

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 862

Short Title: Health Insurance Market Reforms. (Public)

Sponsors: Representatives Insko, Glazier, Farmer-Butterfield, and Harrison (Primary Sponsors).

For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Rules, Calendar, and Operations of the House.

April 15, 2013

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS CHANGES TO THE HEALTH INSURANCE LAWS IN RESPONSE TO THE AFFORDABLE CARE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Habilitative Coverage Requirements. – Article 3 of Chapter 58 of the General Statutes is amended by adding the following new section:

"§ 58-3-300. Habilitative services definition.

(a) For purposes of essential health benefits coverage as described in 45 C.F.R. § 156.110(a)(7) and pursuant to 45 C.F.R. § 156.110(f), habilitative services are defined to be those covered by the North Carolina Health Choice Program as of January 1 of the calendar year proceeding the coverage year.

(b) This section is applicable to non-grandfathered health benefit plans, as defined in G.S. 58-50-305, in the individual and small group markets, that are issued or renewed on or after January 1, 2014."

SECTION 2. Corrections to small group act. – (a) No small employer carrier shall 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.(b) The following are repealed: G.S. 58-50-110(21a), 58-50-126, 58-50-127, 58-50-135, 58-50-155, and 58-50-156.

SECTION 2.(c) G.S. 58-50-110(22) reads as rewritten:

"(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



1 purposes of buying health insurance and in which a bona fide
2 employer-employee relationship exists. In determining the number of
3 eligible employees, companies that are affiliated companies, or that are
4 eligible to file a combined tax return for purposes of taxation by this State,
5 shall be considered one employer. Subsequent to the issuance of a health
6 benefit plan to a small employer and for the purpose of determining
7 eligibility, the size of a small employer shall be determined annually. Except
8 as otherwise specifically provided, the provisions of this Act that apply to a
9 small employer shall continue to apply until the plan anniversary following
10 the date the small employer no longer meets the requirements of this
11 definition. ~~For purposes of this Act, the term small employer includes~~
12 ~~self-employed individuals."~~

13 **SECTION 2.(d)** G.S. 58-50-115 reads as rewritten:

14 **"§ 58-50-115. Health benefit plans subject to Act.**

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

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

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

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

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

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

49 **SECTION 2.(f)** Effective January 1, 2015, subsections (a) and (b) of
50 G.S. 58-50-125 are repealed.

51 **SECTION 2.(g)** G.S. 58-50-130(b) reads as rewritten:

1 "(b) For all small employer health benefit plans that are grandfathered health benefit
2 plans, as defined in G.S. 58-50-305, and that are subject to this section, the premium rates are
3 subject to all of the following provisions:

4 "

5 **SECTION 2.(h)** G.S. 58-50-130 is amended by adding a new subsection to read as
6 follows:

7 "**(i)** A small employer carrier shall not modify the premium rate charged to a small
8 group non-grandfathered health benefit plan, as defined in G.S. 58-50-305, or a small employer
9 group member, including changes in rates related to the increasing age of a group member, for
10 12 months from the initial issue date or renewal date."

11 **SECTION 2.(i)** G.S. 58-50-131(a) reads as rewritten:

12 "(a) No schedule of premium rates for coverage for a health benefit plan subject to this
13 act, or any amendment to the schedule, shall be used in conjunction with any such health
14 benefit plan until a copy of the schedule of premium rates or premium rate amendment has
15 been filed with and approved by the Commissioner. Any schedule of premium rates or
16 premium rate amendment filed under this section shall be established in accordance with
17 ~~G.S. 58-50-130(b).~~ G.S. 58-50-130(b) and, if applicable, Part 8 of this Article. The schedule of
18 premium rates shall not be excessive, unjustified, inadequate, or unfairly discriminatory and
19 shall exhibit a reasonable relationship to the benefits provided by the contract of insurance.
20 Each filing shall include a certification by an individual who is a member in good standing with
21 the Society of Actuaries."

22 **SECTION 3.** Health Benefit Plan Rating. – Article 50 of Chapter 58 of the General
23 Statutes is amended by adding the following new Part to read as follows:

24 "Part 8. Health Benefit Plan Rating.

25 "**§ 58-50-300. Purpose and intent.**

26 The purpose and intent of this Part is to prevent the federal preemption of health insurance
27 regulation in the State and to promote the efficiency and fairness of the health benefit plan
28 marketplaces by establishing uniform standards for rating.

29 "**§ 58-50-305. Definitions.**

30 Unless the context clearly requires otherwise, the following definitions apply in this Part:

- 31 (1) Grandfathered health benefit plan. – A health benefit plan providing
32 coverage considered grandfathered health coverage described in 45 C.F.R. §
33 147.140(a).
- 34 (2) Health benefit plan. – As defined in G.S. 58-3-167.
- 35 (3) Individual health benefit plan. – A health benefit plan offered in the
36 individual market.
- 37 (4) Individual market. – As defined in G.S. 58-68-25.
- 38 (5) Insurer. – As defined in G.S. 58-3-167, except that a multiple employer
39 welfare arrangement subject to Article 49 of this Chapter shall only be
40 included in this definition when specifically referenced.
- 41 (6) Large group health benefit plan. – A health benefit plan offered in the large
42 group market. This specifically includes policies delivered in this State and
43 those issued and delivered to a trust or to an association outside of this State
44 and covering persons resident in this State that are subject to
45 G.S. 58-3-150(b).
- 46 (7) Non-grandfathered health benefit plan. – A health benefit plan that does not
47 meet the definition of a grandfathered health plan.
- 48 (8) Small group health benefit plan. – A health benefit plan offered in the small
49 group market. This specifically includes policies delivered in this State and
50 those issued and delivered to a trust or to an association outside of this State

1 and covering persons resident in this State that are subject to
2 G.S. 58-3-150(b).

3 (9) Small group market. – As defined in G.S. 58-68-25.

4 (10) Student health benefit plan. – Has the same meaning as "student health
5 insurance coverage" found in 45 C.F.R. § 147.145(a).

6 **"§ 58-50-310. Loss ratio standard for non-grandfathered health benefit plans in the**
7 **individual and small group markets.**

8 (a) For non-grandfathered health benefit plans in the individual market issued or
9 renewed on or after January 1, 2014, premiums shall be deemed unreasonable in relation to
10 benefits if the anticipated medical loss ratio over the period for which rates are effective is less
11 than eighty percent (80%) calculated in a manner consistent with 45 C.F.R. Part 158, excluding
12 the credibility adjustment prescribed in 45 C.F.R. Parts 158.230 through 158.232. The
13 Commissioner shall consider actuarially justified adjustments to the medical loss ratio. The
14 medical loss ratio shall be demonstrated on an aggregate basis for all non-grandfathered health
15 benefit plans in the individual market.

16 (b) For non-grandfathered health benefit plans subject to G.S. 58-50-115 and to
17 45 C.F.R. Part 158, and issued or renewed on or after January 1, 2014, premiums shall be
18 deemed unreasonable in relation to benefits if the anticipated medical loss ratio over the period
19 for which rates are effective is less than eighty percent (80%). For purposes of this section, the
20 anticipated medical loss ratio shall be calculated in a manner consistent with
21 45 C.F.R. Part 158, excluding the credibility adjustment prescribed in 45 C.F.R. Parts 158.230
22 through 158.232. The Commissioner shall consider actuarially justified adjustments to the
23 medical loss ratio. The medical loss ratio shall be demonstrated on an aggregate basis for all
24 non-grandfathered health benefit plans in the small group market.

25 (c) This section shall not apply to student health benefit plans.

26 **"§ 58-50-315. Single risk pool.**

27 (a) Individual Market. – A health insurer shall consider the claims experience of all
28 enrollees in all non-grandfathered individual health benefit plans, except non-grandfathered
29 student health benefit plans, offered by such insurer in the individual market in this State to be
30 members of a single risk pool.

31 (b) Small Group Market. – A health insurer shall consider the claims experience of all
32 enrollees in all non-grandfathered small group health benefit plans offered by such insurer in
33 the small group market in this State to be members of a single risk pool."

34 **SECTION 4.** Appeals and grievances. – (a) Part 2 of Article 50 of Chapter 58 of
35 the General Statutes is amended by adding a new section to read as follows:

36 **"§ 58-50-53. State utilization and grievances law mirrors federal law for**
37 **non-grandfathered health benefit plans.**

38 Notwithstanding any other provision of this Part, the State law for utilization review and
39 grievances related to non-grandfathered health benefit plans, as defined in G.S. 58-50-305,
40 shall be the same as provided under the Affordable Care Act, P.L. 111-148, as amended, and
41 any regulations adopted thereunder, except that provisions of this Part that are more protective
42 of consumers shall be enforced.

43 (b) The provisions of this Part shall apply to grandfathered health benefit plans."

44 **SECTION 4.(b)** Part 4 of Article 50 of Chapter 58 of the General Statutes is
45 amended by adding a new section to read as follows:

46 **"§ 58-50-73. External review law mirrors federal law for non-grandfathered health**
47 **benefit plans.**

48 (a) Notwithstanding any other provision of this Part, the State law for external review
49 related to non-grandfathered health benefit plans, as defined in G.S. 58-50-305, shall be the
50 same as provided under the Affordable Care Act, P.L. 111-148, as amended, and any

1 regulations adopted thereunder, except that provisions of this Part that are more protective of
2 consumers shall be enforced.

3 (b) The provisions of this Part shall apply to grandfathered health benefit plans."

4 **SECTION 4.(c)** The Department of Insurance shall adopt rules to implement this
5 section.

6 **SECTION 5.** Monitor Market. – The Department of Insurance shall monitor the
7 health insurance market for negative impacts of the Patient Protection and Affordable Care Act,
8 P.L. 111-148, as amended. The Department shall publish quarterly reports on the impacts
9 beginning on October 1, 2013, and continuing until July 1, 2015.

10 **SECTION 6.** Re-scope Exchange Grants. – To the extent allowable under the
11 grants and notwithstanding subsection (d) of Section 1 of S.L. 2013-5, the Department of
12 Insurance shall re-scope previously awarded Exchange-related grants so as to fund the
13 increased regulatory costs due to the Affordable Care Act. Funds from those grants that have
14 not otherwise been appropriated are hereby appropriated to the Department of Insurance, for
15 fiscal year 2013-2014, for allowable expenses under the grants. Grants funding appropriated by
16 this section are subject to the prohibition provided in subsection (c) of Section 1 of S.L. 2013-5.

17 **SECTION 7.** Except as otherwise provided in that section, Section 2 becomes
18 effective January 1, 2014. Section 6 becomes effective July 1, 2013. The remainder of this act
19 is effective when it becomes law.