

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007**

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HOUSE BILL 265

Short Title: Establish High-Risk Pool. (Public)

Sponsors: Representatives Insko, Holliman, England, Underhill (Primary Sponsors); Alexander, Barnhart, Bell, Brown, Carney, Coleman, Dickson, Dockham, Dollar, Earle, Faison, Farmer-Butterfield, Fisher, Glazier, Hall, J. Harrell, Harrison, Johnson, Justus, Lewis, Love, Lucas, Luebke, Martin, McAllister, McGee, McLawhorn, Moore, Pate, Rapp, Ray, Saunders, Setzer, Spear, Starnes, Tarleton, Tucker, Wainwright, Walend, Walker, E. Warren, Weiss, Wiley, Wilkins, Williams, Womble, Wray, Wright, and Yongue.

Referred to: Health, if favorable, Insurance.

February 20, 2007

A BILL TO BE ENTITLED

1 AN ACT TO ESTABLISH THE NORTH CAROLINA HEALTH INSURANCE RISK
2 POOL.
3

4 The General Assembly of North Carolina enacts:

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

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

8 **"§ 58-50-245. Definitions.**

9 For the purposes of this Part:

- 10 (1) "Administrator" means the Pool Administrator selected by the
11 Executive Director in accordance with this Part.
12 (2) "Benefit plan" means coverage offered by the Pool to eligible
13 individuals.
14 (3) "Board" means the Board of Directors of the Pool.
15 (4) "Commissioner" means the Commissioner of Insurance.
16 (5) "Covered person" means any individual resident of this State,
17 excluding dependents, who is eligible to receive medical care benefits
18 from any insurer.
19 (6) "Creditable coverage" has the same meaning as prescribed in
20 G.S. 58-68-30(c)(1).
21 (7) "Dependent" means a resident spouse, an unmarried child under the
22 age of 19 years, a child who is a full-time student under the age of 23

- 1 years and who is financially dependent upon the parent or guardian, a
2 child who is over 18 years of age and for whom a person may be
3 obligated to pay child support, or a child of any age who is disabled
4 and dependent upon the parent or guardian.
- 5 (8) "Executive Director" means the individual selected by a majority vote
6 of the Board members and hired to serve as the Executive Director of
7 the Pool.
- 8 (9) "Federally defined eligible individual" has the same meaning as
9 "eligible individual" as prescribed in G.S. 58-68-60(b).
- 10 (10) "Health insurance coverage" shall have the same meaning as
11 prescribed in G.S. 58-68-25(a)(5). Health insurance coverage does not
12 include benefits described in G.S. 58-68-25(b).
- 13 (11) "Insurance arrangement" means a plan, program, contract, or other
14 arrangement through which medical care is provided by an employer
15 to its officers or employees but does not include medical care covered
16 through an insurer.
- 17 (12) "Insured" means an individual who is eligible to receive benefits from
18 the Pool.
- 19 (13) "Insurer" means any entity, other than the Pool, that provides medical
20 care benefits including, but not limited to, excess or stop-loss
21 insurance that covers medical care or administers medical care on any
22 individual in this State. For the purposes of this Part, insurer includes:
- 23 a. An insurance company;
24 b. A hospital or medical service corporation;
25 c. A health maintenance organization;
26 d. A multiple employer welfare arrangement;
27 e. A third-party administrator or claims processor;
28 f. The State Health Plan; and
29 g. Any other nongovernmental entity providing a health benefit
30 plan subject to State insurance regulation.
- 31 (14) "Medical care" means:
- 32 a. The diagnosis, cure, mitigation, treatment, or prevention of
33 disease, or amounts paid for the purpose of affecting any
34 structure or function of the body;
35 b. Transportation primarily for and essential to medical care
36 referred to in sub-subdivision a. of this subdivision; and
37 c. Insurance covering medical care referred to in sub-subdivisions
38 a. and b. of this subdivision.
- 39 (15) "Plan of Operation" means the articles, bylaws, and operating rules
40 and procedures adopted by the Board in accordance with this Part.
- 41 (16) "Pool" means the North Carolina Health Insurance Risk Pool.
- 42 (17) "Provider" means an individual or entity that provides medical care to
43 individuals residing in this State.
- 44 (18) "Resident" means an individual who is in the country legally and who:

- 1 a. Has been legally domiciled in this State for a period of at least
2 30 days, except that for a federally defined eligible individual,
3 there shall not be a 30-day requirement;
4 b. Is legally domiciled in this State on the date of application to
5 the Pool and who is eligible for enrollment in the Pool as a
6 result of the Health Insurance Portability and Accountability
7 Act of 1996; or
8 c. Is legally domiciled in this State on the date of application to
9 the Pool and is eligible for the credit for health insurance costs
10 under section 35 of the Internal Revenue Code of 1986.

11 (19) "Reserve" means the Reserve for the North Carolina Health Insurance
12 Risk Pool.

13 (20) "State Health Plan" means the Teachers' and State Employees'
14 Comprehensive Major Medical Plan as set forth in Parts 1, 2, and 3 of
15 Article 3 of Chapter 135 of the General Statutes.

16 (21) "Trade Adjustment Assistance Program" (TAA) means Title II of the
17 Trade Act of 2002, P.L. 107-210.

18 **"§ 58-50-250. Risk Pool established; board of directors; plan of operation.**

19 (a) High-Risk Pool Established. – There is hereby created a nonprofit entity to be
20 known as the North Carolina Health Insurance Risk Pool. The Pool shall operate under
21 the supervision and control of the Board.

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

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

26 (2) Two members of the general public who are not employed by or
27 affiliated with an insurance company or plan, group hospital, or other
28 health care provider and can reasonably be expected to qualify for
29 coverage in the Pool. Members of the general public include
30 individuals whose only affiliation with health insurance or health care
31 coverage is as a covered member. The two members of the general
32 public shall be appointed by the General Assembly, as follows:

33 a. One member upon the recommendation of the President Pro
34 Tempore of the Senate.

35 b. One member upon the recommendation of the Speaker of the
36 House of Representatives.

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

38 a. One insurer who sells individual health insurance policies.

39 b. One who represents the insurance industry, as recommended by
40 the insurer who covers the largest number of persons in the
41 State.

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

- 1 d. Two who represent the medical provider community, one as
2 recommended by the North Carolina Medical Society and one
3 as recommended by the North Carolina Hospital Association.
4 e. One who represents business, as recommended by the North
5 Carolina Citizens for Business and Industry.
6 f. One who represents small business, as recommended by the
7 National Federation of Independent Business.
8 g. One who is either a health policy researcher or a health
9 economist with experience relating to the operation of high-risk
10 insurance pools.

11 (c) Board; Terms of Appointment; Vacancies; Compensation. – The initial Board
12 members shall be appointed as follows: three of the members to serve a term of three
13 years; four of the members to serve a term of one year; and four of the members to serve
14 a term of two years. Subsequent Board members shall serve for terms of three years. A
15 Board member's term shall continue until the member's successor is appointed by the
16 original appointing authority. A Board member may be removed by the appointing
17 authority for cause. The Commissioner shall appoint a chair to serve for the initial two
18 years of the Plan's operation. Subsequent chairs shall be elected by a majority vote of
19 the Board members and shall serve for two-year terms. Board members shall receive
20 travel allowances under G.S. 138-6 when traveling to and from meetings of the Board,
21 but shall not receive any subsistence allowance or per diem under G.S. 138-5.

22 (d) Plan of Operation. – The Board shall submit to the Commissioner a Plan of
23 Operation for the Pool and any amendments necessary or suitable to assure the fair,
24 reasonable, and equitable administration of the Plan of Operation. The Plan of
25 Operation shall become effective upon approval in writing by the Commissioner
26 consistent with the date on which the coverage under this Part must be made available.
27 If the Board fails to submit a suitable Plan of Operation within 180 days after the
28 appointment of the Board, or at any time thereafter fails to submit suitable amendments
29 to the Plan of Operation, the Commissioner shall adopt temporary rules necessary or
30 advisable to effectuate the provisions of this section. The rules shall continue in force
31 until modified by the Commissioner or superseded by a Plan of Operation submitted by
32 the Board and approved by the Commissioner. The Plan of Operation shall:

- 33 (1) Establish procedures for operation of the Pool.
34 (2) Establish procedures for selecting a Pool Administrator in accordance
35 with G.S. 58-50-255.
36 (3) Establish procedures to create a fund for administrative expenses,
37 which shall be managed by the Board.
38 (4) Establish procedures for the collection, handling, disbursing,
39 accounting, assessing, and auditing of assessments, assets, monies, and
40 claims of the Pool and the Pool Administrator.
41 (5) Develop and implement a program to publicize the existence of the
42 Pool, the eligibility requirements, procedures for enrollment, and
43 availability of State premium subsidies and to maintain public
44 awareness of the Pool.

- 1 (6) Establish procedures under which applicants and participants may
2 have grievances reviewed by a grievance committee appointed by the
3 Executive Director in accordance with G.S. 58-50-295.
- 4 (7) Establish procedures for identifying and confirming income levels of
5 applicants for Pool coverage who are eligible to receive a State
6 premium subsidy, if a State premium subsidy is available.
- 7 (8) Provide for other matters as may be necessary and proper for the
8 execution of the Executive Director's powers, duties, and obligations
9 under this Part.
- 10 (e) The Pool shall have the general powers and authority granted under the laws
11 of this State to health insurers and the specific authority to do all of the following:
- 12 (1) Enter into contracts as are necessary or proper to carry out the
13 provisions and purposes of this Part, including the authority, with the
14 approval of the Executive Director in collaboration with the Board, to
15 enter into contracts with similar plans of other states for the joint
16 performance of common administrative functions or with persons or
17 other organizations for the performance of administrative functions.
- 18 (2) Sue or be sued, including taking any legal actions necessary or proper
19 to recover or collect assessments due the Pool.
- 20 (3) Take legal action as necessary to:
- 21 a. Avoid the payment of improper claims against the Pool or the
22 coverage provided by or through the Plan.
- 23 b. Recover any amounts erroneously or improperly paid by the
24 Plan.
- 25 c. Recover any amounts paid by the Pool as a result of mistake of
26 fact or law.
- 27 d. Recover other amounts due the Pool.
- 28 (4) Establish rates and rate schedules in accordance with this Part.
- 29 (5) Issue policies of insurance in accordance with the requirements of this
30 Part.
- 31 (6) Appoint appropriate legal, actuarial, and other committees as
32 necessary to provide technical assistance in the operation of the Pool,
33 policy, and other contract design, and any other function within the
34 Pool's authority.
- 35 (7) Establish policies, conditions, and procedures for reinsuring risks of
36 participating health insurers, as defined in G.S. 58-68-25(a), desiring
37 to issue Pool coverage in their own name. Provision of reinsurance
38 shall not subject the Pool to any of the capital or surplus requirements,
39 if any, otherwise applicable to reinsurers.
- 40 (8) Employ and fix the compensation of employees.
- 41 (9) Prepare and distribute certificate of eligibility forms and enrollment
42 instruction forms to insurance producers and to the general public.
- 43 (10) Provide for reinsurance for the Pool.

- 1 (11) Issue additional types of health insurance policies to provide optional
2 coverage, including Medicare supplemental insurance coverage.
- 3 (12) Provide for and employ cost containment measures and requirements
4 including preadmission screening, second surgical opinion, concurrent
5 utilization review, disease management, individual case management,
6 and other commonly used benefit plan design features for the purpose
7 of making health insurance coverage offered by the Pool more
8 cost-effective.
- 9 (13) Design, utilize, contract, or otherwise arrange for the delivery of
10 cost-effective health care services, including establishing or
11 contracting with preferred provider organizations, health maintenance
12 organizations, and other limited network provider arrangements.
- 13 (14) Adopt bylaws, policies, and procedures as may be necessary or
14 convenient for the implementation of this Part and the operation of the
15 Pool.
- 16 (15) Assess all insurers in accordance with G.S. 58-50-290.

17 (f) The Executive Director, with the approval of the Board, shall operate the Pool
18 in a manner so that the estimated cost of providing the benefit plans offered during any
19 calendar year is not anticipated to exceed the total income the Pool expects to receive
20 from policy premiums and other revenue available to the Pool. The Board may impose a
21 cap on enrollment or may suspend enrollment for an indefinite period if the Board finds
22 that estimated costs are anticipated to exceed income, except that any enrollment cap or
23 suspension shall not apply to federally defined eligible individuals who are eligible to
24 enroll in the Pool pursuant to G.S. 58-50-265(a)(5).

25 (g) The Executive Director shall make an annual report to the Speaker of the
26 House of Representatives, the President Pro Tempore of the Senate, the Commissioner,
27 the Joint Legislative Health Care Oversight Committee, and the Committee on
28 Employee Hospital and Medical Benefits. The report shall summarize the activities of
29 the Pool in the preceding calendar year, including the net written and earned premiums,
30 benefit plan enrollment, the expense of administration, and the paid and incurred losses.

31 (h) Neither the Board nor the employees of the Pool are liable for any obligations
32 of the Pool. There shall be no liability on the part of, and no cause of action of any
33 nature shall arise against, the Pool or its agents or employees, the Board, the Executive
34 Director, the Commissioner, or his representatives for any action taken by them in good
35 faith in the performance of their powers and duties under this Part.

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

38 **"§ 58-50-255. Administrator.**

39 (a) The Executive Director, in collaboration with the Board, shall select through
40 a competitive bidding process one or more insurers to administer the Pool. The
41 Executive Director shall evaluate bids submitted based on criteria established by the
42 Board. The criteria shall allow for the comparison of information about each bidding
43 administrator and selection of a Pool Administrator based on at least the following:

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

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

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

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

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

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

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

33 **"§ 58-50-260. Risk Pool rates and policy forms.**

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

40 (b) The Pool shall determine the standard risk rate by considering the premium
41 rates charged by other insurers offering health insurance coverage to individuals. The
42 standard risk rate shall be established using reasonable actuarial techniques and shall
43 reflect anticipated experience and expenses for the coverage. Pool rates shall be one

1 hundred seventy-five percent (175%) of rates established as applicable for individual
2 standard rates and shall be adjusted annually, at the time of annual renewal.

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

8 (d) Provider reimbursement rates under Pool coverage shall be limited to the
9 rates allowed for providers under the Medicare Program for those services covered by
10 Medicare. The Board shall establish reimbursement rates for services for which
11 Medicare has not established an allowed rate. Providers rendering medical care to an
12 insured shall accept payment of the amount established under this subsection, less any
13 applicable deductible, coinsurance, or co-payment amounts, as payment in full for
14 services rendered.

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

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

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

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

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

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

39 (3) A refusal by an insurer to issue health insurance coverage except at a
40 rate exceeding the Pool rate.

41 (4) A diagnosis of the individual with one of the medical or health
42 conditions listed by the Board in accordance with this section. An
43 individual diagnosed with one or more of these conditions is eligible

- 1 for Pool coverage without applying for other health insurance
2 coverage.
- 3 (5) Qualification as a federally defined eligible individual, whether or not
4 currently covered by an insurer under that qualification.
- 5 (6) An individual who is legally domiciled in this State and is eligible for
6 the credit for health insurance costs under the Trade Adjustment
7 Assistance Reform Act of 2002, section 35 of the Internal Revenue
8 Code of 1986. Each dependent of an individual who is eligible for Pool
9 coverage under this subdivision shall also be eligible for Pool
10 coverage.
- 11 (7) The individual has current individual health insurance coverage at a
12 rate exceeding the Pool rate.
- 13 (b) The Board, upon recommendation of the Executive Director, shall adopt a list
14 of medical or health conditions for which a person shall be eligible for Pool coverage
15 without applying for health insurance pursuant to subsection (a) of this section. The
16 Board may amend the list as the Board considers appropriate.
- 17 (c) An individual is not eligible for coverage under the Pool if:
- 18 (1) The individual has or obtains medical care benefits substantially
19 similar to or more comprehensive than a Pool policy, or would be
20 eligible to have coverage if the person elected to obtain it, except that:
- 21 a. An individual may maintain other coverage for the period of
22 time the individual is satisfying any preexisting condition
23 waiting period under a Pool policy; and
- 24 b. An individual may maintain Pool coverage for the period of
25 time the individual is satisfying a preexisting condition waiting
26 period under another health insurance policy intended to replace
27 the Pool policy.
- 28 (2) The individual is determined to be eligible for enrollment in the State
29 Medical Assistance Plan.
- 30 (3) The individual has previously terminated Pool coverage unless 12
31 months have lapsed since the termination, except that this subdivision
32 shall not apply with respect to an applicant who is a federally defined
33 eligible individual or to an applicant eligible for or receiving benefits
34 under the Trade Adjustment Assistance Program.
- 35 (4) The individual is an inmate or resident of a public institution, except
36 that this subdivision shall not apply with respect to an applicant who is
37 a federally defined eligible individual.
- 38 (5) The individual's premiums are paid for or reimbursed under any
39 government-sponsored program or by any government agency or
40 health care provider, except as an otherwise qualifying full-time
41 employee, or dependent thereof, of a government agency or health care
42 provider. This subdivision shall not apply for individuals receiving
43 benefits under the Trade Adjustment Assistance Program or to

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

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

5 (d) Coverage under the Pool shall cease:

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

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

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

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

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

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

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

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

19 It is an unfair trade practice under Article 63 of this Chapter and under Chapter 75 of
20 the General Statutes for an employer, an insurer, an insurance producer, as defined in
21 G.S. 58-33-10(7), or a third-party administrator to refer an individual employee to the
22 Pool or arrange for an individual employee to apply to the Pool for the purpose of
23 separating that employee from a group medical care benefit plan provided in connection
24 with the employee's employment. This section shall not prohibit an insurer or insurance
25 producer from informing an individual of other coverage options, including coverage
26 provided by the Pool.

27 **§ 58-50-275. Minimum Pool benefits.**

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

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

43 **§ 58-50-280. Preexisting conditions.**

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

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

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

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

16 **"§ 58-50-285. Nonduplication of benefits.**

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

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

29 **"§ 58-50-290. Assessments.**

30 (a) For the purposes of providing the funds necessary to carry out the powers and
31 duties of the Pool, and except as provided in subsection (b1) of this section, the Pool
32 shall assess all insurers at such time and for such amounts as the Board finds necessary
33 to ensure effective and efficient operation of the Pool. Assessments shall be due in not
34 less than 30 days after prior written notice to the insurers and shall accrue interest at
35 twelve percent (12%) per annum on and after the due date.

36 (b) Except with respect to special assessments authorized under this section, and
37 except as otherwise provided in subsection (b1) of this section, the Pool shall assess
38 each insurer in an amount not to exceed two dollars (\$2.00) per covered individual
39 insured or reinsured or for whom medical care benefits are administered by each insurer
40 per month. The assessment shall be based on actual or expected losses, actuarially
41 appropriate reserves, and administrative expenses in excess of expected or collected
42 premiums and federal loss reimbursements, if any, received by the Pool.

43 In addition to the assessment, the Pool may impose on each insurer a special
44 assessment only when enrollment in the Pool has been capped or suspended. A special

1 assessment may be made to cover only the additional losses of the Pool that are
2 expected to result from the continued entry into the Pool by federally defined eligible
3 individuals during the time that enrollment is closed to all other individuals eligible
4 under G.S. 58-50-265. The special assessment shall be based on actual or expected
5 losses, actuarially appropriate reserves, and administrative expenses in excess of
6 expected and collected premiums for the federally defined eligible individuals who
7 enrolled or are expected to enroll while the suspension of enrollment is in effect.

8 (b1) Effective until January 1, 2014, except with respect to special assessments
9 authorized under this section, the Pool shall assess each insurer an amount not to exceed
10 the following limitations for each covered individual insured, reinsured, or for whom
11 medical care benefits are administered, per month:

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

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

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

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

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

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

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

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

36 (f) The Commissioner may suspend or revoke, after notice and hearing, the
37 license of any insurer that fails to pay an assessment. As an alternative, the
38 Commissioner may levy a forfeiture on any insurer that fails to pay an assessment when
39 due. The forfeiture may not exceed five percent (5%) of the unpaid assessment per
40 month, but no forfeiture shall be less than one hundred dollars (\$100.00) per month.

41 **"§ 58-50-291. Reserve created.**

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

1 All premiums, fees, charges, rebates, refunds or any other receipts including, but not
2 limited to, earnings on investments, occurring or arising in connection with the Pool, as
3 established by this Article, shall be deposited into the Reserve. Disbursements from the
4 Reserve shall include any and all amounts required to pay the claims, benefits, and
5 administrative costs as may be determined by the Executive Director and the Board.

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

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

11 **"§ 58-50-295. Complaint procedures.**

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

22 **"§ 58-50-300. Audit.**

23 An audit of the Pool shall be conducted annually under the oversight of the State
24 Auditor. The cost of the audit shall be reimbursed to the State Auditor from the Reserve
25 for the North Carolina Health Insurance Risk Pool.

26 **"§ 58-50-305. Taxation.**

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

28 **"§ 58-50-310. Rules.**

29 The Board and the Commissioner may adopt rules, including temporary rules, to
30 implement this Part.

31 **"§ 58-50-315. Collective action.**

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

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

42 **SECTION 1.3.** The Board, as appointed under Section 1.1 of this act, shall
43 monitor methods of financing the Pool to ensure a stable funding source and allow for
44 its continued operation. This monitoring shall include supplementary sources of

1 funding, such as funds obtained from public and private not-for-profit foundations, or
2 other appropriate and available State or non-State funds. The Board shall also review on
3 a regular basis:

- 4 (1) The number of individuals in this State who are uninsured as of a date
5 certain because of high-risk conditions.
- 6 (2) The number of uninsured individuals who would qualify for coverage
7 under the Pool based on G.S. 58-50-265 and its Plan of Operation.
- 8 (3) The cost of coverage under each of the health insurance plans
9 developed by the Board, including administrative costs.
- 10 (4) The extent to which assessments meet or exceed amounts necessary
11 for coverage and Board operations.
- 12 (5) The status of a request by the State to the Centers for Medicare and
13 Medicaid Services for approval of the North Carolina Health Insurance
14 Risk Pool to be considered an acceptable "alternative mechanism"
15 under the federal Health Insurance Portability and Accountability Act
16 in accordance with 45 C.F.R. § 148.128(e).
- 17 (6) Methods for providing a premium subsidy on a sliding scale basis for
18 individuals with incomes up to three hundred percent (300%) of the
19 federal poverty guidelines.

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

22 **SECTION 1.4.** The Executive Director shall study methods for encouraging
23 healthy behaviors among the Pool's insureds and report the Executive Director's
24 findings to the Board and to the General Assembly not later than one year after initial
25 implementation of the Pool.

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

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

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

1 **SECTION 2.1.** In addition to the Reserve established under G.S. 58-50-291,
2 as enacted in this act, there is established in the Department of Insurance two separate
3 funds, as follows:

4 (1) The Start-up Reserve – State Funds. State funds appropriated to this
5 Fund shall be used to support reasonable expenses for personnel to
6 carry out the Board's responsibilities under the Pool, including
7 contracting a third-party administrator. Funds shall be allocated from
8 this Fund contingent upon the successful application to and award of
9 federal funds for the purposes of this section. Funds shall be allocated
10 by the Commissioner for the reasonable expenses of the Board in
11 conducting its duties under this Article that are incurred on or before
12 July 1, 2009.

13 (2) The Start-up Reserve – Federal Funds. Federal funds received in lump
14 sum or as a draw-down grant for the purposes of this Article shall be
15 deposited to this Reserve. The Commissioner shall, at the end of the
16 fiscal year in which federal funds have been received, transfer from
17 this Reserve to the General Fund an amount not to exceed the amount
18 of State appropriations made for these purposes from the Start-up
19 Reserve – State Funds, plus interest and investment income earned,
20 from the Start-up Reserve – State Funds.

21 **SECTION 2.2.** It is the intent of the General Assembly that in the event the
22 State is not awarded the federal funds anticipated, the General Fund shall be held
23 harmless.

24 **SECTION 3.** There is appropriated from the General Fund to the Start-up
25 Reserve – State Funds established under Section 2.1 of this act, the sum of eight
26 hundred fifty thousand dollars (\$850,000) for the 2007-2008 fiscal year. These funds
27 shall be allocated for the purposes of and in accordance with Section 2.1 of this act.

28 **SECTION 4.** Sections 2.1, 2.2, and 3 of this act become effective July 1,
29 2007, and expire July 1, 2009. The remainder of this act is effective when it becomes
30 law. Enrollment in the Pool shall commence no later than January 1, 2009.