

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013**

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HOUSE BILL 649

Short Title: Small Group Health Ins. Technical Changes. (Public)

Sponsors: Representatives Collins and Dockham (Primary Sponsors).

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

Referred to: Insurance.

April 10, 2013

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(1) Repealed by Session Laws 2001-334, s. 12.1, effective August 3, 2001.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(2) Repealed by Session Laws 1993, c. 529, s. 3.3.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



- 1 medical service plan, a health maintenance organization (HMO), and a
2 multiple employer welfare arrangement.
- 3 (5a) "Case characteristics" means the demographic factors age, ~~gender,~~ family
4 size, geographic location, and industry.
- 5 (6), (7) Repealed by Session Laws 1993, c. 529, s. 3.3.
- 6 (8) "Committee" means the Small Employer Carrier Committee as created by
7 G.S. 58-50-120.
- 8 (9) "Dependent" means the spouse or child of an eligible employee, subject to
9 applicable terms of the health care plan covering the employee.
- 10 (10) "Eligible employee" means an employee who works for a small employer on
11 a full-time basis, with a normal work week of 30 or more hours, including a
12 sole proprietor, a partner or a partnership, or an independent contractor, if
13 included as an employee under a health care plan of a small employer; but
14 does not include employees who work on a part-time, temporary, or
15 substitute basis.
- 16 (11) "Health benefit plan" means any accident and health insurance policy or
17 certificate; nonprofit hospital or medical service corporation contract; health,
18 hospital, or medical service corporation plan contract; HMO subscriber
19 contract; plan provided by a MEWA or plan provided by another benefit
20 arrangement, to the extent permitted by ERISA, subject to G.S. 58-50-115.
21 Health benefit plan does not include benefits described in G.S. 58-68-25(b).
- 22 (12) "Impaired insurer" has the same meaning as prescribed in G.S. 58-62-20(6)
23 or G.S. 58-62-16(8).
- 24 (12a) ~~"Industry" means a demographic factor used to reflect the financial risk
25 associated with a specific industry.~~
- 26 (13) Repealed by Session Laws 1993, c. 529, s. 3.3.
- 27 (14) ~~"Late enrollee" has the same meaning as defined in G.S. 58-68-30(b)(2);
28 provided that the initial enrollment period shall be a period of at least 30
29 consecutive calendar days. In addition to the special enrollment provisions in
30 G.S. 58-68-30(f), an eligible employee or dependent shall not be considered
31 a late enrollee under a small employer health benefit plan if:~~
- 32 a. ~~Repealed by Session Laws 1998-211, s. 9, effective November 1,
33 1998.~~
- 34 ~~1, 2. Repealed by Session Laws 1998-211, s. 9, effective
35 November 1, 1998.~~
- 36 ~~3, 4. Repealed by Session Laws 1993, c. 529, s. 3.3.~~
- 37 b. ~~The individual elects a different health benefit plan offered by the
38 small employer during an open enrollment period;~~
- 39 e. ~~Repealed by Session Laws 1998-211, s. 9, effective November 1,
40 1998.~~
- 41 d. ~~A court has ordered coverage be provided for a spouse or minor child
42 under a covered employee's health benefit plan and the request for
43 enrollment for a spouse is made within 30 days after issuance of the
44 court order. A minor child shall be enrolled in accordance with the
45 requirements of G.S. 58-51-120; or~~
- 46 e. ~~Repealed by Session Laws 1998-211, s. 9, effective November 1,
47 1998.~~
- 48 (15) Repealed by Session Laws 1993, c. 529, s. 3.3.
- 49 (16) "Pool" means the North Carolina Small Employer Health Reinsurance Pool
50 created in G.S. 58-50-150.

- 1 (17) ~~"Preexisting conditions provision" means a preexisting condition provision~~
2 ~~as defined in G.S. 58-68-30.~~
- 3 (18) "Premium" includes insurance premiums or other fees charged for a health
4 benefit plan, including the costs of benefits paid or reimbursements made to
5 or on behalf of persons covered by the plan.
- 6 (19) "Rating period" means the calendar period for which premium rates
7 established by a small employer carrier are assumed to be in effect, as
8 determined by the small employer carrier.
- 9 (20) "Risk-assuming carrier" means a small employer carrier electing to comply
10 with the requirements set forth in G.S. 58-50-140.
- 11 (21) "Reinsuring carrier" means a small employer carrier electing to comply with
12 the requirements set forth in G.S. 58-50-145.
- 13 (21a) ~~"Self-employed individual" means an individual or sole proprietor who~~
14 ~~derives a majority of his or her income from a trade or business carried on~~
15 ~~by the individual or sole proprietor which results in taxable income as~~
16 ~~indicated on IRS form 1040, Schedule C or F and which generated taxable~~
17 ~~income in one of the two previous years.~~
- 18 (22) "Small employer" means any individual actively engaged in business that, on
19 at least fifty percent (50%) of its working days during the preceding calendar
20 quarter, employed no more than 50 eligible employees, the majority of
21 whom are employed within this State, and is not formed primarily for
22 purposes of buying health insurance and in which a bona fide
23 employer-employee relationship exists. In determining the number of
24 eligible employees, companies that are affiliated companies, or that are
25 eligible to file a combined tax return for purposes of taxation by this State,
26 shall be considered one employer. Subsequent to the issuance of a health
27 benefit plan to a small employer and for the purpose of determining
28 eligibility, the size of a small employer shall be determined annually. Except
29 as otherwise specifically provided, the provisions of this Act that apply to a
30 small employer shall continue to apply until the plan anniversary following
31 the date the small employer no longer meets the requirements of this
32 definition. For purposes of this Act, the term small employer includes
33 self-employed individuals employer who does not meet the definition of an
34 "applicable large employer" under Section 4980H(c)(2) of the Affordable
35 Care Act.
- 36 (23) "Small employer carrier" means any carrier that offers health benefit plans
37 covering eligible employees of one or more small employers."

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

39 **"§ 58-50-125. Health care plans; formation; approval; offerings.**

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

~~1 Commissioner shall give due consideration to cost-effective and life-saving health care services
2 and to cost-effective health care providers. The Committee shall file with the Commissioner its
3 findings and recommendations, and reasons for the findings and recommendations, if it does
4 not provide for coverage by any type of health care provider specified in G.S. 58-50-30. The
5 recommended plans may include cost-containment features such as, but not limited to:
6 preferred provider provisions; utilization review of medical necessity of hospital and physician
7 services; case management benefit alternatives; or other managed care provisions.~~

~~8 (a1) Both the basic health care plan and the standard health care plan provided for in
9 subsection (a) of this section may have optional deductible and co-payment levels as may be
10 determined by the small employer carrier, including high deductible options. A small employer
11 carrier shall file any changes in deductibles or co-payment levels with the Commissioner for
12 the Commissioner's approval prior to implementing the changes in this State. The
13 Commissioner may periodically review and update the benefits provided by these plans to
14 address trends in the small group market. The Commissioner shall consult with small employer
15 carriers and representatives of the insurance agent and small employer communities as part of
16 that periodic review.~~

~~17 (b) Repealed by Session Laws 2006-154, s. 9, effective July 23, 2006.~~

~~18 (c) Except as provided under Article 68 of this Chapter, the plans developed under this
19 section are not required to provide coverage that meets the requirements of other provisions of
20 this Chapter that mandate either coverage or the offer of coverage by the type or level of health
21 care services or health care provider.~~

~~22 (d) As a condition of transacting business as a small employer carrier in this State, the
23 carrier shall either offer small employers at least one basic and one standard health care plan or
24 the alternative coverages provided in G.S. 58-50-126. Every small employer that elects to be
25 covered under such a plan and agrees to make the required premium payments and to satisfy
26 the other provisions of the plan shall be issued such a plan by the small employer carrier. The
27 premium payment requirements used in connection with basic and standard health care plans
28 may address the potential credit risk of small employers that elect coverage in accordance with
29 this subsection by means of payment security provisions that are reasonably related to the risk
30 and are uniformly applied. If a small employer carrier offers coverage to a small employer, the
31 small employer carrier shall offer coverage to all eligible employees of a small employer and
32 their dependents. A small employer carrier shall not offer coverage to only certain individuals
33 in a small employer group except in the case of late enrollees as provided in
34 G.S. 58-50-130(a)(4b)-group. A small employer carrier shall not modify any health benefit plan
35 with respect to a small employer, any eligible employee, or dependent through riders,
36 endorsements, or otherwise, in order to restrict or exclude coverage for certain diseases or
37 medical conditions otherwise covered by the health benefit plan. In the case of an eligible
38 employee or dependent of an eligible employee who, before the effective date of the plan, was
39 excluded from coverage or denied coverage by a small employer carrier in the process of
40 providing a health benefit plan to an eligible small employer, the small employer carrier shall
41 provide an opportunity for the eligible employee or dependent of an eligible employee to enroll
42 in the health benefit plan currently held by the small employer.~~

~~43 (e) Repealed by Session Laws 2006-154, s. 9, effective July 23, 2006.~~

~~44 (f) To the extent it is required under this section and G.S. 58-68-40, every small
45 employer carrier shall fairly market all of its small group health benefit plans it offers on a
46 guaranteed issue basis to all small employers in the geographic areas in which the carrier makes
47 coverage available or provides benefits.~~

~~48 (g) Repealed by Session Laws 2006-154, s. 9, effective July 23, 2006.~~

~~49 (h) The provisions of subsection (d) of this section apply to every health benefit plan
50 delivered, issued for delivery, renewed, or continued in this State or covering persons residing
51 in this State on or after the date the plan becomes operational, as determined by the~~

1 Commissioner. For purposes of this subsection, the date a health benefit plan is continued is the
2 anniversary date of the issuance of the health benefit plan."

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

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

5 "**§ 58-50-130. Required health care plan provisions.**

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

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

9 (4a) A carrier may continue to enforce reasonable employer participation and
10 contribution requirements on small employers applying for coverage;
11 however, participation and contribution requirements may vary among small
12 employers only by the size of the small employer group and shall not differ
13 because of the health benefit plan involved. In applying minimum
14 participation requirements to a small employer, a small employer carrier
15 shall not consider employees or dependents who have qualifying existing
16 coverage in determining whether an applicable participation level is met.
17 "Qualifying existing coverage" means benefits or coverage provided under:
18 (i) Medicare, Medicaid, and other government funded programs; ~~or~~ (ii) an
19 employer-based health insurance or health benefit arrangement, including a
20 self-insured plan, that provides benefits similar to or in excess of benefits
21 provided under the basic health care ~~plan-plan~~; or (iii) nongroup or
22 individual health insurance major medical coverage.

23 ~~(4b) Late enrollees may only be excluded from coverage for the greater of 18~~
24 ~~months or an 18-month preexisting condition exclusion; however, if both a~~
25 ~~period of exclusion from coverage and a preexisting condition exclusion are~~
26 ~~applicable to a late enrollee, the combined period shall not exceed 18~~
27 ~~months. If a period of exclusion from coverage is applied, a late enrollee~~
28 ~~shall be enrolled at the end of that period in the health benefit plan held at~~
29 ~~the time by the small employer.~~

30 (5) Notwithstanding any other provision of this Chapter, no small employer
31 carrier, insurer, subsidiary of an insurer, or controlled individual of an
32 insurance holding company shall act as an administrator or claims paying
33 agent, as opposed to an insurer, on behalf of small groups which, if they
34 purchased insurance, would be subject to this section. No small employer
35 carrier, insurer, subsidiary of an insurer, or controlled individual of an
36 insurance holding company shall provide stop loss, catastrophic, or
37 reinsurance coverage to small employers that does not comply with the
38 underwriting, rating, and other applicable standards in this Act.

39 (6) If a small employer carrier offers coverage to a small employer, the small
40 employer carrier shall offer coverage to all eligible employees of a small
41 employer and their dependents. A small employer carrier shall not offer
42 coverage to only certain individuals in a small employer group except in the
43 case of late enrollees as provided in G.S. 58-50-130(a)(4).

44 (7), (8) Repealed by Session Laws 1997-259, s. 5.

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

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

49 (1) Small employer carriers shall use an adjusted-community rating
50 methodology in which the premium for each small employer can vary only
51 on the basis of the eligible employee's or dependent's age ~~as determined~~

1 under subdivision (6) of this subsection, the gender of the eligible employee
 2 or dependent, number of family members covered, or geographic area as
 3 determined under subdivision (7) of this subsection, or industry as
 4 determined under subdivision (9) of this subsection. subsection for groups
 5 that are grandfathered plans, as defined within the Affordable Care Act.
 6 Premium rates charged during a rating period to small employers with
 7 similar case characteristics for same coverage shall not vary from the
 8 adjusted community rate by more than twenty-five percent (25%) for any
 9 reason, including differences in administrative costs and claims experience.
 10 Small employer carriers may develop separate rates for individuals aged 65
 11 years and older for coverage for which Medicare is the primary payor and
 12 coverage for which Medicare is not the primary payor.

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

17 (3) A small employer carrier shall not modify the premium rate charged to a
 18 small employer or a small employer group member, including changes in
 19 rates related to the increasing age of a group member, for 12 months from
 20 the initial issue date or renewal date, unless the group is composite rated and
 21 composition of the group changed by twenty percent (20%) or more or
 22 benefits are changed. The percentage increase in the premium rate charged
 23 to a small employer for a new rating period shall not exceed the sum of all of
 24 the following:

- 25 a. The percentage change in the adjusted community rate as measured
 26 from the first day of the prior rating period to the first day of the new
 27 rating period.
- 28 b. Any adjustment, not to exceed fifteen percent (15%) annually, due to
 29 claim experience, health status, or duration of coverage of the
 30 employees or dependents of the small employer.
- 31 c. Any adjustment because of change in coverage or change in case
 32 characteristics of the small employer group.

33 (4), (5) Repealed by Session Laws 1995, c. 238, s. 1.

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

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

48 ~~Carriers may combine, but shall not split, complete age brackets for the~~
 49 ~~purposes of determining rates under this subsection. Small employer carriers~~
 50 ~~shall be permitted to develop separate rates for individuals aged 65 years and~~

- 1 ~~older for coverage for which Medicare is the primary payor and coverage for~~
2 ~~which Medicare is not the primary payor.~~
- 3 (7) A carrier shall define geographic area to mean medical care system. Medical
4 care system factors shall reflect the relative differences in expected costs,
5 shall produce rates that are not excessive, inadequate, or unfairly
6 discriminatory in the medical care system areas, and shall be revenue neutral
7 to the small employer carrier.
- 8 (8) The Department may adopt rules to administer this subsection and to assure
9 that rating practices used by small employer carriers are consistent with the
10 purposes of this subsection. Those rules shall include consideration of
11 differences based on all of the following:
- 12 a. Health benefit plans that use different provider network arrangements
13 may be considered separate plans for the purposes of determining the
14 rating in subdivision (1) of this subsection, provided that the different
15 arrangements are expected to result in substantial differences in
16 claims costs.
- 17 b. Except as provided for in sub-subdivision a. of this subdivision,
18 differences in rates charged for different health benefit plans shall be
19 reasonable and reflect objective differences in plan design, but shall
20 not permit differences in premium rates because of the case
21 characteristics of groups assumed to select particular health benefit
22 plans.
- 23 c. Small employer carriers shall apply allowable rating factors
24 consistently with respect to all small employers.
- 25 ~~(9) In any case where the small employer carrier uses industry as a case~~
26 ~~characteristic in establishing premium rates, the rate factor associated with~~
27 ~~any industry classification divided by the lowest rate factor associated with~~
28 ~~any other industry classification shall not exceed 1.2.~~
- 29 (c) Repealed by Session Laws 1993, c. 529, s. 3.7.
- 30 (d) In connection with the offering for sale of any health benefit plan to a small
31 employer, each small employer carrier shall make a reasonable disclosure, as part of its
32 solicitation and sales materials, of the following and shall provide this information to the small
33 employer upon request:
- 34 (1) Repealed by Session Laws 1993, c. 529, s. 3.7.
- 35 (2) Provisions concerning the small employer carrier's right to change premium
36 rates and the factors other than claims experience that affect changes in
37 premium rates.
- 38 (3) Provisions relating to renewability of policies and contracts.
- 39 (4) Provisions affecting any preexisting conditions provision.
- 40 (5) The benefits available and premiums charged under all health benefit plans
41 for which the small employer is eligible.
- 42 (e) Each small employer carrier shall maintain at its principal place of business a
43 complete and detailed description of its rating practices and renewal underwriting practices,
44 including information and documentation that demonstrate that its rating methods and practices
45 are based upon commonly accepted actuarial assumptions and are in accordance with sound
46 actuarial principles.
- 47 (f) Each small employer carrier shall file with the Commissioner annually on or before
48 March 15 an actuarial certification certifying that it is in compliance with this Act and that its
49 rating methods are actuarially sound. The small employer carrier shall retain a copy of the
50 certification at its principal place of business.

1 (g) A small employer carrier shall make the information and documentation described
2 in subsection (e) of this section available to the Commissioner upon request. Except in cases of
3 violations of this Act, the information is proprietary and trade secret information and is not
4 subject to disclosure by the Commissioner to persons outside of the Department except as
5 agreed to by the small employer carrier or as ordered by a court of competent jurisdiction.
6 Nothing in this section affects the Commissioner's authority to approve rates before their use
7 under G.S. 58-65-60(e) or G.S. 58-67-50(c).

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

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