

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H.B. 913
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HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH40540-MRa-19A (01/18)

Short Title: Reestablish NC High Risk Pool. (Public)

Sponsors: Representative Lewis.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO REESTABLISH A NORTH CAROLINA HEALTH INSURANCE HIGH RISK
3 POOL.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** It is the intent of the General Assembly to reestablish a North
6 Carolina Health Insurance High Risk Pool, should the provisions of Public Law 111-148, the
7 Patient Protection and Affordable Care Act, as amended, prohibiting denial of health insurance
8 benefit coverage due to a preexisting condition, be repealed. Further, it is the intent of the
9 General Assembly to appropriate funds to assist, in part, in offsetting the cost of premiums for
10 coverage available through a North Carolina Health Insurance High Risk Pool, upon its
11 creation, as well as to seek any federal funding that may be available for this purpose.

12 **SECTION 2.** Article 50 of Chapter 58 of the General Statutes is amended by
13 adding a new Part to read:

14 "Part 8. North Carolina Health Insurance High Risk Pool.

15 **"§ 58-50-400. Definitions.**

16 The following definitions apply in this Part:

- 17 (1) Administrator. – The Pool Administrator selected by the Executive Director
18 in accordance with this Part.
19 (2) Benefit plan. – The coverage offered by the Pool to eligible individuals.
20 (3) Board. – The Board of Directors of the Pool.
21 (4) Commissioner. – The Commissioner of Insurance of North Carolina or the
22 Commissioner's authorized designee.
23 (5) Covered person. – Any individual resident of this State, excluding
24 dependents, who is receiving or is eligible to receive medical care benefits
25 from any insurer.
26 (6) Creditable coverage. – Defined in G.S. 58-51-17.
27 (7) Dependent. – A resident spouse, a child under the age of 26 years, a child
28 who is over 18 years of age and for whom a person may be obligated to pay
29 child support, or a child of any age who is disabled and dependent upon the
30 parent or guardian.
31 (8) Executive Director. – The individual selected by a majority vote of the
32 Board members and hired to serve as the Executive Director of the Pool.
33 (9) Federally defined eligible individual. – The same meaning as the defined
34 term "eligible individual" in G.S. 58-68-60(b).
35 (10) Fund. – The North Carolina Health Insurance Risk Pool Fund.



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- 1 (11) Health insurance coverage. – Defined in G.S. 58-68-25(a)(5) but does not
2 include benefits described in G.S. 58-68-25(b).
- 3 (12) Insurance arrangement. – The plan, program, contract, or other arrangement
4 through which medical care is provided by an employer to its officers or
5 employees but does not include medical care covered through an insurer.
- 6 (13) Insured. – An individual who is eligible to receive benefits from the Pool.
- 7 (14) Insurer. – Any entity, other than the Pool, that provides medical care
8 benefits, including excess or stop-loss insurance, that covers medical care or
9 administers medical care on any individual in this State. For the purposes of
10 this Part, insurer includes all of the following:
- 11 a. An insurance company.
- 12 b. A hospital or medical service corporation.
- 13 c. A health maintenance organization.
- 14 d. A multiple employer welfare arrangement.
- 15 e. A third-party administrator or claims processor.
- 16 f. Any other nongovernmental entity providing a health benefit plan
17 subject to State insurance regulation.
- 18 Insurer does not include an entity to the extent the entity provides excepted
19 benefits as defined in G.S. 58-68-25(b).
- 20 (15) Medical care. – All of the following:
- 21 a. The diagnosis, cure, mitigation, treatment, or prevention of disease,
22 or amounts paid for the purpose of affecting any structure or function
23 of the body.
- 24 b. Transportation primarily for and essential to medical care referred to
25 in sub-subdivision a. of this subdivision.
- 26 c. Insurance covering medical care referred to in sub-subdivisions a.
27 and b. of this subdivision.
- 28 (16) Plan of Operation. – The articles, bylaws, and operating rules and procedures
29 adopted by the Board in accordance with this Part.
- 30 (17) Pool. – The North Carolina Health Insurance Risk Pool.
- 31 (18) Provider. – An individual or entity that provides medical care to individuals
32 residing in this State.
- 33 (19) Resident. – An individual who has legal status in the United States and who
34 meets at least one of the following qualifications:
- 35 a. Has been legally domiciled in this State for a period of at least 30
36 days, except that for a federally defined eligible individual, there
37 shall not be a 30-day requirement.
- 38 b. Is legally domiciled in this State on the date of application to the
39 Pool and who is eligible for enrollment in the Pool as a result of the
40 Health Insurance Portability and Accountability Act of 1996.
- 41 c. Is legally domiciled in this State on the date of application to the
42 Pool and is eligible for the credit for health insurance costs under
43 section 35 of the Internal Revenue Code of 1986.
- 44 (20) Trade Adjustment Assistance Program. – Title II of the Trade Act of 2002,
45 P.L. 107-210, as amended.

46 **"§ 58-50-401. Risk Pool established; board of directors; plan of operation.**

47 (a) There is hereby created a nonprofit entity to be known as the North Carolina Health
48 Insurance High Risk Pool. Notwithstanding that the Pool may be supported in whole or in part
49 from State funds, the Pool is not an instrumentality of the State. The Pool shall operate under
50 the supervision and control of the Board.

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

4 **(1)** One member who represents an insurer, as appointed by the Governor.

5 **(2)** Two members of the general public who are not employed by, or affiliated
6 with, an insurer or insurance plan, a hospital, or any other health care
7 provider and who can reasonably be expected to qualify for coverage in the
8 Pool. Members of the general public include individuals whose only
9 affiliation with health insurance or health care coverage is as a covered
10 member. The two members of the general public shall be appointed by the
11 General Assembly, as follows:

12 **a.** One member upon the recommendation of the President Pro
13 Tempore of the Senate.

14 **b.** One member upon the recommendation of the Speaker of the House
15 of Representatives.

16 **(3)** Eight members appointed by the Commissioner, as follows:

17 **a.** One insurer who sells individual health insurance policies.

18 **b.** One who represents the insurance industry, as recommended by the
19 insurer who covers the largest number of persons in the State.

20 **c.** One who is licensed to sell health insurance in this State.

21 **d.** Two who represent the medical provider community, one as
22 recommended by the North Carolina Medical Society and one as
23 recommended by the North Carolina Hospital Association.

24 **e.** One who represents business, as recommended by the North Carolina
25 Chamber.

26 **f.** One who represents small business, as recommended by the National
27 Federation of Independent Business.

28 **g.** One who is either a health policy researcher or a health economist
29 with experience relating to the operation of health insurance risk
30 pools.

31 **(c)** The initial appointments by the Governor and the General Assembly upon the
32 recommendation of the Speaker of the House of Representatives and the President Pro
33 Tempore of the Senate shall serve a term of three years. The initial appointments by the
34 Commissioner under sub-subdivisions a., b., and d. of subdivision (3) of subsection (b) of this
35 section shall be for a term of two years. The initial appointments by the Commissioner under
36 sub-subdivisions c., e., f., and g. of subdivision (3) of subsection (b) of this section shall be for
37 a term of one year. All succeeding appointments shall be for terms of three years. Members
38 shall not serve for more than three successive terms.

39 A Board member's term shall continue until the member's successor is appointed by the
40 original appointing authority. Vacancies shall be filled by the appointing authority for the
41 unexpired portion of the term in which they occur. A Board member may be removed by the
42 appointing authority for cause.

43 The Board shall meet at least quarterly upon the call of the chair. A majority of the total
44 membership of the Board shall constitute a quorum.

45 The Commissioner shall appoint a chair to serve for the initial two years of the Plan's
46 operation. Subsequent chairs shall be elected by a majority vote of the Board members and
47 shall serve for two-year terms. Board members shall receive travel allowances under
48 G.S. 138-5 when traveling to and from meetings of the Board or for official business of the
49 Pool but shall not receive any per diem under G.S. 138-5(a)(1).

50 **(d)** The Board shall submit to the Commissioner a Plan of Operation for the Pool and
51 any amendments necessary to assure the fair, reasonable, and equitable administration of the

1 Plan of Operation. The Plan of Operation shall become effective upon approval in writing by
2 the Commissioner. If the Board fails to submit a suitable Plan of Operation within 180 days
3 after the appointment of the Board, or at any time thereafter fails to submit suitable
4 amendments to the Plan of Operation, the Commissioner shall adopt temporary rules necessary
5 to effectuate the provisions of this section. The rules shall continue in force until modified by
6 the Commissioner or superseded by a Plan of Operation submitted by the Board and approved
7 by the Commissioner. The Plan of Operation shall do all of the following:

- 8 (1) Establish procedures for operation of the Pool.
 - 9 (2) Establish procedures for selecting a Pool Administrator in accordance with
10 G.S. 58-50-405.
 - 11 (3) Establish procedures to create a fund for administrative expenses, which
12 shall be managed by the Board.
 - 13 (4) Establish procedures for the collection, handling, disbursing, accounting, and
14 auditing of assets, monies, and claims of the Pool and the Pool
15 Administrator.
 - 16 (5) Develop and implement a program to publicize the existence of the Pool, the
17 eligibility requirements, procedures for enrollment, and availability of State
18 premium subsidies and to maintain public awareness of the Pool.
 - 19 (6) Establish procedures under which applicants and participants may have
20 grievances reviewed by a grievance committee appointed by the Executive
21 Director in accordance with G.S. 58-50-445.
 - 22 (7) Establish procedures for identifying and confirming income levels of
23 applicants for Pool coverage who are eligible to receive a State premium
24 subsidy, if a State premium subsidy is available.
 - 25 (8) Provide for other matters as may be necessary and proper for the execution
26 of the Executive Director's powers, duties, and obligations under this Part.
- 27 (e) The Pool shall have the general powers and authority granted under the laws of this
28 State to health insurers and the specific authority to do all of the following:
- 29 (1) Enter into contracts as are necessary or proper to carry out the provisions
30 and purposes of this Part, including the authority, with the approval of the
31 Executive Director acting upon the approval or authorization of the Board, to
32 enter into contracts with similar plans of other states for the joint
33 performance of common administrative functions or with persons or other
34 organizations for the performance of administrative functions.
 - 35 (2) Sue or be sued.
 - 36 (3) Take legal action as necessary to:
 - 37 a. Avoid the payment of improper claims against the Pool or the
38 coverage provided by or through the Plan.
 - 39 b. Recover any amounts erroneously or improperly paid by the Plan.
 - 40 c. Recover any amounts paid by the Pool as a result of mistake of fact
41 or law.
 - 42 d. Recover other amounts due the Pool.
 - 43 (4) Establish rates and rate schedules in accordance with this Part.
 - 44 (5) Provide premium subsidies for individuals with incomes up to three hundred
45 percent (300%) of the federal poverty guidelines where the Board deems it is
46 fiscally prudent to do so. Premium subsidies may come from the following
47 sources:
 - 48 a. Federal grants made to the Pool for premium subsidies.
 - 49 b. The Pool's own funds, not to exceed the amount of the most recent
50 year for which the Pool received a federal grant award under
51 sub-subdivision a. of this subdivision.

- 1 (6) Issue policies of insurance in accordance with the requirements of this Part.
2 (7) Appoint appropriate legal, actuarial, and other committees as necessary to
3 provide technical assistance in the operation of the Pool, policy, and other
4 contract design, and any other function within the Pool's authority.
5 (8) Establish policies, conditions, and procedures for reinsuring risks of
6 participating health insurers, as defined in G.S. 58-3-167(a)(2), desiring to
7 issue Pool coverage in their own names. Provision of reinsurance shall not
8 subject the Pool to any of the capital or surplus requirements, if any,
9 otherwise applicable to reinsurers.
10 (9) Employ and fix the compensation of employees.
11 (10) Prepare and distribute certificate of eligibility forms and enrollment
12 instruction forms to insurance producers and to the general public.
13 (11) Provide for reinsurance for the Pool.
14 (12) Issue additional types of health insurance policies to provide optional
15 coverage, including Medicare supplemental insurance coverage.
16 (13) Provide for and employ cost containment measures and requirements,
17 including preadmission screening, second surgical opinion, concurrent
18 utilization review, disease management, individual case management, health
19 and wellness programs, including a smoking cessation initiative, and other
20 commonly used benefit plan design features, for the purpose of making
21 health insurance coverage offered by the Pool more cost-effective.
22 (14) Design, utilize, contract, or otherwise arrange for the delivery of
23 cost-effective health care services, including establishing or contracting with
24 preferred provider organizations, health maintenance organizations, and
25 other limited network provider arrangements.
26 (15) Adopt bylaws, policies, and procedures as may be necessary or convenient
27 for the implementation of this Part and the operation of the Pool.
28 (16) Enter into contracts with the United States Department of Health and Human
29 Services to administer the federal high risk health insurance pool, if
30 established by the federal government.

31 (f) The Executive Director, with the approval of the Board, shall operate the Pool in a
32 manner so that the estimated cost of providing the benefit plans offered during any calendar
33 year is not anticipated to exceed the total income the Pool expects to receive from policy
34 premiums and other revenue available to the Pool. The Board may impose a cap on enrollment
35 or may suspend enrollment for an indefinite period if the Board finds that estimated costs are
36 anticipated to exceed income, except that any enrollment cap or suspension shall not apply to
37 federally defined eligible individuals who are eligible to enroll in the Pool pursuant to
38 G.S. 58-50-415(a)(6).

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

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

46 **"§ 58-50-405. Administrator.**

47 (a) The Executive Director, with the approval or authorization of the Board, shall select
48 through a competitive bidding process one or more insurers to administer the Pool. The
49 Executive Director shall evaluate bids submitted based on criteria established by the Board.
50 The criteria shall allow for the comparison of information about each bidding administrator and
51 selection of a Pool Administrator based on all of the following criteria, at a minimum:

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

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

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

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

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

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

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

33 **"§ 58-50-410. Risk Pool rates and policy forms.**

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

40 (b) The Pool shall determine the standard risk rate by considering the premium rates
41 charged by other insurers offering health insurance coverage to individuals. The standard risk
42 rate shall be established using reasonable actuarial techniques and shall reflect anticipated
43 experience and expenses for the coverage. Pool rates shall be one hundred thirty-five percent
44 (135%) to one hundred seventy-five percent (175%) of rates established as applicable for
45 individual standard rates and shall be adjusted annually, at the time of annual renewal.

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

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

7 (e) The Pool shall submit all premium rates and premium rate schedules and
8 amendments to the Commissioner for approval. The Pool shall not use any premium rates,
9 premium rate schedules, or amendments to the rates and schedules unless the Commissioner
10 has approved them. The Commissioner, in evaluating the premium rates and premium rate
11 schedules, shall consider the factors provided in this section. The Pool shall provide all
12 individuals enrolled in the Pool with at least 45 days' notice of any change in Pool premium
13 rates or premium rate schedules.

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

20 **"§ 58-50-415. Eligibility for Pool coverage.**

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

- 23 (1) A notice of rejection or refusal to issue substantially similar health insurance
24 coverage for health reasons by an insurer. A rejection or refusal by an
25 insurer offering only stop-loss, excess loss, or reinsurance coverage with
26 respect to the applicant is not sufficient evidence of eligibility.
- 27 (2) An offer to issue health insurance coverage only with a conditional rider that
28 limits coverage for the individual's high-risk medical condition.
- 29 (3) A refusal by an insurer to issue health insurance coverage except at a rate
30 exceeding the Pool rate.
- 31 (4) A diagnosis of the individual with one of the medical or health conditions
32 listed by the Board in accordance with this section. An individual diagnosed
33 with one or more of these conditions is eligible for Pool coverage without
34 applying for other health insurance coverage.
- 35 (5) Qualification as a federally defined eligible individual, whether or not
36 currently covered by an insurer under that qualification.
- 37 (6) An individual who is legally domiciled in this State and is eligible for the
38 credit for health insurance costs under the Trade Adjustment Assistance
39 Reform Act of 2002, section 35 of the Internal Revenue Code of 1986, as
40 amended. Each dependent of an individual who is eligible for Pool coverage
41 under this subdivision shall also be eligible for Pool coverage.
- 42 (7) The individual has current individual health insurance coverage at a rate
43 exceeding the Pool rate.
- 44 (8) The individual is eligible for and has not exhausted current Consolidated
45 Omnibus Budget Reconciliation Act (COBRA) continuation coverage at a
46 rate exceeding the Pool rate and provides evidence of eligibility for Pool
47 coverage under any of the subdivisions (1) through (4) of this subsection.

48 (b) The Board, upon recommendation of the Executive Director, shall adopt a list of
49 medical or health conditions for which a person shall be eligible for Pool coverage under
50 subdivision (4) of subsection (a) of this section. The Board may amend the list as the Board
51 considers appropriate.

1 (c) An individual is not eligible for coverage under the Pool if any of the following
2 applies:

3 (1) The individual has or obtains medical care benefits substantially similar to or
4 more comprehensive than the benefit plan offered by the Pool, or would be
5 eligible to have coverage if the person elected to obtain it, except that:

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

9 b. An individual may maintain Pool coverage for the period of time the
10 individual is satisfying a preexisting condition waiting period under
11 another health insurance policy intended to replace the Pool policy.

12 (2) The individual is determined to be eligible for enrollment in the State
13 Medical Assistance Plan or in Medicare, unless the Pool offers Medicare
14 supplemental insurance coverage.

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

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

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

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

32 (d) Coverage under the Pool shall cease under any of the following circumstances:

33 (1) An individual is no longer a resident of this State. Coverage shall cease on
34 the date the individual is no longer a resident of this State.

35 (2) An individual requests coverage to end.

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

37 (4) State law requires cancellation of the Pool policy.

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

41 (6) The individual has failed to make the payments required under this Part.

42 (7) The individual has performed an act or practice that constitutes fraud or
43 made an intentional misrepresentation of material fact under the terms of the
44 coverage.

45 (e) Except as provided in subsection (d) of this section, an individual who ceases to
46 meet the eligibility requirements of this section may be terminated at the end of the Pool policy
47 period for which the premiums have been paid.

48 **"§ 58-50-420. Unfair referral to Pool.**

49 It is an unfair trade practice under Article 63 of this Chapter and under Chapter 75 of the
50 General Statutes for an employer, an insurer, an insurance producer, as defined in
51 G.S. 58-33-10(7), or a third-party administrator to refer an individual employee to the Pool or

1 arrange for an individual employee to apply to the Pool for the purpose of separating that
2 employee from a group medical care benefit plan provided in connection with the employee's
3 employment. This section shall not prohibit an insurer or insurance producer from informing an
4 individual of other coverage options, including coverage provided by the Pool.

5 **"§ 58-50-425. Minimum Pool benefits.**

6 (a) The Pool shall offer at least two types of benefit plans for individuals eligible under
7 G.S. 58-50-415, including preferred provider organizations with different levels of deductibles
8 and cost-sharing, and at least one choice of a health savings account. The covered services and
9 benefit levels may vary between the types of benefit plans, but at least two types of benefit
10 plans must, at a minimum, cover the benefits and services outlined in the National Association
11 of Insurance Commissioners' Model Health Pool for Uninsurable Individuals Act and be
12 consistent with comprehensive coverage generally available to persons who are eligible for
13 individual health insurance other than Medicare. All benefit plans offered by the Pool shall
14 include disease or case management services.

15 (b) The Board, upon the recommendation of the Executive Director, shall adopt rules
16 regarding the lifetime limits and per individual combined coinsurance and deductibles for the
17 health insurance products offered by the Pool. The initial rules shall include not less than one
18 million dollars (\$1,000,000) lifetime limit and a combined annual limit of up to five thousand
19 dollars (\$5,000) per individual on coinsurance and deductibles. The Board, upon
20 recommendation of the Executive Director, shall adopt rules adjusting these limitations at least
21 once every five years to reflect changes in the medical component of the Consumer Price
22 Index. When adopting or adjusting lifetime limits, the Board may establish categories of
23 diseases that may be more seriously impacted by the lifetime limits than other diseases covered
24 under the Pool.

25 **"§ 58-50-430. Preexisting conditions.**

26 (a) Except as otherwise provided by law, Pool coverage shall exclude charges or
27 expenses incurred during the first six months following the effective date of coverage as to any
28 condition for which medical advice, care, or treatment was recommended or received as to such
29 conditions during the 12-month period immediately preceding the effective date of coverage,
30 except that no preexisting condition exclusion shall be applied to a federally defined eligible
31 individual or an individual who is eligible for the Pool under G.S. 58-50-415(a)(6).

32 (b) The period of any preexisting condition exclusion shall be reduced by the aggregate
33 of the periods of creditable coverage, if any, applicable as of the enrollment date. Credit for
34 having satisfied some or all of the preexisting condition waiting period under previous
35 creditable coverage shall be provided in accordance with G.S. 58-51-17.

36 **"§ 58-50-435. Nonduplication of benefits.**

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

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

47 **"§ 58-50-440. North Carolina Health Insurance High Risk Pool Fund.**

48 (a) The North Carolina Health Insurance High Risk Pool Fund is established and
49 consists of the following revenue:

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

1 (2) The revenue transferred to the Fund under G.S. 105-228.5B.

2 (3) Gifts, grants, and other appropriations.

3 (4) Any interest earned by the Fund.

4 (b) Disbursements from the Fund shall include the amounts required to pay the claims,
5 benefits, and administrative costs as may be determined by the Executive Director and the
6 Board.

7 (c) For the purposes of providing the funds necessary to carry out the powers and duties
8 of the Pool, the State Health Plan for Teachers and State Employees, and any successor of that
9 plan, shall pay an annual surcharge to the North Carolina Health Insurance High Risk Pool
10 Fund in the amount of one dollar and fifty cents (\$1.50) per member per year based on
11 enrollment of active employee Plan members and their dependents covered under the Plan.

12 **"§ 58-50-445. Complaint procedures.**

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

22 **"§ 58-50-450. Audit.**

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

25 **"§ 58-50-455. Taxation.**

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

27 **"§ 58-50-460. Rules.**

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

30 **"§ 58-50-465. Collective action.**

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

34 **"§ 58-50-470. Pool financing; Board reporting.**

35 (a) The Board shall monitor methods of financing the Pool to ensure a stable funding
36 source and allow for its continued operation. This monitoring shall include supplementary
37 sources of funding, such as funds obtained from public and private not-for-profit foundations,
38 or other appropriate and available State or non-State funds. The Board shall also review all of
39 the following on a regular basis:

40 (1) The number of individuals in this State who are uninsured as of a date
41 certain because of high-risk conditions.

42 (2) The number of uninsured individuals who would qualify for coverage under
43 the Pool based on G.S. 58-50-415 and its Plan of Operation.

44 (3) The cost of coverage under each of the health insurance plans developed by
45 the Board, including administrative costs.

46 (4) Methods for providing a premium subsidy on a sliding scale basis for
47 individuals with incomes up to three hundred percent (300%) of the federal
48 poverty guidelines.

49 (b) The Board shall report annually to the Joint Legislative Commission on
50 Governmental Operations and the Fiscal Research Division no later than March 1. The report
51 shall summarize the activities of the Pool in the preceding calendar year, including the net

1 written and earned premiums, benefit plan enrollment, the expense of administration, and the
2 paid and incurred losses. The report shall also include findings and recommendations
3 developed based upon the monitoring and review required by subsection (a) of this section."

4 **SECTION 3.** G.S. 105-228.5B reads as rewritten:

5 **"§ 105-228.5B. Distribution of part of tax proceeds to High Risk Pool.**

6 By November 1 of each year, the State Treasurer must transfer from the General Fund to
7 the North Carolina Health Insurance Risk Pool Fund established in ~~G.S. 58-50-225~~
8 G.S. 58-50-440 an amount equal to thirty percent (30%) of the growth in revenue from the tax
9 applied to gross premiums under G.S. 105-228.5(d)(2). The growth in revenue from this tax is
10 the difference between the amount of revenue collected during the preceding fiscal year on
11 premiums taxed under that subdivision less \$475,545,413, which is the amount of revenue
12 collected during fiscal year 2006-2007 on premiums taxed under that subdivision. The
13 Treasurer must draw the amount required under this section from revenue collected on
14 premiums taxed under that subdivision."

15 **SECTION 4.** G.S. 58-5-75(b) reads as rewritten:

16 "(b) This Part applies to all insurers that offer a health benefit plan and that provide or
17 perform utilization review pursuant to G.S. 58-50-61, the State Health Plan for Teachers and
18 State Employees, the North Carolina Health Insurance High Risk Pool, and any optional plans
19 or programs operating under Part 2 of Article 3A of Chapter 135 of the General Statutes. With
20 respect to second-level grievance review decisions, this Part applies only to second-level
21 grievance review decisions involving noncertification decisions."

22 **SECTION 5.** Article 3 of Chapter 58 of the General Statutes is amended by adding
23 a new section to read:

24 **"§ 58-3-277. Notice relating to the North Carolina Health Insurance High Risk Pool.**

25 (a) The following definitions apply in this section:

26 (1) Applicant. – Any person who seeks to contract for individual health
27 insurance coverage, including any dependent for which application is made
28 and about whom an independent underwriting decision is made by an
29 insurer.

30 (2) Health insurance coverage. – Defined in G.S. 58-50-175(10).

31 (3) Insurer. – Defined in 58-50-175(13).

32 (b) An insurer shall provide a written notice of the existence of the North Carolina
33 Health Insurance High Risk Pool to an applicant for individual health insurance coverage upon
34 the insurer making a determination that the applicant is eligible for coverage by the North
35 Carolina Health Insurance High Risk Pool as provided in subdivisions (1) or (2) of subsection
36 (a) of G.S. 58-50-415.

37 (c) The noticed required in subsection (b) of this section shall be provided to an
38 applicant no later than 10 business days after the insurer reaches a determination that the
39 applicant is eligible for coverage by the North Carolina Health Insurance High Risk Pool as
40 provided in subdivisions (1) or (2) of subsection (a) of G.S. 58-50-415."

41 **SECTION 6.** No later than March 1, 2018, the Department of Insurance shall
42 report to the Joint Legislative Commission on Governmental Operations on any recommended
43 changes to, funding requests for, or any other considerations regarding the North Carolina
44 Health Insurance High Risk Pool. The report shall contain any alternative high risk pool
45 options for consideration by the General Assembly based upon any guidance, regulations, rules,
46 or funding available for high risk pools from the federal government. The report shall contain
47 findings and recommendations, including any proposed legislation. There is appropriated from
48 the General Fund to the Department of Insurance the sum of fifty thousand dollars (\$50,000)
49 for the 2017-2018 fiscal year for the purposes of carrying out any research necessary to
50 complete the report required by this section.

1 **SECTION 7.** Sections 2, 3, 4, and 5 of this act are effective 90 days after the repeal
2 of section 2704 of Public Law 111-148, the Patient Protection and Affordable Care Act, as
3 amended, that prohibits preexisting condition exclusions or other discrimination based on
4 health status. No later than 30 days after the repeal of section 2704 of Public Law 11-148 has
5 taken place, the Department of Insurance shall certify to the Revisor of Statutes that the repeal
6 has occurred. In the certification, the Department of Insurance shall include the session law
7 number of this act. The remainder of this act becomes effective July 1, 2017.