, but not
42 limited to, earnings on investments, occurring or arising in connection with the Pool, as
43 established by this Article, shall be deposited into the Reserve. Disbursements from the

1 Reserve shall include any and all amounts required to pay the claims, benefits and
2 administrative costs as may be determined by the Executive Director and the Board.

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

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

8 **"§ 58-50-295. Complaint procedures.**

9 An applicant or participant in coverage from the Pool is entitled to have complaints
10 against the Pool reviewed by a grievance committee appointed by the Executive
11 Director. Members of the Board shall not serve on the grievance committee. The
12 grievance process shall comply with G.S. 58-50-62. The grievance committee shall
13 report to the Board after completion of the review of each complaint. The Executive
14 Director shall retain all written complaints regarding the Pool at least until the third
15 anniversary of the date the Pool received the complaint. An applicant or participant may
16 file for external review of the applicant's grievance after having exhausted the Pool's
17 internal grievance procedure. External review, including eligibility determinations, shall
18 be conducted in accordance with Part 4 of this Article.

19 **"§ 58-50-300. Audit.**

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

23 **"§ 58-50-305. Taxation.**

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

25 **"§ 58-50-310. Rules.**

26 The Executive Director, in collaboration with the Board, may adopt rules, including
27 temporary rules, to implement this Part. The Executive Director, in collaboration with
28 the Board, and the Commissioner may adopt rules to carry out their respective powers
29 and duties under this Part.

30 **"§ 58-50-315. Collective action.**

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

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

40 **SECTION 1.3.** The Board, as appointed under Section 1.1 of this act, shall
41 monitor methods of financing the Pool to ensure a stable funding source and allow for
42 its continued operation. This monitoring shall include supplementary sources of
43 funding, such as funds obtained from public and private not-for-profit foundations,

1 insurer assessments including special assessments, or other appropriate and available
2 State or non-State funds. The Board shall also review on a regular basis:

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

16 The Board shall report its findings and recommendations to the General
17 Assembly on March 1, 2008, and annually thereafter.

18 **SECTION 1.4.** The Administrator shall study methods for encouraging
19 healthy behaviors and report its findings to the Board and to the General Assembly not
20 later than one year after initial implementation of the Pool.

21 **SECTION 1.5.** Notwithstanding G.S. 58-50-280(a), individuals enrolling in
22 the Pool within six months of the date that enrollment into the Pool first begins shall be
23 subject to a six-month preexisting condition waiting period.

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

25 "(e) The Executive Administrator shall routinely report to the
26 Committee and shall provide the Committee with any information or assistance
27 requested by the Committee as relates to the North Carolina Health Insurance Risk Pool,
28 as established under Part 7 of Article 50 of Chapter 58 of the General
29 Statutes."**SECTION 1.7.** G.S. 120-70.111(a) reads as rewritten:

30 "(a) The Joint Legislative Health Care Oversight Committee shall review, on a
31 continuing basis, the provision of health care and health care coverage to the citizens of
32 this State, in order to make ongoing recommendations to the General Assembly on ways
33 to improve health care for North Carolinians. To this end, the Committee shall study the
34 delivery, availability, and cost of health care in North Carolina. The Committee shall
35 also review, on a continuing basis, the implementation of the State Health Insurance
36 Program for Children established under Part 8 of Article 2 of Chapter 108A of the
37 General Statutes. As part of its review, the Committee shall advise and consult with the
38 Department of Health and Human Services as provided under G.S. 108A-70.21. The
39 Committee shall review, on a continuing basis, the implementation of the North
40 Carolina Health Insurance Risk Pool established under Part 7 of Article 50 of Chapter
41 58 of the General Statutes. As part of its review, the Committee shall advise and consult
42 with the Executive Director of the North Carolina Health Insurance Risk Pool as
43 provided under G.S. 58-50-250. The Committee may also study other matters related to
44 health care and health care coverage in this State."

1 **SECTION 2.1.** There is established in the Department of Insurance the
2 Reserve for the North Carolina Health Insurance Risk Pool ("Reserve"). There is
3 appropriated from the General Fund to the Reserve the sum of five hundred thousand
4 dollars (\$500,000) for the 2007-2008 fiscal year. These funds may be used to support
5 reasonable expenses for personnel to carry out the Board's responsibilities under the
6 Pool and shall be allocated for the reasonable expenses of the Board in conducting its
7 duties under Section 1 of this act that are incurred on or before July 1, 2009. The
8 Reserve is subject to the Executive Budget Act, except that Article 3C of Chapter 143 of
9 the General Statutes does not apply to G.S. 58-50-250(e).

10 Appropriation of the funds from the General Fund to the Reserve is
11 contingent upon successful application for and award of federal grant funds to
12 implement the Pool. Federal funds received for this purpose shall be deposited to the
13 Reserve. Upon receipt of the federal funds, the Board shall, from Reserve funds,
14 reimburse the General Fund in the amount of five hundred thousand dollars (\$500,000).
15 It is the intent of the General Assembly that in the event the State is not awarded the
16 federal funds anticipated, the General Fund shall be held harmless.

17 **SECTION 2.2(a).** There is appropriated from the General Fund to the
18 Reserve the sum of \$ for the 2008-2009 fiscal year. These funds shall be used to provide
19 a premium subsidy on a sliding scale basis for individuals with incomes up to three
20 hundred percent (300%) of the federal poverty guidelines who are participating in the
21 Pool. The subsidy shall pay for ninety-five percent (95%) of the premium costs for
22 individuals with incomes below one hundred percent (100%) of the federal poverty
23 guidelines, to be phased out when a family's income reaches three hundred percent
24 (300%) of the federal poverty guidelines, and will be based on the lowest cost plan
25 offered through the Pool. Individuals who are eligible for a federal premium subsidy
26 under the Trade Adjustment Act (TAA) must apply for premium subsidy under that Act.
27 The amount of the State premium subsidy, if any, shall be reduced by any federal
28 premium subsidy provided. Funds appropriated under this section shall not revert to the
29 General Fund but shall remain in the Reserve for the purposes specified in this section.

30 **SECTION 2.2(b).** There is appropriated from the General Fund to the
31 Reserve the sum of \$ for the 2008-2009 fiscal year. These funds shall be used for claims
32 payment under the Pool based on the covered lives insured under the State Health Plan.

33 **SECTION 3.** Sections 2.1, 2.2(a) and 2.2(b) of this act become effective July
34 1, 2007. The remainder of this act is effective when it becomes law.
35 G.S. 58-50-290(b1), as enacted by Section 1.1 of this act, is repealed January 1, 2014.
36 Enrollment in the Pool shall commence no later than January 1, 2009.