

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 745\*

Short Title: N.C. Health Insurance Pool.

(Public)

Sponsors: Senators Odom; and Johnson of Wake.

Referred to: Insurance.

April 3, 1989

A BILL TO BE ENTITLED

AN ACT TO CREATE THE NORTH CAROLINA HEALTH INSURANCE POOL.

The General Assembly of North Carolina enacts:

Section 1. Chapter 58 of the General Statutes is amended by adding a new Article to read:

**“ARTICLE 51.**

**“NORTH CAROLINA HEALTH INSURANCE POOL.**

**“§ 58-790. Purpose.**

The purpose of this Article is to establish a mechanism through which adequate levels of health insurance coverages can be made available to residents of this State who are otherwise unable to obtain such coverage because of their health.

**“§ 58-791. Definitions.**

As used in this Article:

(1) ‘Benefits plan’ means the coverages to be offered by the Pool to eligible persons pursuant to G.S. 58-796.

(2) ‘Board’ means the Board of Directors of the Pool.

(3) ‘Health insurance’ means a hospital and medical expense-incurred policy, nonprofit hospital or medical service corporation contract, and health maintenance organization subscriber contract. The term does not include short term, accident, or credit insurance; coverage issued as a supplement to liability insurance; insurance arising out of a workers’ compensation or similar law; automobile medical payment insurance; or insurance under which benefits are payable with or

1 without regard to fault and that is statutorily required to be contained  
2 in any liability insurance policy or equivalent self-insurance.

3 (4) 'Health maintenance organization' means any person who undertakes  
4 to provide or arrange for one or more health plans and is regulated by  
5 Chapter 57B of the General Statutes.

6 (5) 'Insurance arrangement' means any plan, program, contract, or any  
7 other arrangement under which one or more employers, unions, or  
8 other organizations provide to their employees or members, either  
9 directly or indirectly through a trust or third party administrator, health  
10 care services or benefits other than through an insurer.

11 (6) 'Insured' means any individual resident of this State who is eligible to  
12 receive benefits from any insurer or insurance arrangement as defined  
13 in this section.

14 (7) 'Insurer' means any insurance company licensed to write health  
15 insurance in this State; any hospital, medical, or dental service  
16 corporation formed under Chapter 57 of the General Statutes; health  
17 maintenance organizations formed under Chapter 57B of the General  
18 Statutes; and all other health benefit providers not regulated by any  
19 other State or federal agency.

20 (8) 'Medicare' means coverage under both Parts A and B of Title XVIII of  
21 the Social Security Act, 42 U.S.C. §1395 et seq., as amended.

22 (9) 'Member' means each insurer and insurance arrangement participating  
23 in the Pool.

24 (10) 'Plan' means the plan of operation of the Pool, including articles,  
25 bylaws, and operating rules, adopted by the Board pursuant to G.S. 58-  
26 793.

27 (11) 'Pool' means the North Carolina Health Insurance Pool created in G.S.  
28 58-792.

29 **"§ 58-792. Creation and operation of the Pool.**

30 (a) There is created a nonprofit entity to be known as the North Carolina Health  
31 Insurance Pool. All insurers issuing health insurance in this State and all insurance  
32 arrangements providing health plan benefits in this State on and after January 1, 1990,  
33 shall be members of the Pool, except as otherwise provided for in this Article. The Pool  
34 shall be governed by the Board.

35 (b) The Commissioner shall, within 90 days after January 1, 1990, give notice to  
36 all insurers and insurance arrangements of the time and place for the initial  
37 organizational meetings of the Board. The Commissioner shall appoint the Board  
38 members, all of whom shall serve at the pleasure of the Commissioner. The Board shall  
39 at all times, to the extent possible, include representatives from at least one domestic  
40 and one foreign insurance company licensed to write health insurance in this State; one  
41 domestic nonprofit hospital, medical, or dental service plan; one health maintenance  
42 organization; one third party administrator; one licensed health insurance agent; the  
43 Commissioner; and one member of the general public who is not associated with the  
44 medical profession, a hospital, or an insurer.

1       (c) The Board shall submit to the Commissioner a Plan for the Pool and any  
2 amendments thereto necessary or suitable to assure the fair, reasonable, and equitable  
3 administration of the Pool. The Commissioner shall, after notice and hearing, approve  
4 the Plan; provided such is determined to be suitable to assure the fair, reasonable, and  
5 equitable administration of the Pool, and provides for the sharing of Pool gains or losses  
6 on an equitable, proportionate basis. The Plan shall become effective upon approval in  
7 writing by the Commissioner consistent with the date on which the coverage under this  
8 Article must be made available. If the Board fails to submit a Plan within 190 days after  
9 its creation, or at any time thereafter fails to submit suitable amendments to the Plan, the  
10 Commissioner shall, after notice and hearing, adopt and promulgate such reasonable  
11 rules as are necessary or advisable to effectuate the provisions of this Article. Such  
12 rules shall continue in force until modified by the Commissioner or superseded by a  
13 Plan submitted by the Board and approved by the Commissioner.

14       (d) In its Plan the Board shall:

- 15           (1) Establish procedures for the handling and accounting of assets and  
16 monies of the Pool;
- 17           (2) Establish procedures for the collection of assessments from all  
18 members to provide for claims paid under the Plan and for  
19 administrative expenses incurred or estimated to be incurred during the  
20 period for which the assessment is made. The level of payments shall  
21 be established by the Board pursuant to G.S. 58-795. Assessments  
22 shall occur at the end of each calendar year, and are due and payable  
23 within 30 days of receipt of an assessment notice;
- 24           (3) Develop and implement a program to publicize the existence of the  
25 Plan, the eligibility requirements, and procedures for enrollment; and  
26 to maintain public awareness of the Plan.

27       (e) The Board and Pool shall have the general powers and authority granted  
28 under the laws of this State to insurance companies licensed to transact the health  
29 insurance and the specific authority to:

- 30           (1) Enter into contracts as are necessary or proper to carry out the  
31 provisions and purposes of this Article; including the authority, with  
32 the approval of the Commissioner, to enter into contracts with similar  
33 pools of other states for the joint performance of common  
34 administrative functions, or with persons or other organizations for the  
35 performance of administrative functions.
- 36           (2) Sue or be sued, including taking any legal actions necessary or proper  
37 for recovery of any assessments for, on behalf of, or against Pool  
38 members.
- 39           (3) Take such legal action as necessary to avoid the payment of improper  
40 claims against the Pool or the coverage provided by or through the  
41 Pool.
- 42           (4) Establish appropriate rates, rate schedules, rate adjustments, expense  
43 allowances, agents' referral fees, claim reserve formulas, and any other  
44 actuarial function appropriate to the operation of the Pool. Rates shall

1 not be unreasonable in relation to the coverage provided, the risk  
2 experience, and expenses of providing the coverage. Rates and rate  
3 schedules may be adjusted for appropriate approved risk factors.

4 (5) Assess members of the Pool in accordance with the provisions of this  
5 section; and make advance interim assessments as may be reasonable  
6 and necessary for the organizational and interim operating expenses.  
7 Any such interim assessments to be credited as offsets against any  
8 regular assessments due following the close of the fiscal year.

9 (6) Issue policies of health insurance in accordance with the requirements  
10 of this Article.

11 (7) Appoint from among Pool members appropriate legal, actuarial, and  
12 other committees as necessary to provide technical assistance in the  
13 operation of the Pool, policy and other contract design, and any other  
14 function within the authority of the Pool.

15 **"§ 58-793. Eligibility.**

16 (a) Any individual who is a resident of this State is eligible for Pool coverage if:

17 (1) Such individual has proof of rejection by at least one insurer of  
18 coverage at levels and rates no less favorable than those provided in  
19 this Article; or

20 (2) Such individual is a member of an employer group of 25 individuals or  
21 less and the individual has proof of rejection of the group by at least  
22 one insurer of coverage at prevailing rates for such group.

23 (b) The following individuals are not eligible for Pool coverage:

24 (1) Persons who have on the date of issue of coverage by the Pool,  
25 coverage under health insurance or an insurance arrangement;

26 (2) Any person who, is at the time of Pool application, eligible for health  
27 care benefits under State Medicaid law;

28 (3) Any person who has terminated coverage in the Pool unless 12 months  
29 have lapsed since such termination;

30 (4) Any person on whose behalf the Pool has paid out one million dollars  
31 (\$1,000,000) in benefits;

32 (5) Inmates of public institutions and persons eligible for public programs.

33 (c) Any person whose health insurance coverage is involuntarily terminated for  
34 any reason other than nonpayment of premium and who is not eligible for continuation  
35 or conversion may apply for coverage in the Pool. If such coverage is applied for  
36 within 45 days after the involuntary termination and if premiums are paid for the entire  
37 coverage period, the effective date of the coverage shall be the date of termination of the  
38 previous coverage.

39 (d) Any individual who ceases to meet the eligibility requirements of this section  
40 may be terminated at the end of the policy period.

41 **"§ 58-794. Administrator.**

42 (a) The Board shall, subject to the approval of the Commissioner, select an  
43 insurer or insurers through a competitive bidding process to administer the Pool. The

1 Board shall evaluate bids submitted based on criteria established by the Board, which  
2 shall include:

3 (1) The insurer's proven ability to handle individual accident and health  
4 insurance;

5 (2) The efficiency of the insurer's claim paying procedures;

6 (3) An estimate of total charges for administering the Plan; and

7 (4) The insurer's ability to administer the Pool in a cost-efficient manner.

8 (b) The administrator shall serve for a period of three years subject to removal  
9 for cause.

10 (c) At least one year prior to the expiration of each three-year period of service  
11 by an administrator, the Board shall invite all insurers, including the current  
12 administrator, to submit bids to serve as the administrator for the succeeding three-year  
13 period. Selection of the administrator for the succeeding period shall be made at least  
14 six months prior to the end of the current three-year period.

15 (d) The administrator shall perform all eligibility and administrative claims  
16 payment functions relating to the Pool.

17 (e) The administrator shall establish a premium billing procedure for collection  
18 of premiums from insured persons. Billings shall be made on a periodic basis as  
19 determined by the Board.

20 (f) The administrator shall perform all necessary functions to assure timely  
21 payment of benefits to covered persons under the Pool including:

22 (1) Making available information relating to the proper manner of  
23 submitting a claim for benefits to the Pool and distributing forms upon  
24 which submittal shall be made;

25 (2) Evaluating the eligibility of each claim for payment by the Pool.

26 (g) The administrator shall submit regular reports to the Board and to the  
27 Commissioner regarding the operation of the Pool. The frequency, content, and form of  
28 the report shall be determined by the Commissioner;

29 (h) Following the close of each fiscal year, the administrator shall determine net  
30 written and earned premiums, the expense of administration, and the paid and incurred  
31 losses for the year; and report this information to the Board and the Commissioner on a  
32 form prescribed by the Commissioner;

33 (i) The administrator shall be paid as provided in the Plan for its expenses  
34 incurred in the performance of its services.

35 **§ 58-795. Assessments.**

36 (a) Following the close of each fiscal year, the administrator shall determine the  
37 net premiums (premiums less reasonable administrative expense allowances), the Pool  
38 expenses of administration, and the incurred losses for the year, taking into account  
39 investment income and other appropriate gains and losses. Health insurance premiums  
40 and benefits paid by an insurance arrangement that are less than an amount determined  
41 by the Board to justify the cost of collection shall not be considered for purposes of  
42 determining assessments.

43 (b) Each insurer's assessment shall be determined by multiplying the total cost of  
44 Pool operation by a fraction, the numerator of which equals that insurer's premium or

1 subscriber contract charges for health insurance written in the State during the preceding  
2 calendar year; and the denominator of which equals the total of all premiums, subscriber  
3 contract charges written in the State, and one hundred ten percent (110%) of all claims  
4 paid by insurance arrangements in the State during the preceding calendar year.

5 (c) Each insurance arrangement's assessment shall be determined by multiplying  
6 the total cost of Pool operation by a fraction, the numerator of which equals one  
7 hundred ten percent (110%) of the benefits paid by that insurance arrangement on  
8 behalf of insureds in this State during the preceding calendar year; and the denominator  
9 of which equals the total of all premiums, subscriber contract charges, and one hundred  
10 ten percent (110%) of all benefits paid by insurance arrangements made on behalf of  
11 insureds in this State during the preceding calendar year. Insurance arrangements shall  
12 report to the Board claims payments made in this State on an annual basis on a form  
13 prescribed by the Commissioner.

14 (d) If assessments exceed actual losses and administrative expenses of the Pool,  
15 the excess shall be held at interest and used by the Board to offset future losses or to  
16 reduce Pool premiums. As used in this subsection, 'future losses' includes reserves for  
17 incurred but not reported claims.

18 (e) Each member's proportion of participation in the Pool shall be determined  
19 annually by the Board based on annual statements and other reports deemed necessary  
20 by the Board and filed by the member with the Board.

21 (f) Any deficit incurred by the Pool shall be recouped by assessments  
22 apportioned under subsection (a) of this section by the Board among members.

23 (g) The Board may abate or defer, in whole or in part, the assessment of a  
24 member if, in the opinion of the Board, payment of the assessment would endanger the  
25 ability of the member to fulfill its contractual obligations. In the event an assessment  
26 against a member is abated or deferred in whole or in part, the amount by which such  
27 assessment is abated or deferred may be assessed against the other members in a manner  
28 consistent with the basis for assessments set forth in this section. The member receiving  
29 such abatement or deferment shall remain liable to the Pool for the deficiency for four  
30 years.

31 (h) Every insurer or any health benefit provider not regulated by any other State  
32 or federal agency shall share in the gains or losses of the Pool, but may avoid Pool  
33 liability by offering in a publicized fashion or at least one month each year comparable  
34 coverage at a rate or price no less favorable and qualifications no more restrictive than  
35 provided by G.S. 58-796.

36 **"§ 58-796. Minimum benefits; availability.**

37 (a) The Pool shall offer major medical expense coverage to every eligible person  
38 who is not eligible for Medicare. Major medical expense coverage offered by the Pool  
39 shall pay an eligible person's covered expenses, subject to limits on the deductible and  
40 coinsurance payments authorized under subdivision (d)(3) of this section, up to a  
41 lifetime limit on one million dollars (\$1,000,000) per covered individual. The  
42 maximum limit under this section shall not be altered by the Board, and no actuarial  
43 equivalent benefit may be substituted by the Board.

1       (b) Covered expenses shall be the prevailing charge in the locality for the  
2 following services and articles when prescribed by a physician and determined by the  
3 Pool to be medically necessary:

- 4           (1) Hospital services;
- 5           (2) Professional services for the diagnosis or treatment of injuries,  
6 illnesses, or conditions, other than mental or dental, that are rendered  
7 by a physician, or by other licensed professionals at his direction;
- 8           (3) Drugs and medical supplies requiring a physician's prescription;
- 9           (4) Services of a licensed skilled nursing facility for not more than 120  
10 days during a policy year;
- 11           (5) Services of a home health agency up to a maximum of 270 services per  
12 year;
- 13           (6) Use of radium or other radioactive materials;
- 14           (7) Oxygen;
- 15           (8) Anesthetic;
- 16           (9) Prostheses other than dental;
- 17           (10) Rental of durable medical equipment, other than eyeglasses and  
18 hearing aids, for which there is no personal use in the absence of the  
19 conditions for which is prescribed;
- 20           (11) Diagnostic X rays and laboratory tests;
- 21           (12) Oral surgery for excision of partially or completely unerupted,  
22 impacted teeth or the gums and tissues of the mouth when not  
23 performed in connection with the extraction or repair of teeth;
- 24           (13) Services of a physical therapist;
- 25           (14) Transportation provided by a licensed ambulance or emergency  
26 medical or rescue service to the nearest facility qualified to treat the  
27 condition;
- 28           (15) Services for diagnosis and treatment of mental and nervous disorders;  
29 provided that an insured shall be required to make a fifty percent  
30 (50%) copayment, and that the payment by the Pool shall not exceed  
31 four thousand dollars (\$4,000) for outpatient psychiatric treatment.

32       (c) Covered expenses do not include the following:

- 33           (1) Any charge for treatment for cosmetic purposes other than surgery for  
34 treatment for the repair or treatment of an injury or a congenital bodily  
35 defect to restore normal bodily functions;
- 36           (2) Care that is primarily for custodial or domiciliary purposes;
- 37           (3) Any charge for confinement in a private room to the extent it is in  
38 excess of the institution's charge for its most common semiprivate  
39 room, unless a private room is prescribed as medically necessary by a  
40 physician;
- 41           (4) That part of any charge for services rendered or articles prescribed by  
42 a physician, dentist, or other health care provider that exceeds the  
43 prevailing charge in the locality or for any charge not medically  
44 necessary;

- 1           (5) Any charge for services or articles, the provision of which is not within  
2 the scope of authorized practice of the institution or individual  
3 providing the services or articles;  
4           (6) Any expense incurred prior to the effective date of coverage by the  
5 Pool for the person on whose behalf the expense is incurred;  
6           (7) Dental care except as provided in subdivision (b)(12) of this section;  
7           (8) Eyeglasses and hearing aids;  
8           (9) Illness or injury due to acts of war;  
9           (10) Services of blood donors and any fee for failure to replace the first  
10 three pints of blood provided to an eligible person each policy year;  
11           (11) Personal supplies or services provided by a hospital or nursing home,  
12 or any other nonmedical or nonprescribed supply or service.

13           (d) Premiums charged for coverages issued by the Pool may not be unreasonable  
14 in relation to the benefits provided, the risk experience, and the reasonable expenses of  
15 providing the coverage.

16           (e) The Board shall determine the standard risk rate by calculating the average  
17 individual standard rate charged by the five largest insurers offering coverages in the  
18 State comparable to the Pool coverage. In the event five insurers do not offer  
19 comparable coverage, the standard risk rate shall be established using reasonable  
20 actuarial techniques and shall reflect anticipated experience and expenses for such  
21 coverage. Initial rates for Pool coverage shall not be more than one hundred fifty  
22 percent (150%) of rates established as applicable for individual standard risks.  
23 Subsequent rates shall be established to provide fully for the expected costs of claims  
24 including recovery of prior losses, expenses of operation, investment income of claim  
25 reserves, and any other cost factors subject to the limitations described in this section.  
26 In no event shall Pool rates exceed one hundred seventy-five percent (175%) of rates  
27 applicable to individual standard risks. All rates and rate schedules shall be submitted  
28 to the Commissioner for approval.

29           (f) The Pool coverage defined in this section shall provide a choice of  
30 deductibles of either five hundred dollars (\$500.00), one thousand dollars (\$1,000), or  
31 any other amount determined by the Board, per annum per individual; and coinsurance  
32 of twenty percent (20%), such coinsurance and deductibles in the aggregate not to  
33 exceed three thousand five hundred dollars (\$3,500) per individual nor five thousand  
34 dollars (\$5,000) per family per annum. The deductibles and coinsurance factors may be  
35 adjusted annually according to the Medical Component of the Consumer Price Index,  
36 with the Commissioner's approval.

37           (g) Pool coverage shall exclude charges or expenses incurred during the first six  
38 months following the effective date of coverage as to any condition, which during the  
39 six-month period immediately preceding the effective date of coverage, (1) has  
40 manifested itself in such a manner as would cause an ordinarily prudent person to seek  
41 diagnosis, care, or treatment; or (2) for which medical advice, care, or treatment was  
42 recommended or received. Such preexisting condition exclusions shall be waived to the  
43 extent to which similar exclusions, if any, have been satisfied under any prior health  
44 insurance coverage that was involuntarily terminated; provided, that application for



1 Pool coverage is made not later than 45 days following such involuntary termination  
2 and, in such case, coverage in the Pool shall be effective from the date on which such  
3 prior coverage was terminated.

4 (h) Benefits otherwise payable under Pool coverage shall be reduced by all  
5 amounts paid or payable through any other health insurance, or insurance arrangement,  
6 and by all hospital and medical expense benefits paid or payable under any workers'  
7 compensation coverage, automobile medical payment or liability insurance, whether  
8 provided on the basis of fault or nonfault, and by any hospital or medical benefits paid  
9 or payable under or provided pursuant to any State or federal law or program except  
10 Medicaid.

11 (i) The insurer or the Pool has a cause of action against an eligible person for the  
12 recovery of the amount of benefits paid that are not covered expenses. Benefits due  
13 from the Pool may be reduced or refused as a setoff against any amount recoverable  
14 under this subsection.

15 **"§ 58-797. Collective action.**

16 Neither the participation in the Pool as members, the establishment of rates, forms,  
17 or procedures; nor any other joint or collective action required by this Article shall be  
18 the basis of any legal action, criminal or civil liability, or penalty against the Pool or any  
19 of its members.

20 **"§ 58-798. Plan notice.**

21 On and after the date that the Pool becomes operational, every insurer licensed in  
22 this State shall include a notice of the existence of the Pool in any rejection of any  
23 application for health insurance coverage, which rejection was made for reasons of the  
24 health of the applicant.

25 **"§ 58-799. Taxation.**

26 The Pool is exempt from all taxes."

27 Sec. 2. In the event any provision of this act is held to be invalid by any court  
28 of competent jurisdiction, the court's holding as to that provision shall not affect the  
29 validity or operation of other provisions of this act; and to that end the provisions of this  
30 act are severable.

31 Sec. 3. This act shall become effective January 1, 1990.