

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007**

S

1

SENATE BILL 177

Short Title: Health Insurance Coverage/Risk Pool. (Public)

Sponsors: Senators Rand; Dalton and Purcell.

Referred to: Commerce, Small Business and Entrepreneurship.

February 15, 2007

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE ACCESS TO HEALTH INSURANCE COVERAGE TO
3 CERTAIN INDIVIDUALS THROUGH THE ESTABLISHMENT OF THE
4 NORTH CAROLINA HEALTH INSURANCE RISK POOL.

5 The General Assembly of North Carolina enacts:

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

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

9 **"§ 58-50-245. Definitions.**

10 For the purposes of this Part:

- 11 (1) "Administrator." – The Pool Administrator selected by the Executive
12 Director in accordance with this Part.
- 13 (2) "Benefit plan." – Coverage offered by the Pool to eligible individuals.
- 14 (3) "Board." – The Board of Directors of the Pool.
- 15 (4) "Commissioner." – The Commissioner of Insurance.
- 16 (5) "Covered person." – Any individual resident of this State, excluding
17 dependents, who is eligible to receive health benefits from any insurer.
- 18 (6) "Church plan." – The meaning given that term under section 3(33) of
19 the Employee Retirement Income Security Act of 1974.
- 20 (7) "Creditable coverage." – The same meaning as prescribed in
21 G.S. 58-68-30(c)(1).
- 22 (8) "Executive Director." – The individual selected by a majority vote of
23 the Board members and hired to serve as the Executive Director of the
24 Pool.
- 25 (9) "Federally defined eligible individual." – The same meaning as
26 "eligible individual" as prescribed in G.S. 58-68-60(b).
- 27 (10) "Governmental plan." – The same meaning as prescribed in
28 G.S. 58-68-60(h)(2).

- 1 (11) "Group health plan." – An employee welfare benefit plan as defined in
2 section 3(1) of the Employee Retirement Income Security Act of 1974
3 to the extent that the plan provides medical care, including items and
4 services paid for as medical care to employees as defined under the
5 terms of the plan directly or through insurance, reimbursement, or
6 otherwise.
- 7 (12) "Health insurance coverage." – The meaning prescribed in
8 G.S. 58-68-25(a)(5). Health insurance coverage does not include
9 benefits described in G.S. 58-68-25(b).
- 10 (13) "Insurance arrangement." – A plan, program, contract, or other
11 arrangement through which medical care services are provided by an
12 employer to its officers or employees but does not include medical
13 care services covered through an insurer.
- 14 (14) "Insured." – An individual who is eligible to receive benefits from the
15 Pool.
- 16 (15) "Insurer." – Any entity, other than the Pool, that provides health
17 insurance coverage in this State. For the purposes of this Part, insurer
18 includes:
- 19 a. An insurance company;
20 b. A hospital or medical service corporation;
21 c. A health maintenance organization;
22 d. A multiple employer welfare arrangement;
23 e. A third-party administrator or claims processor;
24 f. An administrative service organization;
25 g. The State Health Plan; and
26 h. Any other nongovernmental entity providing a health benefit
27 plan subject to State insurance regulation; and
- 28 (16) "Medical care." – Amounts paid for:
- 29 a. The diagnosis, cure, mitigation, treatment, or prevention of
30 disease, or amounts paid for the purpose of affecting any
31 structure or function of the body;
- 32 b. Transportation primarily for and essential to medical care
33 referred to in sub-subdivision a. of this subdivision; and
- 34 c. Insurance covering medical care referred to in sub-subdivisions
35 a. and b. of this subdivision.
- 36 (17) "Plan of Operation." – The articles, bylaws, and operating rules and
37 procedures adopted by the Board in accordance with this Part.
- 38 (18) "Pool." – The North Carolina Health Insurance Risk Pool.
- 39 (19) "Resident." – An individual who is in the country legally and who:
- 40 a. Has been legally domiciled in this State for a period of at least
41 30 days, except that for a federally defined eligible individual,
42 there shall not be a 30-day requirement;
- 43 b. Is legally domiciled in this State on the date of application to
44 the Pool and who is eligible for enrollment in the Pool as a

1 result of the Health Insurance Portability and Accountability
2 Act of 1996; or

3 c. Is legally domiciled in this State on the date of application to
4 the Pool and is eligible for the credit for health insurance costs
5 under section 35 of the Internal Revenue Code of 1986.

6 (20) "State Health Plan." – The Teachers' and State Employees'
7 Comprehensive Major Medical Plan as set forth in Parts 1, 2, and 3 of
8 Article 3 of Chapter 135 of the General Statutes.

9 (21) "Trade Adjustment Assistance Program."(TAA). – Title II of the Trade
10 Act of 2002, P.L. 107-210.

11 (22) "Trust Fund." – The North Carolina Health Insurance Risk Pool Trust
12 Fund.

13 **"§ 58-50-250. Risk Pool established; board of directors; plan of operation.**

14 (a) Risk Pool Established. – There is hereby created the North Carolina Health
15 Insurance Risk Pool. The Pool shall be established within the Department of
16 Administration for budgetary purposes only. The Pool shall operate under the
17 supervision and control of the Board.

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

21 (1) Three members appointed by the General Assembly upon the
22 recommendation of the President Pro Tempore of the Senate.

23 (2) Three members appointed by the General Assembly upon the
24 recommendation of the Speaker of the House of Representatives.

25 (3) Three members appointed by the Governor.

26 (4) Two members appointed by the Commissioner.

27 (c) Board; Terms of Appointment; Vacancies; Compensation. – The initial Board
28 members shall be appointed as follows: four of the members appointed by the General
29 Assembly shall serve a term of four years, and two shall serve a term of three years; the
30 members appointed by the Governor shall serve a term of two years; the members
31 appointed by the Commissioner shall serve a term of one year. Subsequent Board
32 members shall serve for terms of four years. A Board member's term shall continue until
33 the member's successor is appointed by the original appointing authority. The Governor
34 shall appoint a chair to serve for the initial two years of the Plan's operation. Subsequent
35 chairs shall be elected by a majority vote of the Board members and shall serve for
36 two-year terms. A Board member may be removed by the appointing authority for
37 cause. Board members shall receive travel allowances under G.S. 138-6 when traveling
38 to and from Board meetings, but shall not receive subsistence allowance or per diem
39 under G.S. 138-5.

40 (d) Plan of Operation. – The Executive Director shall submit to the Board a Plan
41 of Operation for the Pool and any amendments necessary or suitable to assure the fair,
42 reasonable, and equitable administration of the Plan of Operation. The Plan of
43 Operation shall become effective upon approval by the majority of the Board consistent
44 with the date on which the coverage under this Part must be made available. The

1 Executive Director shall submit a suitable Plan of Operation within 180 days after the
2 appointment of the Board. The Plan of Operation shall:

- 3 (1) Establish procedures for operation of the Pool.
- 4 (2) Establish procedures for selecting a Pool Administrator in accordance
5 with G.S. 58-50-255.
- 6 (3) Establish procedures to create a fund for administrative expenses,
7 which shall be managed by the Board.
- 8 (4) Establish procedures for the collection, handling, disbursing,
9 accounting, assessing, and auditing of assessments, assets, monies, and
10 claims of the Pool and the Pool Administrator.
- 11 (5) Develop and implement a program to publicize the existence of the
12 Pool, the eligibility requirements, procedures for enrollment, and
13 availability of State premium subsidies, and to maintain public
14 awareness of the Pool.
- 15 (6) Establish procedures under which applicants and participants may
16 have grievances reviewed by a grievance committee appointed by the
17 Executive Director in accordance with G.S. 58-50-295.
- 18 (7) Establish procedures for identifying and confirming income levels of
19 applicants for Pool coverage who are eligible to receive a State
20 premium subsidy, if a State premium subsidy is available.
- 21 (8) Provide for other matters as may be necessary and proper for the
22 execution of the Executive Director's powers, duties, and obligations
23 under this Part.

24 (e) The Pool shall have the general powers and authority granted under the laws
25 of this State to health insurers and the specific authority to do all of the following:

- 26 (1) Enter into contracts as are necessary or proper to carry out the
27 provisions and purposes of this Part, including the authority, with the
28 approval of the Executive Director in collaboration with the Board, to
29 enter into contracts with similar plans of other states for the joint
30 performance of common administrative functions or with persons or
31 other organizations for the performance of administrative functions.
- 32 (2) Sue or be sued, including taking any legal actions necessary or proper
33 to recover or collect assessments due the Pool.
- 34 (3) Take legal action as necessary to:
 - 35 a. Avoid the payment of improper claims against the Pool or the
36 coverage provided by or through the Plan.
 - 37 b. Recover any amounts erroneously or improperly paid by the
38 Plan.
 - 39 c. Recover any amounts paid by the Pool as a result of mistake of
40 fact or law.
 - 41 d. Recover other amounts due the Pool.
- 42 (4) Establish rates and rate schedules in accordance with this Part.
- 43 (5) Issue policies of insurance in accordance with the requirements of this
44 Part.

- 1 (6) Appoint appropriate legal, actuarial, and other committees as
2 necessary to provide technical assistance in the operation of the Pool,
3 policy, and other contract design, and any other function within the
4 Pool's authority.
- 5 (7) Establish policies, conditions, and procedures for reinsuring risks of
6 participating health insurers, as defined in G.S. 58-68-25(a), desiring
7 to issue Pool coverage in their own name. Provision of reinsurance
8 shall not subject the Pool to any of the capital or surplus requirements,
9 if any, otherwise applicable to reinsurers.
- 10 (8) Employ and fix the compensation of employees.
- 11 (9) Prepare and distribute certificate of eligibility forms and enrollment
12 instruction forms to insurance producers and to the general public.
- 13 (10) Provide for reinsurance of risks incurred by the Pool.
- 14 (11) Issue additional types of health insurance policies to provide optional
15 coverage, including Medicare supplemental insurance coverage.
- 16 (12) 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,
19 and other commonly used benefit plan design features for the purpose
20 of making health insurance coverage offered by the Pool more
21 cost-effective.
- 22 (13) Design, utilize, contract, or otherwise arrange for the delivery of
23 cost-effective health care services, including establishing or
24 contracting with preferred provider organizations, health maintenance
25 organizations, and other limited network provider arrangements.
- 26 (14) Adopt bylaws, policies, and procedures as may be necessary or
27 convenient for the implementation of this Part and the operation of the
28 Pool.
- 29 (15) Assess all insurers in accordance with G.S. 58-50-290.
- 30 (f) The Executive Director, with the approval of the Board, shall operate the Pool
31 in a manner so that the estimated cost of providing a benefit plan during any calendar
32 year is not anticipated to exceed the total income the Pool expects to receive from
33 policy premiums and other revenue available to the Pool.
- 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 and other statutory provisions addressing 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 insurers to administer the Pool. The
6 Executive Director shall evaluate bids submitted based on criteria established by the
7 Board. The criteria shall allow for the comparison of information about each bidding
8 administrator and selection of a Pool Administrator based on at least the following:

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

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

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

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

14 (5) Financial condition and stability.

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

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

25 (1) Verification of eligibility.

26 (2) Payment of claims.

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

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

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

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

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

40 **"§ 58-50-260. Risk Pool rates and policy forms.**

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

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

3 (b) The Pool shall determine the standard risk rate by considering the premium
4 rates charged by other insurers offering health insurance coverage to individuals. The
5 standard risk rate shall be established using reasonable actuarial techniques and shall
6 reflect anticipated experience and expenses for the coverage. Pool rates shall be not less
7 than one hundred seventy-five percent (175%) and not more than two hundred percent
8 (200%) of rates established as applicable for individual standard rates.

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

13 (d) Provider reimbursement rates under Pool coverage shall be limited to the
14 rates allowed for providers under the Medicare Program. The Board shall establish
15 reimbursement rates for services for which Medicare has not established an allowed
16 rate.

17 (e) The Pool shall submit all premium rates and premium rate schedules and
18 amendments thereto to the Commissioner for review. If the Commissioner disagrees
19 with the rates and rate schedules submitted by the Pool, the Commissioner may request
20 that the General Assembly make changes to the rates or rate schedules. The rates and
21 rate schedules shall become effective upon the Pool's submission to the Commissioner
22 for review. The Commissioner, in reviewing the rates and rate schedules, shall consider
23 the factors provided in this section. The Pool shall provide all individuals enrolled in the
24 Pool with at least 45 days' notice of any change in Pool rates or rate schedules.

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

30 **"§ 58-50-265. Eligibility for Pool coverage.**

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

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

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

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

43 (4) A diagnosis of the individual with one of the medical or health
44 conditions listed by the Board in accordance with this section. An

1 individual diagnosed with one or more of these conditions is eligible
2 for Pool coverage without applying for other health insurance
3 coverage;

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

9 (6) An individual who is legally domiciled in this State and is eligible for
10 the credit for health insurance costs under the Trade Adjustment
11 Assistance Reform Act of 2002, section 35 of the Internal Revenue
12 Code of 1986. An individual who qualifies under this subdivision may
13 elect to have dependent coverage under the Pool. As used in this
14 subsection, "dependent" means a resident spouse or unmarried child
15 under the age of 19 years, a child who is a student under the age of 23
16 years and who is financially dependent upon the child's parent or
17 guardian, or a child of any age who is disabled and dependent upon the
18 child's parent or guardian.

19 (b) The Board, upon recommendation of the Executive Director, shall adopt a list
20 of medical or health conditions for which a person shall be eligible for Pool coverage
21 without applying for health insurance pursuant to subsection (a) of this section. The
22 Board may amend the list as the Board considers appropriate.

23 (c) An individual is not eligible for coverage under the Pool if:

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

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

30 b. An individual may maintain Pool coverage for the period of
31 time the individual is satisfying a preexisting condition waiting
32 period under another health insurance policy intended to replace
33 the Pool policy.

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

36 (3) The individual has previously terminated Pool coverage unless 12
37 months have elapsed since the termination, except that this subdivision
38 shall not apply with respect to an applicant who is a federally defined
39 eligible individual or to an applicant eligible for or receiving benefits
40 under the Trade Adjustment Assistance Program.

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

1 (5) The individual's premiums are paid for or reimbursed under any
2 government-sponsored program or by any government agency or
3 health care provider, except as an otherwise qualifying full-time
4 employee of a government agency or health care provider. This
5 subdivision shall not apply for individuals receiving benefits under the
6 Trade Adjustment Assistance Program or to individuals receiving
7 premium subsidies made available by the State based on individual
8 income levels.

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

11 (d) Coverage under the Pool shall cease:

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

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

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

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

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

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

21 (e) Except as provided in subsection (d) of this section, an individual who ceases
22 to meet the eligibility requirements of this section may be terminated at the end of the
23 coverage period for which the premiums have been paid. The Board shall establish
24 guidelines for terminating coverage under this subsection, which guidelines shall
25 include notice to the covered individual of the termination and reasons therefor.

26 **"§ 58-50-270. Unfair referral to Pool.**

27 It is an unfair trade practice under Article 63 of this Chapter for an insurer, insurance
28 producer, as defined in G.S. 58-33-10(7), third-party administrator, or an employer to
29 refer an individual employee to the Pool or arrange for an individual employee to apply
30 to the Pool for the purpose of separating that employee from group health insurance
31 coverage provided in connection with the employee's employment or for the purpose of
32 separating an individual covered by health insurance offered in the individual market.
33 This section shall not prohibit an insurer or insurance producer from informing an
34 individual of other coverage options, including coverage provided by the Pool.

35 **"§ 58-50-275. Minimum Pool benefits.**

36 (a) The Pool shall offer at least two types of health insurance coverage for
37 individuals eligible under G.S. 58-50-265, including preferred provider organizations
38 with different levels of deductibles and cost-sharing, and at least one choice of a health
39 savings account. The covered services and benefit levels may vary between the types of
40 coverage, but at least two types of coverage must, at a minimum, cover the benefits and
41 services outlined in the National Association of Insurance Commissioners' (NAIC)
42 Model Health Pool for Uninsurable Individuals Act and be consistent with
43 comprehensive coverage generally available to persons who are eligible for health

1 insurance other than Medicare. All health insurance products offered by the Pool shall
2 include disease or case management services.

3 (b) Health insurance products offered by the Pool shall include not less than one
4 million dollars (\$1,000,000) lifetime limit and an annual limit of up to five thousand
5 dollars (\$5,000) per individual on coinsurance and deductible expenses. The Board,
6 upon recommendation of the Executive Director, shall adjust limitations at least once
7 every five years to reflect changes in the medical component of the Consumer Price
8 Index.

9 **"§ 58-50-280. Preexisting conditions.**

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

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

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

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

25 **"§ 58-50-285. Nonduplication of benefits.**

26 (a) The Pool shall be payor of last resort of benefits whenever any other benefit
27 or source of third-party payment is available. Benefits otherwise payable under
28 coverage shall be reduced by all amounts paid or payable through any other health
29 insurance coverage and by all hospital and medical expenses paid or payable under any
30 workers' compensation coverage, automobile medical payment, or liability insurance,
31 whether provided on the basis of fault or no-fault, and by any hospital or medical
32 benefits paid or payable under or provided pursuant to any State or federal law or
33 program.

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

38 **"§ 58-50-290. Assessments.**

39 (a) For the purposes of providing the funds necessary to carry out the powers and
40 duties of the Pool, and except as provided in subsection (c) of this section, the Pool shall
41 assess all insurers at such time and for such amounts as the Board finds necessary to
42 ensure effective and efficient operation of the Pool. Assessments shall be due in not less
43 than 30 days after prior written notice to the insurers and shall accrue interest at twelve
44 percent (12%) per annum on and after the due date. An insurer or other entity covering a

1 person in this State under a health benefit plan or other insurance arrangement is subject
2 to assessment under this section whether or not the insurer or other entity is located in
3 this State.

4 (b) Except with respect to special assessments authorized under this section, and
5 except as otherwise provided in subsection (c) of this section, the Pool shall assess each
6 insurer in an amount not to exceed two dollars (\$2.00) per covered individual insured,
7 or administered by an insurer per month. The assessment shall be based on actual or
8 expected losses, actuarially appropriate reserves, and administrative expenses in excess
9 of expected or collected premiums and federal loss reimbursements, if any, received by
10 the Pool. A special assessment may be made to cover only the additional losses of the
11 Pool that result or are expected to result from unanticipated circumstances. The special
12 assessment shall be based on actual or expected losses, actuarially appropriate reserves,
13 and unanticipated administrative expenses.

14 (b1) Effective until January 1, 2014, and except with respect to special
15 assessments authorized under this section, the Pool shall assess each insurer an amount
16 not to exceed the following limitations for each covered individual insured per month:

17 (1) Seventy cents (70¢) for the 2008-2009 calendar year.

18 (2) One dollar (\$1.00) for the 2009-2010 calendar year.

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

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

21 (5) Two dollars (\$2.00) for the 2012-2013 calendar year and all calendar
22 years thereafter.

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

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

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

41 (f) The Commissioner may suspend or revoke, after notice and hearing, the
42 license to transact insurance in this State of any insurer that fails to pay an assessment.
43 As an alternative, the Commissioner may levy a forfeiture on any insurer that fails to
44 pay an assessment when due. The forfeiture may not exceed five percent (5%) of the

1 unpaid assessment per month, but no forfeiture shall be less than one hundred dollars
2 (\$100.00) per month.

3 (g) The Health Insurance Program for Children (NC Health Choice) established
4 under Part 8 of Article 2 of Chapter 108A of the General Statutes, and administered
5 under Part 5 of Article 3 of Chapter 135 of the General Statutes, shall be subject to
6 assessment or special assessment under this Part only if federal law permits the
7 assessment, and additional federal funds are available for this purpose.

8 (h) The Board may collect the assessments and other amounts owing under this
9 Part annually or in periodic installments.

10 **"§ 58-50-291. Trust Fund created.**

11 (a) There is established in the State Treasurer's Office The North Carolina Health
12 Insurance Risk Pool Trust Fund. The State Treasurer may invest monies in the Trust
13 Fund as provided under G.S. 147-69.2 and G.S. 147-69.3.

14 All premiums, fees, charges, rebates, assessments, refunds, or any other receipts
15 including, but not limited to, earnings on investments, occurring or arising in connection
16 with the Pool, as established by this Article, shall be deposited into the Trust Fund.
17 Disbursements from the Trust Fund shall include any and all amounts required to pay
18 the claims, benefits, and administrative costs as may be determined by the Executive
19 Director and the Board.

20 (b) Disbursement from the Trust Fund may be made by warrant drawn on the
21 State Treasurer by the Executive Director, or the Executive Director and the Board may
22 by contract authorize the Administrator to draw the warrant.

23 **"§ 58-50-295. Complaint procedures.**

24 An applicant or participant in coverage from the Pool is entitled to have complaints
25 against the Pool reviewed by a grievance committee appointed by the Executive
26 Director. Members of the Board shall not serve on the grievance committee. The
27 grievance process shall comply with G.S. 58-50-62. The grievance committee shall
28 report to the Board after completion of the review of each complaint. The Executive
29 Director shall retain all written complaints regarding the Pool at least until the third
30 anniversary of the date the Pool received the complaint. Independent review of an
31 appeal decision upholding a noncertification or a second level grievance review
32 decision upholding a noncertification shall be subject to review pursuant to Part 4 of this
33 Article.

34 **"§ 58-50-300. Audit.**

35 An audit of the Pool shall be conducted annually under the oversight of the State
36 Auditor. The cost of the audit shall be reimbursed to the State Auditor from The North
37 Carolina Health Insurance Risk Pool Trust Fund.

38 **"§ 58-50-305. Taxation.**

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

40 **"§ 58-50-310. Rules.**

41 The Board may adopt rules, including temporary rules, to implement its duties under
42 this Part.

43 **"§ 58-50-315. Collective action.**

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

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

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

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

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

32 **SECTION 1.4.** The Executive Director of the North Carolina Health
33 Insurance Risk Pool shall study methods for encouraging healthy behaviors and report
34 its findings to the Board and to the General Assembly not later than one year after initial
35 implementation of the Pool.

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

40 **SECTION 1.6.** G.S. 120-70.111(a) reads as rewritten:

41 "(a) The Joint Legislative Health Care Oversight Committee shall review, on a
42 continuing basis, the provision of health care and health care coverage to the citizens of
43 this State, in order to make ongoing recommendations to the General Assembly on ways
44 to improve health care for North Carolinians. To this end, the Committee shall study the

1 delivery, availability, and cost of health care in North Carolina. The Committee shall
2 also review, on a continuing basis, the implementation of the State Health Insurance
3 Program for Children established under Part 8 of Article 2 of Chapter 108A of the
4 General Statutes. As part of its review, the Committee shall advise and consult with the
5 Department of Health and Human Services as provided under G.S. 108A-70.21. The
6 Committee shall review, on a continuing basis, the implementation of the North
7 Carolina Health Insurance Risk Pool established under Part 7 of Article 50 of Chapter
8 58 of the General Statutes. As part of its review, the Committee shall advise and consult
9 with the Executive Director of the North Carolina Health Insurance Risk Pool as
10 provided under G.S. 58-50-250. The Committee may also study other matters related to
11 health care and health care coverage in this State."

12 **SECTION 2.** There is appropriated from the General Fund to The North
13 Carolina Health Insurance High Risk Pool Trust Fund (Trust Fund) the sum of one
14 million dollars (\$1,000,000) for the 2007-2008 fiscal year. These funds may be used to
15 support reasonable expenses for personnel to carry out the Board's responsibilities under
16 the Pool and shall be allocated for the reasonable expenses of the Board in conducting
17 its duties under Section 1.1 of this act that are incurred on or before July 1, 2009. The
18 Trust Fund is subject to the Executive Budget Act, except that Article 3C of Chapter
19 143 of the General Statutes does not apply to G.S. 58-50-250(e).

20 Appropriation of the funds from the General Fund to the Trust Fund is
21 contingent upon successful application for and award of federal grant funds to
22 implement the Pool. Federal funds received for this purpose shall be deposited to the
23 Trust Fund. Upon receipt of the federal funds, the Board shall, from Trust Fund monies,
24 reimburse the General Fund in the amount of one million dollars (\$1,000,000). It is the
25 intent of the General Assembly that in the event the State is not awarded the federal
26 funds anticipated, the General Fund shall be held harmless.

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