

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013**

**SESSION LAW 2013-357
HOUSE BILL 649**

AN ACT TO MAKE TECHNICAL CHANGES TO THE SMALL EMPLOYER GROUP HEALTH COVERAGE REFORM ACT TO MITIGATE THE EFFECTS OF THE FEDERAL AFFORDABLE CARE ACT ON NORTH CAROLINA'S SMALL BUSINESSES AND TO INCREASE STOP LOSS INSURANCE OPTIONS FOR SMALL EMPLOYERS.

The General Assembly of North Carolina enacts:

SECTION 1. Corrections to small group act. – No small employer carrier shall be required to issue the basic or standard health benefit plan as described in G.S. 58-50-125(a). Any basic or standard health benefit plans described in G.S. 58-50-125(a) that are not "grandfathered health plans," as that term is used under Section 1251 of the Affordable Care Act, P.L. 11-148, as amended, shall be terminated on the next anniversary date on or after January 1, 2014, and the small employer carrier shall offer the employer replacement coverage from available small group health benefit plans pursuant to and in accordance with all applicable State and federal laws and regulations. The termination shall be preceded by a 90-day notice to the Commissioner, the employer policyholder, the participants, and the beneficiaries. If the plan is issued to a self-employed individual, as defined in G.S. 58-50-110(21a), then the small employer carrier shall offer (i) replacement coverage from available individual health benefit plans or (ii) if the small employer carrier does not offer individual health benefit plans in this State, then individual conversion coverage pursuant to G.S. 58-53-45.

SECTION 2.(a) The following are repealed: G.S. 58-50-126, 58-50-127, 58-50-135, 58-50-155, and 58-50-156.

SECTION 2.(b) G.S. 58-50-110 reads as rewritten:

"§ 58-50-110. Definitions.

As used in this Act:

...
(10a) "Grandfathered health plan" means a health benefit plan providing coverage considered grandfathered health coverage described in 45 C.F.R. §147.140(a).

...
(22) "Small employer" means any individual actively engaged in business that, on at least fifty percent (50%) of its working days during the preceding calendar quarter, employed no more than 50 eligible employees, the majority of whom are employed within this State, and is not formed primarily for purposes of buying health insurance and in which a bona fide employer-employee relationship exists. In determining the number of eligible employees, companies that are affiliated companies, or that are eligible to file a combined tax return for purposes of taxation by this State, shall be considered one employer. Subsequent to the issuance of a health benefit plan to a small employer and for the purpose of determining eligibility, the size of a small employer shall be determined annually. Except as otherwise specifically provided, the provisions of this Act that apply to a small employer shall continue to apply until the plan anniversary following the date the small employer no longer meets the requirements of this definition. For purposes of this ~~Act~~subdivision, the term small employer



includes self-employed individuals. Effective January 1, 2014, this definition shall apply only to grandfathered group health plans subject to this Act.

(22a) "Small employer" means, in connection with a nongrandfathered group health plan with respect to a calendar year and a plan year, an employer that employed an average of at least one but not more than 50 employees on business days during the preceding calendar year and that employs at least one employee on the first day of the plan year. The number of employees shall be determined using the method set forth in section 4980H(c)(2) of the Internal Revenue Code.

...."

SECTION 2.(c) G.S. 58-50-115 reads as rewritten:

"§ 58-50-115. Health benefit plans subject to Act.

(a) A health benefit plan is subject to this Act if it provides health benefits for small employers ~~or self-employed individuals~~ and if any of the following conditions are met:

- (1) Any part of the premiums or benefits is paid by a small employer or any covered individual is reimbursed, whether through wage or adjustments or otherwise, by a small employer for any portion of the premium;
- (2) The health benefit plan is treated by the employer ~~or any of the covered self-employed individuals~~ as part of a plan or program for the purpose of sections 106, 125, or 162 of the United States Internal Revenue Code; or
- (3) The small employer ~~or self-employed individuals~~ ~~have~~ has permitted payroll deductions for the eligible enrollees for the health benefit plans.

(b) Repealed by Session Laws 1993, c. 529, s. 3.5."

SECTION 2.(d) G.S. 58-50-125(d) reads as rewritten:

~~"(d) As a condition of transacting business as a small employer carrier in this State, the carrier shall either offer small employers at least one basic and one standard health care plan or the alternative coverages provided in G.S. 58-50-126. Every small employer that elects to be covered under such a plan and agrees to make the required premium payments and to satisfy the other provisions of the plan shall be issued such a plan by the small employer carrier. The premium payment requirements used in connection with basic and standard health care plans may address the potential credit risk of small employers that elect coverage in accordance with this subsection by means of payment security provisions that are reasonably related to the risk and are uniformly applied.~~

If a small employer carrier offers coverage to a small employer, the small employer carrier shall offer coverage to all eligible employees of a small employer and their dependents. A small employer carrier shall not offer coverage to only certain individuals in a small employer group except in the case of late enrollees as provided in G.S. 58-50-130(a)(4b). A small employer carrier shall not modify any health benefit plan with respect to a small employer, any eligible employee, or dependent through riders, endorsements, or otherwise, in order to restrict or exclude coverage for certain diseases or medical conditions otherwise covered by the health benefit plan. In the case of an eligible employee or dependent of an eligible employee who, before the effective date of the plan, was excluded from coverage or denied coverage by a small employer carrier in the process of providing a health benefit plan to an eligible small employer, the small employer carrier shall provide an opportunity for the eligible employee or dependent of an eligible employee to enroll in the health benefit plan currently held by the small employer."

SECTION 2.(e) Effective January 1, 2015, subsections (a) and (a1) of G.S. 58-50-125 are repealed.

SECTION 2.(f) G.S. 58-50-130 reads as rewritten:

"§ 58-50-130. Required health care plan provisions.

...
(b) For all small employer health benefit plans that are grandfathered health benefit plans and that are subject to this section, the premium rates are subject to all of the following provisions:

...."

SECTION 2.(g) G.S. 58-50-130 is amended by adding the following new subsections to read:

"(b1) For all small employer health benefit plans that are not grandfathered health benefit plans and that are subject to this section, the premium rates are subject to all of the following provisions:

(1) A small employer carrier shall use a method to develop premiums for small employer group health benefit plans that are not grandfathered health plans which spreads financial risk across a large population and allows adjustments for only the following factors:

- a. Age, except that the rate shall not vary by more than the ratio of three to one (3:1) for adults.
- b. Whether the plan or coverage covers individual or family.
- c. Geographic rating areas.
- d. Tobacco use, except that the rate shall not vary by more than the ratio of one and two-tenths to one (1.2:1) due to tobacco use.

With respect to family coverage under a health benefit plan, the rating variations for age and tobacco use shall be applied based on the portion of premium that is attributable to each family member covered under the plan.

(2) A small employer carrier shall consider the claims experience of all enrollees in all small employer group health benefit plans that are not grandfathered health plans offered by the insurer in the small employer group market in this State to be members of a single risk pool. No small employer carrier shall consider claims experience of grandfathered health plans in developing the single risk pool.

...
(i) A small employer carrier shall not modify the premium rate charged to a small group nongrandfathered health benefit plan or a small employer group member, including changes in rates related to the increasing age of a group member, for 12 months from the initial issue date or renewal date."

SECTION 3. G.S. 58-50-130(a) reads as rewritten:

"(a) Health benefit plans covering small employers are subject to the following provisions:

...
(5) Notwithstanding any other provision of this Chapter, no small employer carrier, insurer, subsidiary of an insurer, or controlled individual of an insurance holding company shall act as an administrator or claims paying agent, as opposed to an insurer, on behalf of small groups which, if they purchased insurance, would be subject to this section. No small employer carrier, insurer, subsidiary of an insurer, or controlled individual of an insurance holding company shall provide stop loss, catastrophic, or reinsurance coverage to small employers who employ fewer than 26 eligible employees that does not comply with the underwriting, rating, and other applicable standards in this Act. An insurer shall not issue a stop loss health insurance policy to any person, firm, corporation, partnership, or association defined as a small employer that does any of the following:

- a. Provides direct coverage of health expenses payable to an individual.
- b. Has an annual attachment point for claims incurred per individual that is lower than twenty thousand dollars (\$20,000) for plan years beginning in 2013. For subsequent policy years, the amount shall be indexed using the Consumer Price Index for Medical Services for All Urban Consumers for the South Region and shall be rounded to the nearest whole thousand dollars. The index factor shall be the index as of July of the year preceding the change divided by the index as of July 2012.
- c. Has an annual aggregate attachment point lower than the greater of one of the following:
 - 1. One hundred twenty percent (120%) of expected claims.
 - 2. Twenty thousand dollars (\$20,000) for plan years beginning in 2013. For subsequent policy years, the amount shall be indexed using the Consumer Price Index for Medical Services for All Urban Consumers for the South Region and shall be

rounded to the nearest whole thousand dollars. The index factor shall be the index as of July of the year preceding the change divided by the index as of July 2012.

Nothing in this subsection prohibits an insurer from providing additional incentives to small employers with benefits promoting a medical home or benefits that provide health care screenings, are focused on outcomes and key performance indicators, or are reimbursed on an outcomes basis rather than a fee-for-service basis.

...."
SECTION 4.(a) G.S. 58-50-110(22a) is repealed.

SECTION 4.(b) G.S. 58-50-110 reads as rewritten:

"§ 58-50-110. Definitions.

As used in this Act:

...
(22b) "Small employer" means, in connection with a nongrandfathered group health plan with respect to a calendar year and a plan year, an employer who employed an average of at least one but not more than 100 employees on business days during the preceding calendar year and who employs at least one employee on the first day of the plan year. The number of employees shall be determined using the method set forth in section 4980H(c)(2) of the Internal Revenue Code.

...."
SECTION 5. The Department of Insurance shall adopt rules to implement this act. The Department of Insurance shall adopt rules providing for the oversight, monitoring of, and reporting by insurers and third-party administrators who administer health benefit plans with stop loss coverage pursuant to this act. The Department of Insurance shall make the amount of the attachment points in Section 3 of this act available to the public annually.

SECTION 6. Section 1 of this act is effective when it becomes law. Except as otherwise provided in that section, Section 2 of this Act becomes effective January 1, 2014, and applies to all insurance contracts and policies issued, renewed, or amended on or after that date. Section 3 of this act becomes effective October 1, 2013, and applies to all stop loss insurance contracts and policies issued, renewed, or amended on or after that date. Section 4 of this act becomes effective January 1, 2016. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 15th day of July, 2013.

s/ Daniel J. Forest
President of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

s/ Pat McCrory
Governor

Approved 4:54 p.m. this 25th day of July, 2013