



# HOUSE BILL 115: North Carolina Health Benefit Exchange

2011-2012 General Assembly

---

<b>Committee:</b>	House Insurance	<b>Date:</b>	April 11, 2011
<b>Introduced by:</b>	Reps. Dockham, Brubaker, Wray, Murry	<b>Prepared by:</b>	Amy Jo Johnson
<b>Analysis of:</b>	PCS to Second Edition H115-CSTK-4		Staff Attorney

---

**SUMMARY:** *The PCS to House Bill 115 adds a new Part to Article 50 of Chapter 58 of the General Statutes creating the North Carolina Health Benefit Exchange.*

**CURRENT LAW:** The federal Patient Protection and Affordable Care Act, P.L. 111-148, as amended by the federal Health Care and Education Reconciliation Act of 2010, P.L. 111-152, (hereafter "The ACA") directs that States may set up Health Benefit Exchanges for individuals and small businesses to purchase health insurance. An Exchange for small businesses is known as the Small Business Health Options Program or "SHOP" Exchange. A state is not required to create its own Exchange. If a state does not create its own exchange, the federal government will create one for the state. If the state chooses to create its own Exchange, the Exchange(s) must be functional by 2014, at the time when citizens and legal immigrants will be required to pay a penalty if they do not have qualified health insurance unless they meet specific exemptions. A state's Health Benefit Exchange must ensure that it is financially self-sufficient beginning January 1, 2015. Section 1311(d) of the ACA outlines certain Exchange requirements and functions.

## **BILL ANALYSIS:**

**§58-50-300. Definitions.** This definition section applies only to the newly created Part 8 of Article 50 of Chapter 58 of the General Statutes.

- A "qualified employer" is a small employer that elects to make its full-time employees eligible for one or more qualified health plans offered through the SHOP Exchange.
- A "qualified individual" is to be defined as an individual, including a minor, who meets all of the following requirements: is seeking to enroll in a qualified health plan offered to individuals through the Exchange, resides in this State, is not incarcerated at the time of enrollment, other than incarceration pending the disposition of charges, and is reasonably expected to be, for the entire period for which enrollment is sought, a citizen or national of the United States or an alien lawfully present in the United States.
- A "Small employer" is 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.

**§58-50-310. Exchange established; board of directors; plan of operation.** The Exchange Authority may be supported in whole or in part by State funds but is not an instrumentality of the State. The Exchange Authority is subject to the supervision of the Commissioner of Insurance. This section of the

# House PCS 115

Page 2

bill also directs that the Exchange Authority will be operated by the Board of Directors. The Exchange Authority will create two separate Exchanges: the Individual Exchange and the SHOP Exchange.

The Board consists of the following 13 members:

- The Commissioner of Insurance, serving as an ex officio, nonvoting member.
- The Director of the Division of Medical Assistance, serving as an ex officio, nonvoting member.
- Four members appointed by the President Pro Tempore of the Senate:
  - One member who represents the medical provider community, recommended by the North Carolina Medical Society.
  - One member who represents an insurer, and is not a licensed health insurance agent, as recommended by the North Carolina Association of Health Plans.
  - One member who represents business, as recommended by the North Carolina Chamber.
  - One member of the general public who is not employed by or affiliated with an insurance company or plan, group hospital, or other health care provider, who can reasonably be expected to qualify for coverage in the Exchanges.
- Four members appointed by the Speaker of the House of Representatives:
  - One member who represents the medical provider community, as recommended by the North Carolina Hospital Association.
  - One member who represents the insurance industry and is not a licensed health insurance agent.
  - One member who represents small business, as recommended by the National Federation of Independent Business.
  - One member of the general public who is not employed by or affiliated with an insurance company or plan, group hospital, or other health care provider, who can reasonably be expected to qualify for coverage in the Exchanges.
- Three members appointed by the Governor:
  - One member who has expertise and experience in the development and operation of State-scale information technology systems.
  - One member who has expertise and experience in rural health policy, rural health economics, or rural health care finance as recommended by the North Carolina Rural Economic Development Center.
  - One member who has expertise and experience as a licensed health insurance agent in this State, as recommended by the North Carolina Association of Health Underwriters, the National Association of Insurance and Financial Advisors – North Carolina, and the Independent Insurance Agents of North Carolina.

Initial appointments are staggered, after which all succeeding appointments will be for three years. Members are not allowed to serve for more than two consecutive terms. A Board member may not influence any decision that might have a material financial effect on him or her or a member of his or her immediate family.

The Board is required to submit to the Commissioner a Plan of Operation for the Exchange. The Plan of Operation will be effective upon written approval of the Commissioner. The Plan of Operation must include policies and procedures for fiscal operations of the Exchange Authority, a statement acknowledging the fiduciary duty owed by the Exchange Authority to persons it services, and an approach to coordinate with DHHS to fairly allocate administrative costs for eligibility determinations in the Exchange Authority and Medicaid.

# House PCS 115

Page 3

**§ 58-50-320. Exchange Authority general powers.** The Exchange Authority has the power and authority to enter into contracts, to take legal action, and to enter into information-sharing agreements with federal and State agencies and other state exchanges.

**§ 58-50-330. General requirements.** The Exchange Authority will make qualified health plans available January 1, 2014. The Exchange Authority cannot charge a fee if an individual enrolls in another type of minimum essential coverage if that individual has become newly eligible or insurance has become affordable through their employer. A qualified health plan may include benefits above and beyond the essential benefits, and if a state law or regulation requires doing so, the state will make payment to defray the cost. If payments to defray the costs are not made, the insurer is not required to include those additional benefits in their health plans. Nothing in this Part is meant to conflict with or limit any state insurance laws or regulations adopted by the Commissioner. The Exchange Authority is subject to the Public Meetings laws and Public Records laws. Additionally, the members of the Board and the Executive Director are public servants for purposes of the State Ethics Act.

**§ 58-50-340. General duties.** Among its duties, the Exchange Authority will facilitate the purchase and sale of qualified health plans, operate a toll-free telephone hotline and an internet web-site, rate qualified health plans, inform individuals of eligibility requirements under Medicaid and CHIP and enroll individuals qualifying for those plans, provide pertinent information to the federal Secretary of the Treasury including information regarding exempted individuals and individuals receiving premium tax credits, take into account any excess of premium growth when recommending to the General Assembly whether or not to open the SHOP Exchange to the large group market, and meet financial integrity requirements and fiduciary duty requirements. Additionally, the Exchange Authority shall also conduct a review of costs and benefits of collecting and distributing premiums for small business, as well as study the feasibility of offering a Basic Health Plan and make recommendations on both issues to the General Assembly.

**§ 58-50-350. Health Benefit Plan certification.** The conditions under which the Exchange Authority will certify a health benefit plan as a qualified health plan include approval of the Commissioner of specific requirements unless the Exchange Authority determines that making the plan available is not in the interest of qualified individuals and employers. Additionally, the Exchange Authority will require each insurer to submit a justification for any premium increases. There are limits as to why the Exchange Authority may exclude a plan. The Exchange Authority is not allowed to impose premium price controls. The Exchange Authority must establish a process for certifying and decertifying claims, including an appeals process.

**§ 58-50-360. Choice.** There will be two risk pools: one for the Individual Exchange and one for the SHOP Exchange. Both risk pools will consist of all enrollees within that market, including those not purchased on the Exchange. Agents and brokers will be allowed to enroll on the Exchange Authority.

**§ 58-50-370. Funding; Publication of costs.** The Exchange Authority utilizes the funding stream which currently supports the North Carolina Health Insurance Risk Pool for the operations of the Exchange beginning in 2014. In 2015, that funding stream will support operation of the Exchange Authority that serves individuals with incomes less than 400% of the federal poverty level as well as qualified employers receiving a tax credit. All other users shall pay an annual user fee to the Exchange Authority, which must be approved by the Commissioner. Services performed by the Exchange Authority on behalf of other state or federal programs shall be paid for by those state or federal programs. The Exchange is exempt from all State taxes.

# House PCS 115

Page 4

**§ 58-50-380. Regulations.** The Commissioner may promulgate regulations to implement the provisions of the bill.

**§ 58-50-390. Audit.** There will be an annual audit of the Exchange Authority by the State Auditor.

Nothing in the Act will be construed to interfere with payments to Federally-qualified health centers.

The bill contains a severability clause. If the any portion of the act is found invalid, then the whole act is repealed. If the ACA is repealed or found invalid, then this act is repealed. If the ACA is not funded, the this act is unenforceable.

**EFFECTIVE DATE:** This act is effective when it becomes law.

*H115-SMTK-10(CSTK-4) v5*