GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE DRH10230-ME-75 (03/28)

Short Title:	Small Group Health Ins. Technical Changes.	(Public)
Sponsors:	Representatives Collins and Dockham (Primary Sponsors).	
Referred to:		

A BILL TO BE ENTITLED

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.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-50-110 reads as rewritten:

"**§ 58-50-110. Definitions.**

As used in this Act:

(1) Repealed by Session Laws 2001-334, s. 12.1, effective August 3, 2001.

(1a) "Actuarial certification" means a written statement by a member of the American Academy of Actuaries or other individual acceptable to the Commissioner that a small employer carrier is in compliance with the provisions of G.S. 58-50-130, and to the extent applicable, the provisions of Article 68 of this Chapter, based upon the person's examination, including a review of the appropriate records and of the actuarial assumptions and methods used by the small employer carrier in establishing premium rates for applicable health benefit plans.

(1b) "Adjusted community rating" means a method used to develop carrier premiums which spreads financial risk across a large population and allows adjustments for the following demographic factors: age, ~~gender,~~ family composition, and geographic areas, as determined pursuant to G.S. 58-50-130(b).

(1c) "Affordable Care Act" means the federal Patient Protection and Affordable Care Act, P.L. 111-148, as amended, and any regulations adopted thereunder.

(2) Repealed by Session Laws 1993, c. 529, s. 3.3.

~~(3) "Basic health care plan" means a health care plan for small employers that is lower in cost than a standard health care plan and is required to be offered by all small employer carriers pursuant to G.S. 58-50-125 and approved by the Commissioner in accordance with G.S. 58-50-125.~~

(4) "Board" means the board of directors of the Pool.

(5) "Carrier" means any person that provides one or more health benefit plans in this State, including a licensed insurance company, a prepaid hospital or medical service plan, a health maintenance organization (HMO), and a multiple employer welfare arrangement.

(5a) "Case characteristics" means the demographic factors age, ~~gender,~~ family size, geographic location, and industry.

(6), (7) Repealed by Session Laws 1993, c. 529, s. 3.3.

(8) "Committee" means the Small Employer Carrier Committee as created by G.S. 58-50-120.

(9) "Dependent" means the spouse or child of an eligible employee, subject to applicable terms of the health care plan covering the employee.

(10) "Eligible employee" means an employee who works for a small employer on a full-time basis, with a normal work week of 30 or more hours, including a sole proprietor, a partner or a partnership, or an independent contractor, if included as an employee under a health care plan of a small employer; but does not include employees who work on a part-time, temporary, or substitute basis.

(11) "Health benefit plan" means any accident and health insurance policy or certificate; nonprofit hospital or medical service corporation contract; health, hospital, or medical service corporation plan contract; HMO subscriber contract; plan provided by a MEWA or plan provided by another benefit arrangement, to the extent permitted by ERISA, subject to G.S. 58-50-115. Health benefit plan does not include benefits described in G.S. 58-68-25(b).

(12) "Impaired insurer" has the same meaning as prescribed in G.S. 58-62-20(6) or G.S. 58-62-16(8).

~~(12a) "Industry" means a demographic factor used to reflect the financial risk associated with a specific industry.~~

(13) Repealed by Session Laws 1993, c. 529, s. 3.3.

~~(14) "Late enrollee" has the same meaning as defined in G.S. 58-68-30(b)(2); provided that the initial enrollment period shall be a period of at least 30 consecutive calendar days. In addition to the special enrollment provisions in G.S. 58-68-30(f), an eligible employee or dependent shall not be considered a late enrollee under a small employer health benefit plan if:~~

~~a. Repealed by Session Laws 1998-211, s. 9, effective November 1, 1998.~~

~~1, 2. Repealed by Session Laws 1998-211, s. 9, effective November 1, 1998.~~

~~3, 4. Repealed by Session Laws 1993, c. 529, s. 3.3.~~

~~b. The individual elects a different health benefit plan offered by the small employer during an open enrollment period;~~

~~c. Repealed by Session Laws 1998-211, s. 9, effective November 1, 1998.~~

~~d. A court has ordered coverage be provided for a spouse or minor child under a covered employee's health benefit plan and the request for enrollment for a spouse is made within 30 days after issuance of the court order. A minor child shall be enrolled in accordance with the requirements of G.S. 58-51-120; or~~

~~e. Repealed by Session Laws 1998-211, s. 9, effective November 1, 1998.~~

(15) Repealed by Session Laws 1993, c. 529, s. 3.3.

(16) "Pool" means the North Carolina Small Employer Health Reinsurance Pool created in G.S. 58-50-150.

~~(17) "Preexisting conditions provision" means a preexisting condition provision as defined in G.S. 58-68-30.~~

(18) "Premium" includes insurance premiums or other fees charged for a health benefit plan, including the costs of benefits paid or reimbursements made to or on behalf of persons covered by the plan.

(19) "Rating period" means the calendar period for which premium rates established by a small employer carrier are assumed to be in effect, as determined by the small employer carrier.

(20) "Risk-assuming carrier" means a small employer carrier electing to comply with the requirements set forth in G.S. 58-50-140.

(21) "Reinsuring carrier" means a small employer carrier electing to comply with the requirements set forth in G.S. 58-50-145.

~~(21a) "Self-employed individual" means an individual or sole proprietor who derives a majority of his or her income from a trade or business carried on by the individual or sole proprietor which results in taxable income as indicated on IRS form 1040, Schedule C or F and which generated taxable income in one of the two previous years.~~

(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, the term small employer includes self-employed individuals.~~employer who does not meet the definition of an "applicable large employer" under Section 4980H(c)(2) of the Affordable Care Act.

(23) "Small employer carrier" means any carrier that offers health benefit plans covering eligible employees of one or more small employers."

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

"**§ 58-50-125. Health care plans; formation; approval; offerings.**

~~(a) To improve the availability and affordability of health benefits coverage for small employers, the Committee shall recommend to the Commissioner two plans of coverage, one of which shall be a basic health care plan and the second of which shall be a standard health care plan. Each plan of coverage shall be in two forms, one of which shall be in the form of insurance and the second of which shall be consistent with the basic method of operation and benefit plans of HMOs, including federally qualified HMOs. On or before January 1, 1992, the Committee shall file a progress report with the Commissioner. The Committee shall submit the recommended plans to the Commissioner for approval within 180 days after the appointment of the Committee under G.S. 58-50-120. The Committee shall take into consideration the levels of health benefit plans provided in North Carolina, and appropriate medical and economic factors, and shall establish benefit levels, cost sharing, exclusions, and limitations. Notwithstanding subsection (c) of this section, in developing and approving the plans, the Committee and the Commissioner shall give due consideration to cost-effective and life-saving health care services and to cost-effective health care providers. The Committee shall file with the Commissioner its~~

~~findings and recommendations, and reasons for the findings and recommendations, if it does not provide for coverage by any type of health care provider specified in G.S. 58-50-30. The recommended plans may include cost containment features such as, but not limited to: preferred provider provisions; utilization review of medical necessity of hospital and physician services; case management benefit alternatives; or other managed care provisions.~~

~~(a1) Both the basic health care plan and the standard health care plan provided for in subsection (a) of this section may have optional deductible and co-payment levels as may be determined by the small employer carrier, including high deductible options. A small employer carrier shall file any changes in deductibles or co-payment levels with the Commissioner for the Commissioner's approval prior to implementing the changes in this State. The Commissioner may periodically review and update the benefits provided by these plans to address trends in the small group market. The Commissioner shall consult with small employer carriers and representatives of the insurance agent and small employer communities as part of that periodic review.~~

(b) Repealed by Session Laws 2006-154, s. 9, effective July 23, 2006.

(c) Except as provided under Article 68 of this Chapter, the plans developed under this section are not required to provide coverage that meets the requirements of other provisions of this Chapter that mandate either coverage or the offer of coverage by the type or level of health care services or health care provider.

(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).~~group. 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.

(e) Repealed by Session Laws 2006-154, s. 9, effective July 23, 2006.

~~(f) To the extent it is required under this section and G.S. 58-68-40, every small employer carrier shall fairly market all of its small group health benefit plans it offers on a guaranteed issue basis to all small employers in the geographic areas in which the carrier makes coverage available or provides benefits.~~

(g) Repealed by Session Laws 2006-154, s. 9, effective July 23, 2006.

(h) The provisions of subsection (d) of this section apply to every health benefit plan delivered, issued for delivery, renewed, or continued in this State or covering persons residing in this State on or after the date the plan becomes operational, as determined by the Commissioner. For purposes of this subsection, the date a health benefit plan is continued is the anniversary date of the issuance of the health benefit plan."

SECTION 3. G.S. 58-50-126(f) is repealed.

SECTION 4. G.S. 58-50-130 reads as rewritten:

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

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

(1) to (4) Repealed by Session Laws 1997-259, s. 5, effective July 14, 1997.

(4a) A carrier may continue to enforce reasonable employer participation and contribution requirements on small employers applying for coverage; however, participation and contribution requirements may vary among small employers only by the size of the small employer group and shall not differ because of the health benefit plan involved. In applying minimum participation requirements to a small employer, a small employer carrier shall not consider employees or dependents who have qualifying existing coverage in determining whether an applicable participation level is met. "Qualifying existing coverage" means benefits or coverage provided under: (i) Medicare, Medicaid, and other government funded programs; ~~or~~ (ii) an employer-based health insurance or health benefit arrangement, including a self-insured plan, that provides benefits similar to or in excess of benefits provided under the basic health care ~~plan.~~plan; or (iii) nongroup or individual health insurance major medical coverage.

~~(4b) Late enrollees may only be excluded from coverage for the greater of 18 months or an 18-month preexisting-condition exclusion; however, if both a period of exclusion from coverage and a preexisting-condition exclusion are applicable to a late enrollee, the combined period shall not exceed 18 months. If a period of exclusion from coverage is applied, a late enrollee shall be enrolled at the end of that period in the health benefit plan held at the time by the small employer.~~

(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 that does not comply with the underwriting, rating, and other applicable standards in this Act.

(6) 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)(4).

(7), (8) Repealed by Session Laws 1997-259, s. 5.

(9) The health benefit plan must meet the applicable requirements of Article 68 of this Chapter.

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

(1) Small employer carriers shall use an adjusted-community rating methodology in which the premium for each small employer can vary only on the basis of the eligible employee's or dependent's age ~~as determined under subdivision (6) of this subsection, the gender of the eligible employee or dependent,~~ number of family members covered, or geographic area as

determined under subdivision (7) of this ~~subsection, or industry as determined under subdivision (9) of this subsection.~~subsection for groups that are grandfathered plans, as defined within the Affordable Care Act. Premium rates charged during a rating period to small employers with similar case characteristics for same coverage shall not vary from the adjusted community rate by more than twenty-five percent (25%) for any reason, including differences in administrative costs and claims experience. Small employer carriers may develop separate rates for individuals aged 65 years and older for coverage for which Medicare is the primary payor and coverage for which Medicare is not the primary payor.

(2) Rating factors related to age, ~~gender,~~ number of family members covered, or geographic ~~location, or industry~~location may be developed by each carrier to reflect the carrier's experience. The factors used by carriers are subject to the Commissioner's review.

(3) A small employer carrier shall not modify the premium rate charged to a small employer 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, unless the group is composite rated and composition of the group changed by twenty percent (20%) or more or benefits are changed. The percentage increase in the premium rate charged to a small employer for a new rating period shall not exceed the sum of all of the following:

a. The percentage change in the adjusted community rate as measured from the first day of the prior rating period to the first day of the new rating period.

b. Any adjustment, not to exceed fifteen percent (15%) annually, due to claim experience, health status, or duration of coverage of the employees or dependents of the small employer.

c. Any adjustment because of change in coverage or change in case characteristics of the small employer group.

(4), (5) Repealed by Session Laws 1995, c. 238, s. 1.

~~(6) Unless the small employer carrier uses composite rating, the small employer carrier shall use the following age brackets:~~

~~a. Younger than 15 years;~~
~~b. 15 to 19 years;~~
~~c. 20 to 24 years;~~
~~d. 25 to 29 years;~~
~~e. 30 to 34 years;~~
~~f. 35 to 39 years;~~
~~g. 40 to 44 years;~~
~~h. 45 to 49 years;~~
~~i. 50 to 54 years;~~
~~j. 55 to 59 years;~~
~~k. 60 to 64 years;~~
~~l. 65 years.~~

~~Carriers may combine, but shall not split, complete age brackets for the purposes of determining rates under this subsection. Small employer carriers shall be permitted to develop separate rates for individuals aged 65 years and older for coverage for which Medicare is the primary payor and coverage for which Medicare is not the primary payor.~~

(7) A carrier shall define geographic area to mean medical care system. Medical care system factors shall reflect the relative differences in expected costs, shall produce rates that are not excessive, inadequate, or unfairly discriminatory in the medical care system areas, and shall be revenue neutral to the small employer carrier.

(8) The Department may adopt rules to administer this subsection and to assure that rating practices used by small employer carriers are consistent with the purposes of this subsection. Those rules shall include consideration of differences based on all of the following:

a. Health benefit plans that use different provider network arrangements may be considered separate plans for the purposes of determining the rating in subdivision (1) of this subsection, provided that the different arrangements are expected to result in substantial differences in claims costs.

b. Except as provided for in sub-subdivision a. of this subdivision, differences in rates charged for different health benefit plans shall be reasonable and reflect objective differences in plan design, but shall not permit differences in premium rates because of the case characteristics of groups assumed to select particular health benefit plans.

c. Small employer carriers shall apply allowable rating factors consistently with respect to all small employers.

~~(9) In any case where the small employer carrier uses industry as a case characteristic in establishing premium rates, the rate factor associated with any industry classification divided by the lowest rate factor associated with any other industry classification shall not exceed 1.2.~~

(c) Repealed by Session Laws 1993, c. 529, s. 3.7.

(d) In connection with the offering for sale of any health benefit plan to a small employer, each small employer carrier shall make a reasonable disclosure, as part of its solicitation and sales materials, of the following and shall provide this information to the small employer upon request:

(1) Repealed by Session Laws 1993, c. 529, s. 3.7.

(2) Provisions concerning the small employer carrier's right to change premium rates and the factors other than claims experience that affect changes in premium rates.

(3) Provisions relating to renewability of policies and contracts.

(4) Provisions affecting any preexisting conditions provision.

(5) The benefits available and premiums charged under all health benefit plans for which the small employer is eligible.

(e) Each small employer carrier shall maintain at its principal place of business a complete and detailed description of its rating practices and renewal underwriting practices, including information and documentation that demonstrate that its rating methods and practices are based upon commonly accepted actuarial assumptions and are in accordance with sound actuarial principles.

(f) Each small employer carrier shall file with the Commissioner annually on or before March 15 an actuarial certification certifying that it is in compliance with this Act and that its rating methods are actuarially sound. The small employer carrier shall retain a copy of the certification at its principal place of business.

(g) A small employer carrier shall make the information and documentation described in subsection (e) of this section available to the Commissioner upon request. Except in cases of violations of this Act, the information is proprietary and trade secret information and is not

subject to disclosure by the Commissioner to persons outside of the Department except as agreed to by the small employer carrier or as ordered by a court of competent jurisdiction. Nothing in this section affects the Commissioner's authority to approve rates before their use under G.S. 58-65-60(e) or G.S. 58-67-50(c).

(h) The provisions of subdivisions (a)(1), (3), and (5) and subsections (b) through (g) of this section apply to health benefit plans delivered, issued for delivery, renewed, or continued in this State or covering persons residing in this State on or after January 1, 1992. The provisions of subdivisions (a)(2) and (4) of this section apply to health benefit plans delivered, issued for delivery, renewed, or continued in this State or covering persons residing in this State on or after the date the plan becomes operational, as designated by the Commissioner. For purposes of this subsection, the date a health benefit plan is continued is the anniversary date of the issuance of the health benefit plan."

SECTION 5. This act becomes effective January 1, 2014.