

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 1895

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

Sponsors: Representatives Insko, England, Nye, Wright (Primary Sponsors); Ross, Fisher, Tucker, B. Allen, Allred, Barnhart, Bordsen, Carney, Coleman, Culp, Farmer-Butterfield, Glazier, Goodwin, Harrison, Ed Jones, Lewis, Luebke, McAllister, McLawhorn, Pate, Rapp, Spear, Underhill, Walker, Weiss, Wilkins, Williams, and Womble.

Referred to: Insurance.

May 11, 2006

A BILL TO BE ENTITLED
AN ACT TO ESTABLISH THE NORTH CAROLINA HEALTH INSURANCE RISK
POOL AND TO APPROPRIATE FUNDS THEREFOR.

The General Assembly of North Carolina enacts:

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

"Part 7. North Carolina Health Insurance Risk Pool.

"§ 58-50-245. Definitions.

For the purposes of this Part:

- (1) "Administrator" means the Pool Administrator selected by the Board in accordance with this Part.
- (2) "Benefit plan" means coverage offered by the Pool to eligible individuals.
- (3) "Board" means the Board of Directors of the Pool.
- (4) "Covered person" means any individual resident of this State, excluding dependents, who is eligible to receive health benefits from any insurer.
- (5) "Church plan" has the meaning given that term under section 3(33) of the Employee Retirement Income Security Act of 1974.
- (6) "Creditable coverage" means, with respect to an individual, coverage of the individual provided under any of the following:
 - a. A group health plan.
 - b. Health insurance coverage.
 - c. Part A or Part B of Title XVIII of the Social Security Act. (Medicare)

- 1 d. Title XIX of the Social Security Act, other than coverage
2 consisting solely of benefits under section 1928.(Medicaid)
3 e. Chapter 55 of Title 10, United States Code.
4 f. A medical care program of the Indian Health Service or of a
5 tribal organization.
6 g. A state health benefits risk pool.
7 h. A health plan offered under Chapter 89 of Title 5, United States
8 Code.
9 i. A public health plan as defined in federal regulations.
10 j. A health benefit plan under section 5(e) of the Peace Corps Act
11 (22 U.S.C. § 2504(e)).

12 A period of creditable coverage shall not be counted, with respect
13 to the enrollment of an individual who seeks coverage under this Part,
14 if, after such period and before the enrollment date, the individual
15 experiences a significant break in coverage.

16 (7) "Dependent" means a resident spouse or unmarried child under the age
17 of 19 years, a child who is a full-time student under the age of 23 years
18 and who is financially dependent upon the parent, a child who is over
19 18 years of age and for whom a person may be obligated to pay child
20 support, or a child of any age who is disabled and dependent upon the
21 parent.

22 (8) "Family member" means a parent, grandparent, brother, sister, or child
23 of a dependent residing with the insured.

24 (9) "Federally defined eligible individual" means an individual:

- 25 a. For whom, as of the date on which the individual seeks
26 coverage under this Part, the aggregate of the periods of
27 creditable coverage is 18 or more months;
28 b. Whose most recent prior creditable coverage was under a group
29 health plan, governmental plan, church plan, or health insurance
30 coverage offered in connection with such a plan;
31 c. Who is not eligible for coverage under a group health plan, Part
32 A or Part B of Title XVIII of the Social Security Act
33 (Medicare), or a State plan under Title XIX of the Act
34 (Medicaid), or any successor program, and who does not have
35 other health insurance coverage;
36 d. With respect to whom the most recent coverage within the
37 period of aggregate creditable coverage was not terminated
38 based on a factor relating to nonpayment of premiums or fraud;
39 e. Who, if offered the option of continuation coverage under a
40 COBRA continuation provision or under a similar state
41 program, elected this coverage; and
42 f. Who has exhausted continuation coverage under this provision
43 or program, if the individual elected the continuation coverage
44 described in sub-subdivision e. of this subdivision.

1 (10) "Governmental plan" has the meaning given under section 3(32) of the
2 Employee Retirement Income Security Act of 1974 and any
3 governmental plan established or maintained for its employees by the
4 government of the United States or by an agency or instrumentality of
5 the government of the United States.

6 (11) "Group health plan" means an employee welfare benefit plan as
7 defined in section 3(1) of the Employee Retirement Income Security
8 Act of 1974 to the extent that the plan provides medical care, including
9 items and services paid for as medical care to employees or their
10 dependents, as defined under the terms of the plan directly or through
11 insurance, reimbursement, or otherwise.

12 (12) "Health insurance coverage" means any hospital and medical expense
13 incurred policy, nonprofit health care services contract, health
14 maintenance organization subscriber contract, or any other health care
15 plan or arrangement that pays for or furnishes medical or health care
16 services whether by insurance or otherwise.

17 "Health insurance coverage" does not include one or more, or any
18 combination of, the following:

19 a. Coverage only for accident or disability income insurance, or
20 any combination thereof.

21 b. Coverage issued as a supplement to liability insurance.

22 c. Liability insurance, including general liability insurance and
23 automobile liability insurance.

24 d. Workers' compensation or similar insurance.

25 e. Automobile medical payment insurance.

26 f. Credit-only insurance.

27 g. Coverage for on-site medical clinics.

28 h. Other similar insurance coverage, specified in federal
29 regulations issued pursuant to P.L. 104-191, under which
30 benefits for medical care are secondary or incidental to other
31 insurance benefits.

32 i. Limited-scope dental or vision benefits.

33 j. Benefits for long-term care, nursing home care, home health
34 care, community-based care, or any combination thereof.

35 k. Medicare supplemental health insurance as defined under
36 section 1882(g)(1) of the Social Security Act.

37 l. Coverage supplemental to the coverage provided under Chapter
38 55 of Title 10, United States Code (Civilian Health and Medical
39 Program of the Uniformed Services – CHAMPUS).

40 m. Similar supplemental coverage provided to coverage under a
41 group health plan.

42 (13) "Insurance arrangement" means a plan, program, contract, or other
43 arrangement through which health care services are provided by an

- 1 employer to its officers or employees, but does not include health care
2 services covered through an insurer.
- 3 (14) "Insured" means an individual who is eligible to receive benefits from
4 the Pool. The term "insured" includes dependents and family members,
5 as applicable.
- 6 (15) "Insurer" means any entity that provides health insurance coverage in
7 this State. For the purposes of this Part, insurer includes an insurance
8 company, a hospital or medical service corporation, a health
9 maintenance organization, a multiple employer welfare arrangement, a
10 third-party administrator or claims processor, an administrative service
11 organization, or any other nongovernmental entity providing a health
12 benefit plan subject to State insurance regulation.
- 13 (16) "Medical care" means amounts paid for:
- 14 a. The diagnosis, cure, mitigation, treatment, or prevention of
15 disease, or amounts paid for the purpose of affecting any
16 structure or function of the body;
- 17 b. Transportation primarily for and essential to medical care
18 referred to in sub-subdivision a. of this subdivision; and
- 19 c. Insurance covering medical care referred to in sub-subdivisions
20 a. and b. of this subdivision.
- 21 (17) "Plan of operation" means the articles, bylaws, and operating rules and
22 procedures adopted by the Board in accordance with this Part.
- 23 (18) "Pool" means the North Carolina Health Insurance Risk Pool.
- 24 (19) "Resident" means an individual who:
- 25 a. Has been legally domiciled in this State for a period of at least
26 30 days, except that for a federally defined eligible individual,
27 there shall not be a 30-day requirement;
- 28 b. Is legally domiciled in this State on the date of application to
29 the Pool and who is eligible for enrollment in the Pool as a
30 result of the Health Insurance Portability and Accountability
31 Act of 1996; or
- 32 c. Is legally domiciled in this State on the date of application to
33 the Pool and is eligible for the credit for health insurance costs
34 under section 35 of the Internal Revenue Code of 1986.
- 35 (20) "Significant break in coverage" means a period of 63 consecutive days
36 during all of which the individual does not have any creditable
37 coverage, except that neither a waiting period nor an affiliation period
38 is taken into account in determining a significant break in coverage.
- 39 (21) "Trade Adjustment Assistance Program" (TAA) means Title II of the
40 Trade Act of 2002, P.L. 107-210.

41 **§ 58-50-250. Risk Pool established; board of directors; plan of operation.**

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

1 (b) Board of Directors Appointment; Membership. – The Board of Directors of
2 the North Carolina Health Insurance Risk Pool shall consist of the Commissioner of
3 Insurance, who shall serve as an ex officio nonvoting member of the Board, and seven
4 members appointed as follows:

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

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

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

16 (2) Five members appointed by the Commissioner of Insurance, as
17 follows:

18 a. Two who are insurers, at least one of whom covers the largest
19 number of persons in the State.

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

21 c. One who represents the medical provider community, as
22 recommended by the North Carolina Medical Society.

23 d. One who represents small business, as recommended by the
24 North Carolina Citizens for Business and Industry.

25 (c) Board of Directors; Terms of Appointment; Vacancies; Compensation. – The
26 initial Board members shall be appointed as follows: two of the members to serve a
27 term of three years; three of the members to serve a term of one year; and two of the
28 members to serve a term of two years. Subsequent Board members shall serve for terms
29 of three years. A Board member's term shall continue until the member's successor is
30 appointed. The Commissioner shall appoint a chair to serve for the initial two years of
31 the Plan's operation. Subsequent chairs shall be elected by a majority vote of the Board
32 members and shall serve for two-year terms. The Commission shall fill vacancies in
33 membership and may remove members from the Board for cause. Board members shall
34 not be compensated in their capacity as Board members but shall be reimbursed for
35 reasonable expenses incurred in the necessary performance of their duties.

36 (d) Plan of Operation. – The Board shall submit to the Commissioner a Plan of
37 Operation for the Pool and any amendments necessary or suitable to assure the fair,
38 reasonable, and equitable administration of the Plan of Operation. The Plan of
39 Operation shall become effective upon approval in writing by the Commissioner
40 consistent with the date on which the coverage under this Part must be made available.
41 If the Board fails to submit a suitable Plan of Operation within 180 days after the
42 appointment of the Board of Directors, or at any time thereafter fails to submit suitable
43 amendments to the Plan of Operation, the Commissioner shall adopt temporary rules
44 necessary or advisable to effectuate the provisions of this section. The rules shall

1 continue in force until modified by the Commissioner or superseded by a Plan of
2 Operation submitted by the Board and approved by the Commissioner. The Plan of
3 Operation shall:

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

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

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

- 1 (5) Issue policies of insurance in accordance with the requirements of this
2 Part.
- 3 (6) Appoint appropriate legal, actuarial, and other committees as
4 necessary to provide technical assistance in the operation of the Pool,
5 policy, and other contract design, and any other function within the
6 Pool's authority.
- 7 (7) Borrow money to effect the purposes of the Pool. Any notes or other
8 evidence of indebtedness of the Pool not in default are legal
9 investments for insurers and may be carried as admitted assets.
- 10 (8) Establish policies, conditions, and procedures for reinsuring risks of
11 participating insurers desiring to issue Pool coverage in their own
12 name. Provision of reinsurance shall not subject the Pool to any of the
13 capital or surplus requirements, if any, otherwise applicable to
14 reinsurers.
- 15 (9) Employ and fix the compensation of employees.
- 16 (10) Prepare and distribute certificate of eligibility forms and enrollment
17 instruction forms to insurance producers and to the general public.
- 18 (11) Provide for reinsurance of risks incurred by the Pool.
- 19 (12) Issue additional types of health insurance policies to provide optional
20 coverage, including Medicare supplemental insurance coverage.
- 21 (13) Provide for and employ cost containment measures and requirements
22 including preadmission screening, second surgical opinion, concurrent
23 utilization review, disease management, individual case management,
24 and other commonly used benefit plan design features for the purpose
25 of making health insurance coverage offered by the Pool more
26 cost-effective.
- 27 (14) Design, utilize, contract, or otherwise arrange for the delivery of
28 cost-effective health care services, including establishing or
29 contracting with preferred provider organizations, health maintenance
30 organizations, and other limited network provider arrangements.
- 31 (15) Adopt bylaws, policies, and procedures as may be necessary or
32 convenient for the implementation of this Part and the operation of the
33 Pool.

34 (f) The Board shall operate the Pool in a manner so that the estimated cost of
35 providing health insurance coverage during any fiscal year will not exceed the total
36 income the Pool expects to receive from policy premiums and other revenue available to
37 the Pool. The financing mechanisms recommended to and approved by the General
38 Assembly shall provide for a means to adjust those mechanisms annually, or more
39 frequently if necessary, in order to assure that the Pool has the financial capacity to
40 insure the projected number of enrollees.

41 (g) The Board shall make an annual report to the Commissioner, to the Speaker
42 of the House of Representatives, and to the President Pro Tempore of the Senate. The
43 report shall summarize the activities of the Pool in the preceding calendar year,

1 including the net written and earned premiums, benefit plan enrollment, the expense of
2 administration, and the paid and incurred losses.

3 (h) Neither the Board nor its employees are liable for any obligations of the Pool.
4 No current or former member or employee of the Board is liable, and no cause of action
5 of any nature may arise against them, for any act or omission related to the performance
6 of their powers and duties under this Part, unless such act or omission constitutes willful
7 or wanton misconduct. The Board may provide in its bylaws or rules for
8 indemnification of, and legal representation for, its members and employees.

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

11 **"§ 58-50-255. Administrator.**

12 (a) The Board shall select through a competitive bidding process one or more
13 insurers or a third-party administrator to administer the Pool. The Board shall evaluate
14 bids submitted based on criteria established by the Board. The criteria shall allow for
15 the comparison of information about each bidding administrator and selection of a Pool
16 Administrator based on at least the following:

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

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

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

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

22 (5) Financial condition and stability.

23 If a member of the Board has submitted a bid to be selected by the Board as Pool
24 Administrator, that bidding member of the Board shall not participate in the selection
25 process or in the Board's final decision on the selection of the Administrator.

26 (b) The Administrator shall serve for a period specified in the contract between
27 the Pool and the Administrator subject to removal for cause and subject to any terms,
28 conditions, and limitations of the contract between the Pool and the Administrator. At
29 least one year before the expiration of each period of service by an Administrator, the
30 Board shall invite eligible entities, including the current Administrator, to submit bids to
31 serve as the Administrator. Selection of the Administrator for the succeeding period
32 shall be made at least six months before the end of the current period.

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

35 (1) Determination of eligibility.

36 (2) Payment of claims.

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

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

41 (d) The Administrator shall submit regular reports to the Board regarding the
42 operation of the Pool. The contract between the Board and the Administrator shall
43 specify the frequency, content, and form of the report.

1 (e) Following the close of each calendar year, the Administrator shall determine
2 net written and earned premiums, the expense of administration, and the paid and
3 incurred losses for the year and report this information to the Board and the
4 Commissioner on a form prescribed by the Commissioner.

5 (f) The Administrator shall be paid as provided in the contract between the
6 Board and the Administrator.

7 **"§ 58-50-260. Risk Pool rates.**

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

14 (b) The Pool shall determine the standard risk rate by considering the premium
15 rates charged by other insurers offering health insurance coverage to individuals. The
16 standard risk rate shall be established using reasonable actuarial techniques and shall
17 reflect anticipated experience and expenses for the coverage. Pool rates shall be one
18 hundred fifty percent (150%) of rates established as applicable for individual standard
19 rates.

20 (c) The Pool shall provide for premium discounts for covered individuals who
21 are nonsmokers or who are actively participating in a smoking cessation program.
22 Approval of smoking cessation programs, criteria for active participation in smoking
23 cessation programs, and discount rates shall be established by the Board, subject to the
24 approval of the Commissioner.

25 (d) Provider reimbursement rates under Pool coverage shall be limited to the
26 rates allowed for providers under the Medicare Program.

27 (e) The Pool shall submit all rates and rate schedules to the Commissioner for
28 approval, and the Commissioner must approve the rates and rate schedules before the
29 Pool may use them. The Commissioner, in evaluating the rates and rate schedules, shall
30 consider the factors provided in this section.

31 **"§ 58-50-265. Eligibility for Pool coverage.**

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

- 34 (1) A notice of rejection or refusal to issue substantially similar insurance
35 for health reasons by two insurers. A rejection or refusal by an insurer
36 offering only stop-loss, excess loss, or reinsurance coverage with
37 respect to the applicant is not sufficient evidence of eligibility;
- 38 (2) Two offers to issue insurance only with conditional riders that limit
39 coverage for the individual's high-risk medical condition;
- 40 (3) Refusal by two insurers to issue insurance except at a rate exceeding
41 the Pool rate;
- 42 (4) Diagnosis of the individual with one of the medical or health
43 conditions listed by the Board in accordance with this section. An
44 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) In the case of an individual who is eligible for coverage under the
4 Health Insurance Portability and Accountability Act of 1996, the
5 individual's maintenance of health insurance coverage, of which the
6 most recent coverage was through an employer-sponsored plan, for the
7 previous 18 months with no gap in coverage greater than 63 days and
8 exhaustion of 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.

13 (b) The Board shall adopt a list of medical or health conditions for which a
14 person shall be eligible for Pool coverage without applying for health insurance
15 pursuant to subsection (a) of this section. Persons who can demonstrate the existence or
16 history of any medical or health conditions on the list adopted by the Board shall not be
17 required to provide the evidence specified in subsection (a) of this section. The Board
18 may amend the list as the Board considers appropriate.

19 (c) Each dependent of an individual who is eligible for Pool coverage shall also
20 be eligible for Pool coverage.

21 (d) An individual is not eligible for coverage under the Pool if:

- 22 (1) The individual has or obtains health insurance coverage substantially
23 similar to or more comprehensive than a Pool policy, or would be
24 eligible to have coverage if the person elected to obtain it, except that:
25 a. An individual may maintain other coverage for the period of
26 time the individual is satisfying any preexisting condition
27 waiting period under a Pool policy; and
28 b. An individual may maintain Pool coverage for the period of
29 time the individual is satisfying a preexisting condition waiting
30 period under another health insurance policy intended to replace
31 the Pool policy.
- 32 (2) The individual is determined to be eligible for enrollment in the State
33 Medical Assistance Plan.
- 34 (3) The individual has previously terminated Pool coverage unless 12
35 months have lapsed since the termination, except that this subdivision
36 shall not apply with respect to an applicant who is a federally defined
37 eligible individual or to an applicant eligible for or receiving benefits
38 under the Trade Adjustment Assistance Program.
- 39 (4) The individual is an inmate or resident of a public institution, except
40 that this subdivision shall not apply with respect to an applicant who is
41 a federally defined eligible individual.
- 42 (5) The individual's premiums are paid for or reimbursed under any
43 government-sponsored program or by any government agency or
44 health care provider, except as an otherwise qualifying full-time

1 employee, or dependent thereof, of a government agency or health care
2 provider. This subdivision shall not apply for individuals receiving
3 benefits under the Trade Adjustment Assistance Program or to
4 individuals receiving premium subsidies made available by the State
5 based on individual income levels.

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

8 (e) Coverage under the Pool shall cease:

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

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

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

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

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

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

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

21 **"§ 58-50-270. Unfair referral to Pool.**

22 It is an unfair trade practice under Article 63 of this Chapter for an insurer, insurance
23 producer, as defined in G.S. 58-33-10(7), or third-party administrator to refer an
24 individual employee to the Pool or arrange for an individual employee to apply to the
25 Pool for the purpose of separating that employee from group health insurance coverage
26 provided in connection with the employee's employment, or for the purpose of
27 separating an individual covered by health insurance offered in the individual market.

28 **"§ 58-50-275. Minimum Pool benefits.**

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

39 (b) Health insurance products offered by the Pool shall include not less than one
40 million dollars (\$1,000,000) lifetime limit and a sliding scale annual limit of two
41 thousand dollars (\$2,000) to five thousand dollars (\$5,000) on out-of-pocket expenses.
42 The sliding scale shall be based on family income. The Board shall adjust limitations at
43 least once every five years to reflect changes in the medical component of the Consumer
44 Price Index.

1 **"§ 58-50-280. Preexisting conditions.**

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

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

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

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

17 **"§ 58-50-285. Nonduplication of benefits.**

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

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

30 **"§ 58-50-290. Assessments.**

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

36 (b) Each insurer shall be assessed in an amount not to exceed two dollars (\$2.00)
37 per covered individual insured or reinsured by each insurer per month. The assessment
38 will be based on actual and expected losses, actuarially appropriate reserves, and
39 administrative expenses in excess of expected and collected premiums and federal loss
40 reimbursements, if any, received by the Pool.

41 (c) The Board shall make reasonable efforts designed to ensure that each covered
42 individual is counted only once with respect to any assessment. For that purpose, the
43 Board shall require each insurer that obtains excess or stop-loss insurance to include in
44 its count of covered individuals all individuals whose coverage is insured (including by

1 way of excess or stop-loss coverage) in whole or in part. The Board shall allow a
2 reinsurer to exclude from its number of covered individuals those who have been
3 counted by the primary insurer or by the primary reinsurer or primary excess or
4 stop-loss insurer for the purposes of determining its assessment under this section.

5 (d) The Board may verify each insurer's assessment based on annual statements
6 and other reports deemed to be necessary by the Board. The Board may use any
7 reasonable method of estimating the number of covered individuals of an insurer if the
8 specific number is unknown.

9 (e) If assessments and other receipts by the Pool, Board, or administering insurer
10 exceed the actual losses and administrative expenses of the plan, the excess shall be
11 held at interest and used by the Board to offset future losses or to reduce plan premiums.
12 Future losses include reserves for claims incurred but not reported.

13 (f) The Commissioner may suspend or revoke, after notice and hearing, the
14 certificate of authority to transact insurance in this State of any member insurer that fails
15 to pay an assessment. As an alternative, the Commissioner may levy a forfeiture on any
16 member insurer that fails to pay an assessment when due. The forfeiture may not exceed
17 five percent (5%) of the unpaid assessment per month, but no forfeiture shall be less
18 than one hundred dollars (\$100.00) per month.

19 **§ 58-50-295. Complaint procedures.**

20 An applicant or participant in coverage from the Pool is entitled to have complaints
21 against the Pool reviewed by a grievance committee appointed by the Board. Members
22 of the Board shall not serve on the grievance committee. The grievance process shall
23 comply with G.S. 58-50-62. The grievance committee shall report to the Board after
24 completion of the review of each complaint. The Board shall retain all written
25 complaints regarding the Pool at least until the third anniversary of the date the Pool
26 received the complaint. An applicant or participant may file for external review of the
27 applicant's grievance after having exhausted the Pool's internal grievance procedure.
28 External review shall be conducted in accordance with Part 4 of this Article.

29 **§ 58-50-300. Audit.**

30 The State Auditor shall conduct annually a special audit of the Pool. The State
31 Auditor's report shall include a financial audit and an economic and efficiency audit.
32 The State Auditor shall report the cost of each audit conducted under this Part to the
33 Board and the Comptroller, and the Board shall remit that amount to the Comptroller for
34 deposit to the General Fund.

35 **§ 58-50-305. Taxation.**

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

37 **§ 58-50-310. Rules.**

38 The Commissioner may adopt rules, including temporary rules, to implement this
39 Part.

40 **§ 58-50-315. Collective action.**

41 The participation in the Pool as participating insurers, the establishment of rates,
42 forms, or procedures, and any other joint or collective action required by this Part may
43 not be the basis of any legal action or criminal or civil liability or penalty against the
44 Pool or any participating insurer."

1 **SECTION 1.2.** The Board of Directors of the North Carolina Health
2 Insurance Risk Pool, as appointed under Section 1 of this act, shall monitor methods of
3 financing the Pool to ensure a stable funding source and allow for its continued
4 operation. This monitoring shall include supplementary sources of funding, such as
5 funds obtained from public and private not-for-profit foundations, or other appropriate
6 and available State or non-State funds. The Board shall also review on a regular basis:

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

9 (2) The number of uninsured individuals who would qualify for coverage
10 under the Pool based on G.S. 58-50-265 and its Plan of Operation.

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

13 The Board shall report its findings and recommendations to the General
14 Assembly on March 1, 2007, and annually thereafter.

15 **SECTION 1.3.** The North Carolina Health Insurance Risk Pool
16 Administrator shall study methods for encouraging healthy behaviors and report its
17 findings to the Board of Directors of the Pool and to the General Assembly not later
18 than one year after initial implementation of the Pool.

19 **SECTION 1.4.** The Board of Directors of the Pool shall apply for grant
20 funds available from the federal government to help support the implementation and
21 ongoing costs of operating a high-risk pool. If federal funds are available for purposes
22 for which funds were appropriated in this act from the General Fund, such federal funds
23 shall be used to reimburse the General Fund, to the maximum extent allowable, for
24 amounts appropriated for this purpose.

25 **SECTION 2.** G.S. 58-6-25(d) is amended by adding the following new
26 subdivision to read:

27 ...

28 "(d) Use of Proceeds. – The Insurance Regulatory Fund is created in the State
29 treasury, under the control of the Office of State Budget and Management. The proceeds
30 of the charge levied in this section and all fees collected under Articles 69 through 71 of
31 this Chapter and under Articles 9 and 9C of Chapter 143 of the General Statutes shall be
32 credited to the Fund. The Fund shall be placed in an interest-bearing account and any
33 interest or other income derived from the Fund shall be credited to the Fund. Moneys in
34 the Fund may be spent only pursuant to appropriation by the General Assembly and in
35 accordance with the line item budget enacted by the General Assembly. The Fund is
36 subject to the provisions of the Executive Budget Act, except that no unexpended
37 surplus of the Fund shall revert to the General Fund. All money credited to the Fund
38 shall be used to reimburse the General Fund for the following:

39 ...

40 (6) Money appropriated to the Department of Insurance for the Special
41 Reserve for the North Carolina Health Insurance Risk Pool."

42 **SECTION 3.1.** There is appropriated from the General Fund to the
43 Department of Insurance the sum of \$ for the 2006-2007 fiscal year. These funds shall

1 be used to support # additional full-time positions in the Department to carry out the
2 Department's responsibilities under the North Carolina Health Insurance Risk Pool.

3 **SECTION 3.2.** There is appropriated from the General Fund to the
4 Department of Insurance the sum of two hundred thousand dollars (\$200,000) for the
5 2006-2007 fiscal year. These funds shall be placed in a Special Reserve for the North
6 Carolina Health Insurance Risk Pool in the Department of Insurance and shall be
7 allocated for the reasonable expenses of the Board in conducting its duties under
8 Section 1 of this act. The North Carolina Health Insurance Risk Pool shall not offer or
9 provide coverage under Section 1 of this act until the effective date of an act of the
10 General Assembly that establishes or approves a method or methods for financing the
11 Pool as specified in this act.

12 **SECTION 3.3.** There is appropriated to the Special Reserve for the North
13 Carolina Health Insurance Risk Pool the sum of \$ for the 2006-2007 fiscal year. These
14 funds shall be used to provide a premium subsidy on a sliding scale basis for individuals
15 with incomes up to three hundred percent (300%) of the federal poverty guidelines who
16 are participating in the North Carolina Health Insurance Risk Pool. The subsidy shall
17 pay for ninety-five percent (95%) of the premium costs for individuals with incomes
18 below one hundred percent (100%) of the federal poverty guidelines, to be phased out
19 when a family's income reaches three hundred percent (300%) of the federal poverty
20 guidelines, and will be based on the lowest cost plan offered through the High-Risk
21 Pool. Individuals who are eligible for a federal premium subsidy under the Trade
22 Adjustment Act (TAA) must apply for premium subsidy under that Act. The amount of
23 the State premium subsidy, if any, shall be reduced by any federal premium subsidy
24 provided. Funds appropriated under this section shall not revert to the General Fund but
25 shall remain in the Special Reserve for the purposes specified in this section.

26 **SECTION 4.** Sections 3.1, 3.2, and 3.3 of this act become effective July 1,
27 2006. The remainder of this act is effective when it becomes law. Enrollment in the
28 North Carolina Health Insurance Risk Pool shall commence no earlier than January 1,
29 2007.