



SPONSOR: Rep. D. Short & Sen. Copeland;
Reps. Cathcart, Lee, Booth, Carey, Ewing, Hastings,
Hocker, Hudson, Lavelle, Stone, Thornburg, Brady,
Carson, Johnson, Walls; Sens. Sorenson, Connor,
Simpson, Still

HOUSE OF REPRESENTATIVES
144th GENERAL ASSEMBLY

HOUSE BILL NO. 478

AN ACT TO AMEND TITLE 18 OF THE DELAWARE CODE RELATING TO THE DELAWARE HEALTH
INSURANCE RISK POOL.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 SECTION 1. Amend Title 18 of the Delaware Code by adding a new Chapter to read as follows:

2 "Chapter 35A. Delaware State Health Insurance Risk Pool.

3 § 3501A. Definitions.

4 The following definitions apply to this Part:

- 5 (1) 'Administrator' – The Pool Administrator selected by the Executive Director in accordance with this Part.
- 6 (2) 'Benefit plan' – The coverage offered by the Pool to eligible individuals.
- 7 (3) 'Board' – The Board of Directors of the Pool.
- 8 (4) 'Commissioner' – The Commissioner of Insurance of Delaware or the Commissioner's authorized
9 designee.
- 10 (5) 'Covered person' – Any individual resident of this State, excluding dependents, who is receiving or is
11 eligible to receive medical care benefits from any insurer.
- 12 (6) 'Creditable coverage' – The same meaning as defined in Title 18 of the Delaware Code.
- 13 (7) 'Dependent' – A resident spouse, an unmarried child under the age of 19 years, a child who is a full-time
14 student under the age of 24 years and who is financially dependent upon the parent or guardian, or a child
15 of any age who is disabled and dependent upon the parent or guardian.
- 16 (8) 'Executive Director' – The individual selected by a majority vote of the Board members and hired to
17 serve as the Executive Director of the Pool.
- 18 (9) 'Federally defined eligible individual' – The same meaning as the defined term 'eligible individual' in
19 Title 18 of the Delaware Code.
- 20 (10) 'Health insurance coverage' – The same meaning as defined in Title 18 of the Delaware Code.

21 (11) 'Insurance arrangement' – The plan, program, contract, or other arrangement through which medical care
22 is provided by an employer to its officers or employees but does not include medical care covered
23 through an insurer.

24 (12) 'Insured' – An individual who is eligible to receive benefits from the Pool.

25 (13) 'Insurer' – Any entity, other than the Pool, that provides medical care benefits, including excess or
26 stop-loss insurance, that covers medical care or administers medical care on any individual in this State.

27 For the purposes of this Part, insurer includes:

- 28 a. An insurance company;
- 29 b. A hospital or medical service corporation;
- 30 c. A health maintenance organization;
- 31 d. A multiple employer welfare arrangement;
- 32 e. A third-party administrator or claims processor; and
- 33 f. Any other nongovernmental entity providing a health benefit plan subject to State insurance
34 regulation.

35 Insurer does not include an entity to the extent the entity provides excepted benefits as defined in Title 18
36 of the Delaware Code.

37 (14) 'Medical care' – All of the following:

- 38 a. The diagnosis, cure, mitigation, treatment, or prevention of disease, or amounts paid for the
39 purpose of affecting any structure or function of the body;
- 40 b. Transportation primarily for and essential to medical care referred to in subdivision a. of this
41 subdivision; and
- 42 c. Insurance covering medical care referred to in sub-subdivisions a. and b. of this subdivision.

43 (15) 'Plan of Operation' – The articles, bylaws, and operating rules and procedures adopted by the Board in
44 accordance with this Part.

45 (16) 'Pool' – The Delaware Health Insurance Risk Pool.

46 (17) 'Provider' – An individual or entity that provides medical care to individuals residing in this State.

47 (18) 'Resident' – An individual who has legal status in the United States and who:

- 48 a. Has been legally domiciled in this State for a period of at least 30 days, except that for a
49 federally defined eligible individual, there shall not be a 30-day requirement;
- 50 b. is legally domiciled in this State on the date of application to the Pool and who is eligible for
51 enrollment in the Pool as a result of the Health Insurance Portability and Accountability Act of
52 1996; or

53 c. Is legally domiciled in this State on the date of application to the Pool and is eligible for the
54 credit for health insurance costs under section 35 of the Internal Revenue Code of 1986.

55 (19) 'Special Fund' – The Delaware Health Insurance Risk Pool Special fund.

56 (20) 'Trade Adjustment Assistance Program (TAA)' – Title II of the Trade Act of 2002, P.L. 107-210.

57 § 3502A. Risk Pool established; board of directors; plan of operation.

58 (a) There is hereby created a nonprofit entity to be known as the Delaware Health Insurance Risk Pool.
59 Notwithstanding that the Pool may be supported in whole or in part from State funds, the Pool is not an instrumentality of
60 the State. The Pool shall operate under the supervision and control of the Board.

61 (b) The Board of the Delaware Health Insurance Risk Pool shall consist of the Commissioner, who shall
62 serve as an *ex officio* nonvoting member of the Board, and 11 members appointed as follows:

63 (1) One member who represents an insurer, as appointed by the Governor.

64 (2) Four members of the general public who are not employed by or affiliated with an insurance
65 company or plan, group hospital, or other health care provider and can reasonably be expected to
66 qualify for coverage in the Pool. Members of the general public include individuals whose only
67 affiliation with health insurance or health care coverage is as a covered member. The four
68 members of the general public shall be appointed by the General Assembly, as follows:

69 a. Two members upon the recommendation of the President Pro Tempore of the Senate.

70 b. Two members upon the recommendation of the Speaker of the House of
71 Representatives.

72 (3) Six members appointed by the Commissioner, as follows:

73 a. One insurer who sells individual health insurance policies.

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

75 c. Two who represent the medical provider community, one as recommended by the
76 Delaware Medical Society, and one as recommended by the Delaware Hospital
77 Association.

78 d. One who represents business, as recommended by the Delaware State Chamber of
79 Commerce.

80 e. One who represents small business, as recommended by the National Federation of
81 Independent Business.

82 (c) The initial appointments by the Governor and the General Assembly, upon the recommendation of the
83 Speaker of the House of Representatives and the President Pro Tempore of the Senate, shall serve a term of three (3) years.

84 The initial appointments by the Commissioner under sub-subdivisions a. and d. of subdivision (b)(3) of this Section shall be

85 for a term of two (2) years. The initial appointments by the Commissioner under sub-subdivisions c., e., and f. of
86 subdivision (b)(3) of this section shall be for a term of one (1) year. All succeeding appointments shall be for terms of three
87 (3) years. Members shall not serve for more than two successive terms.

88 A Board member's term shall continue until the member's successor is appointed by the original appointing
89 authority. Vacancies shall be filled by the appointing authority for the unexpired portion of the term in which they occur.
90 A Board member may be removed by the appointing authority for cause.

91 The Board shall meet at least quarterly upon the call of the chair. A majority of the total membership of the
92 Commission shall constitute a quorum.

93 The Commissioner shall appoint a chair to serve for the initial two (2) years of the Plan's operation. Subsequent
94 chairs shall be elected by a majority vote of the Board members and shall serve for two-year terms. Board members shall
95 receive travel allowances under Title 18 of the Delaware Code when traveling to and from meetings of the Board, but shall
96 not receive any subsistence allowance or per diem under Title 18 of the Delaware Code.

97 (d) The Board shall submit to the Commissioner a Plan of Operation for the Pool and any amendments
98 necessary or suitable to assure the fair, reasonable, and equitable administration of the Plan of Operation. The Plan of
99 Operation shall become effective upon approval in writing by the Commissioner consistent with the date on which the
100 coverage under this Part must be made available. If the Board fails to submit a suitable Plan of Operation within 180 days
101 after the appointment of the Board, or at any time thereafter fails to submit suitable amendments to the Plan of Operation,
102 the Commissioner shall adopt temporary rules necessary or advisable to effectuate the provisions of this section. The rules
103 shall continue in force until modified by the Commissioner or superseded by a Plan of Operation submitted by the Board
104 and approved by the Commissioner. The Plan of Operation shall:

- 105 (1) Establish procedures for operation of the Pool.
- 106 (2) Establish procedures for selecting a Pool Administrator in accordance with Title 18 of the
107 Delaware Code.
- 108 (3) Establish procedures to create a fund for administrative expenses, which shall be managed by the
109 Board.
- 110 (4) Establish procedures for the collection, handling, disbursing, accounting, and auditing of assets,
111 monies, and claims of the Pool and the Pool Administrator.
- 112 (5) Develop and implement a program to publicize the existence of the Pool, the eligibility
113 requirements, procedures for enrollment, and availability of State premium subsidies and to
114 maintain public awareness of the Pool.

- 115 (6) Establish procedures under which applicants and participants may have grievances reviewed by
116 a grievance committee appointed by the Executive Director in accordance with Title 18 of the
117 Delaware Code.
- 118 (7) Establish procedures for identifying and confirming income levels of applicants for Pool
119 coverage who are eligible to receive a State premium subsidy, if a State premium subsidy is
120 available.
- 121 (8) Provide for other matters as may be necessary and proper for the execution of the Executive
122 Director's powers, duties, and obligations under this Part.
- 123 (e) The Pool shall have the general powers and authority granted under the laws of this State to health
124 insurers and the specific authority to do all of the following:
- 125 (1) Enter into contracts as are necessary or proper to carry out the provisions and purposes of this
126 Part, including the authority, with the approval of the Executive Director in collaboration with
127 the Board, to enter into contracts with similar plans of other states for the joint performance of
128 common administrative functions or with persons or other organizations for the performance of
129 administrative functions.
- 130 (2) Sue or be sued.
- 131 (3) Take legal action as necessary to:
- 132 a. Avoid the payment of improper claims against the Pool or the coverage provided by or
133 through the Plan.
- 134 b. Recover any amounts erroneously or improperly paid by the Plan.
- 135 c. Recover any amounts paid by the Pool as a result of mistake of fact or law.
- 136 d. Recover other amounts due the Pool.
- 137 (4) Establish rates and rate schedules in accordance with this Part.
- 138 (5) Issue policies of insurance in accordance with the requirements of this Part.
- 139 (6) Appoint appropriate legal, actuarial, and other committees as necessary to provide technical
140 assistance in the operation of the Pool, policy, and other contract design, and any other function
141 within the Pool's authority.
- 142 (7) Establish policies, conditions, and procedures for reinsuring risks of participating health insurers,
143 as defined in Title 18 of the Delaware Code, desiring to issue Pool coverage in their own name.
144 Provision of reinsurance shall not subject the Pool to any of the capital or surplus requirements,
145 if any, otherwise applicable to reinsurers.
- 146 (8) Employ and fix the compensation of employees.

- 147 (9) Prepare and distribute certificate of eligibility forms and enrollment instruction forms to
148 insurance producers and to the general public.
- 149 (10) Provide for reinsurance for the Pool.
- 150 (11) Issue additional types of health insurance policies to provide optional coverage, including
151 Medicare supplemental insurance coverage.
- 152 (12) Provide for and employ cost containment measures and requirements including preadmission
153 screening, second surgical opinion, concurrent utilization review, disease management,
154 individual case management, health and wellness programs including a smoking cessation
155 initiative, and other commonly used benefit plan design features for the purpose of making
156 health insurance coverage offered by the Pool more cost-effective.
- 157 (13) Design, utilize, contract, or otherwise arrange for the delivery of cost-effective health care
158 services, including establishing or contracting with preferred provider organizations, health
159 maintenance organizations, and other limited network provider arrangements.
- 160 (14) Adopt bylaws, policies, and procedures as may be necessary or convenient for the
161 implementation of this Part and the operation of the Pool.

162 (f) The Executive Director, with the approval of the Board, shall operate the Pool in a manner so that the
163 estimated cost of providing the benefit plans offered during any calendar year is not anticipated to exceed the total income
164 the Pool expects to receive from policy premiums and other revenue available to the Pool. The Board may impose a cap on
165 enrollment or may suspend enrollment for an indefinite period if the Board finds that estimated costs are anticipated to
166 exceed income, except that any enrollment cap or suspension shall not apply to federally defined eligible individuals who
167 are eligible to enroll in the Pool pursuant to Title 18 of the Delaware Code.

168 (g) The Executive Director shall make an annual report to the Speaker of the House of Representatives, the
169 President Pro Tempore of the Senate, the Commissioner, the Joint Legislative Health Care Oversight Committee, and the
170 Committee on Employee Hospital and Medical Benefits. The report shall summarize the activities of the Pool in the
171 preceding calendar year, including the net written and earned premiums, benefit plan enrollment, the expense of
172 administration, and the paid and incurred losses.

173 (h) Neither the Board nor the employees of the Pool are liable for any obligations of the Pool. There shall be
174 no liability on the part of, and no cause of action of any nature shall arise against, the Pool or its agents or employees, the
175 Board, the Executive Director, or the Commissioner or the Commissioner's representatives for any action taken by them in
176 good faith in the performance of their powers and duties under this Part.

177 (i) The members of the Board are public servants under Title 18 of the Delaware Code and are subject to the
178 provisions of Title 29, Chapter 58 of the Delaware Code.

179 § 3503A. Administrator.

180 (a) The Executive Director, in collaboration with the Board, shall select through a competitive bidding
181 process one or more insurers to administer the Pool. The Executive Director shall evaluate bids submitted based on criteria
182 established by the Board. The criteria shall allow for the comparison of information about each bidding administrator and
183 selection of a Pool Administrator based on at least the following:

- 184 (1) Proven ability to handle health insurance coverage to individuals.
- 185 (2) Efficiency and timeliness of the claim processing procedures.
- 186 (3) Estimated total charges for administering the Pool.
- 187 (4) Ability to apply effective cost containment programs and procedures and to administer the Pool
188 in a cost-efficient manner.
- 189 (5) Financial condition and stability.
- 190 (6) Evidence of authority to provide third-party administrative services in Delaware.

191 (b) The Administrator shall serve for a period specified in the contract between the Pool and the
192 Administrator subject to removal for cause and subject to any terms, conditions, and limitations of the contract between the
193 Pool and the Administrator. At least one year before the expiration of each period of service by an Administrator, the
194 Executive Director shall invite eligible entities, including the current Administrator, unless the current Administrator was
195 removed for cause, to submit bids to serve as the Administrator. Selection of the Administrator for the succeeding period
196 shall be made at least six months before the end of the current period.

197 (c) The Administrator shall perform such functions relating to the Pool as may be assigned to it, including:
198 (1) Verification of eligibility.
199 (2) Payment of claims.
200 (3) Establishment of a premium billing procedure for collection of premiums from individuals
201 covered under the Pool.
202 (4) Other necessary functions to assure timely payment of benefits to covered persons under the
203 Pool.

204 (d) The Administrator shall submit regular reports to the Executive Director and the Board regarding the
205 operation of the Pool. The contract between the Pool and the Administrator shall specify the frequency, content, and form
206 of the report.

207 (e) Following the close of each calendar year, the Administrator shall determine net written and earned
208 premiums, the expense of administration, and the paid and incurred losses for the year and report this information to the
209 Executive Director and the Board on a form prescribed by the Executive Director.

210 (f) The Administrator shall be paid as provided in the contract between the Pool and the Administrator.

211 § 3504A. Risk Pool rates and policy forms.

212 (a) The Pool shall adopt and modify, as appropriate, rates, rate schedules, rate adjustments, expense
213 allowances, agent referral fees, claim reserve formulas, and any other actuarial function appropriate to the operation of the
214 Pool. Rates and rate schedules may be adjusted for appropriate factors such as age, sex, and geographic variation in claim
215 cost and shall take into consideration appropriate rating factors in accordance with established actuarial and underwriting
216 practices.

217 (b) The Pool shall determine the standard risk rate by considering the premium rates charged by other
218 insurers offering health insurance coverage to individuals. The standard risk rate shall be established using reasonable
219 actuarial techniques and shall reflect anticipated experience and expenses for the coverage. Pool rates shall be one hundred
220 fifty percent (150%) to two hundred percent (200%) of rates established as applicable for individual standard rates and shall
221 be adjusted annually, at the time of annual renewal.

222 (c) The Executive Director, with the approval of the Board and the Commissioner, may develop incentive
223 programs with premium discounts. The Pool may provide for premium surcharges for covered individuals who are
224 smokers. Premium surcharge rates shall be established by the Executive Director, in collaboration with the Board, subject
225 to the approval of the Commissioner.

226 (d) Provider reimbursement rates under Pool coverage shall be limited to the rates allowed for providers
227 under the Medicare Program for those services covered by Medicare. The Board shall establish reimbursement rates for
228 services for which Medicare has not established an allowed rate. Providers rendering medical care to an insured shall
229 accept payment of the amount established under this subsection, including any applicable deductible, coinsurance, or
230 co-payment amounts, as payment in full for services rendered.

231 (e) The Pool shall submit all premium rates and premium rate schedules and amendments to the
232 Commissioner for approval. The Pool shall not use any premium rates, premium rate schedules, or amendments to the rates
233 and schedules unless the Commissioner has approved them. The Commissioner, in evaluating the premium rates and
234 premium rate schedules, shall consider the factors provided in this Section. The Pool shall provide all individuals enrolled
235 in the Pool with at least 45 days' notice of any change in Pool premium rates or premium rate schedules.

236 (f) The Pool shall submit all policy forms, riders, endorsements, and applications for coverage to the
237 Commissioner for approval. The Pool shall not use any policy forms, riders, endorsements, or applications for coverages
238 unless the Commissioner has approved them. Except for any provisions that are specifically treated otherwise under this
239 Part, the provisions of this Chapter that apply to benefit plans and policy forms of health insurers generally shall apply to
240 the benefit plans offered and policy forms used by the Pool.

241 § 3505A. Eligibility for Pool coverage.

242 (a) Any individual who is and continues to be a resident of this State is eligible for Pool coverage if the
243 individual provides evidence of any of the following:

244 (1) A notice of rejection or refusal to issue substantially similar health insurance coverage for health
245 reasons by an insurer. A rejection or refusal by an insurer offering only stop-loss, excess loss, or
246 reinsurance coverage with respect to the applicant is not sufficient evidence of eligibility.

247 (2) An offer to issue health insurance coverage only with a conditional rider that limits coverage for
248 the individual's high-risk medical condition.

249 (3) A refusal by an insurer to issue health insurance coverage except at a rate exceeding the Pool
250 rate.

251 (4) A diagnosis of the individual with one of the medical or health conditions listed by the Board in
252 accordance with this section. An individual diagnosed with one or more of these conditions is
253 eligible for Pool coverage without applying for other health insurance coverage.

254 (5) Qualification as a federally defined eligible individual, whether or not currently covered by an
255 insurer under that qualification.

256 (6) An individual who is legally domiciled in this State and is eligible for the credit for health
257 insurance costs under the Trade Adjustment Assistance Reform Act of 2002, Section 35 of the
258 Internal Revenue Code of 1986. Each dependent of an individual who is eligible for Pool
259 coverage under this subdivision shall also be eligible for Pool coverage.

260 (7) The individual has current individual health insurance coverage at a rate exceeding the Pool rate.

261 (b) The Board, upon recommendation of the Executive Director, shall adopt a list of medical or health
262 conditions for which a person shall be eligible for Pool coverage under subdivision (a)(4) of this Section. The Board may
263 amend the list as the Board considers appropriate.

264 (c) An individual is not eligible for coverage under the Pool if:

265 (1) The individual has or obtains medical care benefits substantially similar to or more
266 comprehensive than the benefit plan offered by the Pool, or would be eligible to have coverage if
267 the person elected to obtain it, except that:

268 a. An individual may maintain other coverage for the period of time the individual is
269 satisfying any preexisting condition waiting period under a Pool policy; and

270 b. An individual may maintain Pool coverage for the period of time the individual is
271 satisfying a preexisting condition waiting period under another health insurance policy
272 intended to replace the Pool policy.

- 273 (2) The individual is determined to be eligible for enrollment in the Delaware Medical Assistance
274 Plan or in Medicare, unless the Pool offers Medicare supplemental insurance coverage.
- 275 (3) The individual has previously terminated Pool coverage unless 12 months have lapsed since the
276 termination, except that this subdivision shall not apply with respect to an applicant who is a
277 federally defined eligible individual or to an applicant eligible for or receiving benefits under the
278 Trade Adjustment Assistance Program.
- 279 (4) The individual is an inmate or resident of a public institution, except that this subdivision shall
280 not apply with respect to an applicant who is a federally defined eligible individual.
- 281 (5) The individual's premiums are paid for or reimbursed under any government-sponsored program
282 or by any government agency or health care provider, except as an otherwise qualifying full-time
283 employee, or dependent thereof, of a government agency or health care provider. This
284 subdivision shall not apply for individuals receiving benefits under the Trade Adjustment
285 Assistance Program or to individuals receiving premium subsidies made available by the State
286 based on individual income levels.
- 287 (6) The individual has in effect on the date Pool coverage takes effect health insurance coverage
288 from an insurer or insurance arrangement.
- 289 (d) Coverage under the Pool shall cease:
- 290 (1) On the date an individual is no longer a resident of this State.
- 291 (2) On the date an individual requests coverage to end.
- 292 (3) Upon the death of the covered individual.
- 293 (4) On the date State law requires cancellation of the Pool policy.
- 294 (5) At the option of the Pool, 30 days after the Pool makes any inquiry concerning the individual's
295 eligibility or residence to which the individual does not reply.
- 296 (6) Because the individual has failed to make the payments required under this Part.
- 297 (e) Except as provided in subsection (d) of this Section, an individual who ceases to meet the eligibility
298 requirements of this Section may be terminated at the end of the Pool policy period for which the necessary premiums have
299 been paid.

300 § 3506A. Unfair referral to Pool.

301 It is an unfair trade practice under Article 63 of this Chapter and under Chapter 75 of the General Statutes for an
302 employer, an insurer, an insurance producer, as defined in Title 18 of the Delaware Code or a third-party administrator to
303 refer an individual employee to the Pool or arrange for an individual employee to apply to the Pool for the purpose of
304 separating that employee from a group medical care benefit plan provided in connection with the employee's employment.

305 This Section shall not prohibit an insurer or insurance producer from informing an individual of other coverage options,
306 including coverage provided by the Pool.

307 § 3507A. Minimum Pool benefits.

308 (a) The Pool shall offer at least two (2) types of benefit plans for individuals eligible under Title 18 of the
309 Delaware Code, including preferred provider organizations with different levels of deductibles and cost-sharing, and at least
310 one (1) choice of a health savings account. The covered services and benefit levels may vary between the types of benefit
311 plans, but at least two (2) types of benefit plans must, at a minimum, cover the benefits and services outlined in the
312 National Association of Insurance Commissioners' (NAIC) Model Health Pool for Uninsurable Individuals Act and be
313 consistent with comprehensive coverage generally available to persons who are eligible for individual health insurance
314 other than Medicare. All benefit plans offered by the Pool shall include disease or case management services.

315 (b) The Board, upon the recommendation of the Executive Director, shall adopt rules regarding the lifetime
316 limits and per individual combined coinsurance and deductibles for the health insurance products offered by the Pool. The
317 initial rules shall include not less than one million dollars (\$1,000,000) lifetime limit and a combined annual limit of up to
318 five thousand dollars (\$5,000) per individual on coinsurance and deductibles. The Board, upon recommendation of the
319 Executive Director, shall adopt rules adjusting these limitations at least once every five (5) years to reflect changes in the
320 medical component of the Consumer Price Index. When adopting or adjusting lifetime limits the Board may establish
321 categories of diseases that may be more seriously impacted by the lifetime limits than other diseases covered under the
322 Pool.

323 § 3508A. Preexisting conditions.

324 (a) Except as otherwise provided by law, Pool coverage shall exclude charges or expenses incurred during
325 the first 12 months following the effective date of coverage as to any condition for which medical advice, care, or treatment
326 was recommended or received as to such conditions during the 12-month period immediately preceding the effective date
327 of coverage, except that no preexisting condition exclusion shall be applied to a federally defined eligible individual.

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

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

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

336 § 3509A. Nonduplication of benefits.

337 (a) The Pool shall be payor of last resort of benefits whenever any other benefit or source of third-party
338 payment is available. Benefits otherwise payable under coverage shall be reduced by all amounts paid or payable through
339 any other medical care benefits and by all hospital and medical expenses paid or payable under any workers' compensation
340 coverage notwithstanding any provision of law to the contrary, automobile medical payment, or liability insurance, whether
341 provided on the basis of fault or no-fault, and by any hospital or medical benefits paid or payable under or provided
342 pursuant to any State or federal law or program.

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

346 § 3510A. Delaware Health Insurance Risk Pool Special Fund.

347 (a) The Delaware Health Insurance Risk Pool Special Fund is established as an interest-bearing,
348 non-reverting account in the General Fund. The Special Fund consists of the following revenue:

349 (1) Premiums, fees, charges, rebates, refunds, and any other receipts occurring or arising in
350 connection with the Pool.

351 (2) The revenue transferred to the Fund under Title 18 of the Delaware Code.

352 (3) Gifts, grants, and other appropriations.

353 (b) Disbursements from the Special Fund shall include the amounts required to pay the claims, benefits, and
354 administrative costs as may be determined by the Executive Director and the Board. Disbursement from the Special Fund
355 may be made by warrant drawn on the State Treasurer by the Executive Director, or the Executive Director and the Board
356 may by contract authorize the Administrator to draw the warrant.

357 § 3511A. Complaint procedures.

358 An applicant or participant in coverage from the Pool is entitled to have complaints against the Pool reviewed by a
359 grievance committee appointed by the Executive Director. Members of the Board shall not serve on the grievance
360 committee. The grievance committee shall report to the Board after completion of the review of each complaint. The
361 Executive Director shall retain all written complaints regarding the Pool at least until the third anniversary of the date the
362 Pool received the complaint. Independent review of an appeal decision upholding a noncertification or a second-level
363 grievance review decision upholding a noncertification shall be subject to review pursuant to Part 4 of this Article.

364 § 3512A. Audit.

365 An audit of the Pool shall be conducted annually under the oversight of the State Auditor. The cost of the audit
366 shall be reimbursed to the State Auditor from the Special Fund.

367 § 3513A. Taxation.

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

369 § 3514A. Rules.

370 The Board and the Commissioner may adopt rules pursuant to Title 29, Administrative Procedures Act, including
371 temporary rules, to implement this Part.

372 § 3515A. Collective action.

373 The establishment of rates, forms, or procedures and any other joint or collective action required by this Part may
374 not be the basis of any legal action or criminal or civil liability or penalty against the Pool or any insurer.

375 § 3516A. Pool financing; Board reporting.

376 (a) The Board shall monitor methods of financing the Pool to ensure a stable funding source and allow for its
377 continued operation. This monitoring shall include supplementary sources of funding, such as funds obtained from public
378 and private not-for-profit foundations, or other appropriate and available State or non-State funds. The Board shall also
379 review on a regular basis:

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

382 (2) The number of uninsured individuals who would qualify for coverage under the Pool based on
383 Title 18 of the Delaware Code and its Plan of Operation.

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

386 (4) The status of a request by the State to the Centers for Medicare and Medicaid Services for
387 approval of the Delaware Health Insurance Risk Pool to be considered an acceptable 'alternative
388 mechanism' under the federal Health Insurance Portability and Accountability Act in accordance
389 with 45 C.F.R. § 148.128(e).

390 (5) Methods for providing a premium subsidy on a sliding scale basis for individuals with incomes
391 up to three hundred percent (300%) of the federal poverty guidelines.

392 (b) The Board shall report its findings and recommendations to the General Assembly on March 1, 2009, and
393 annually thereafter.

394 § 3517A. Start-up Reserve.

395 (1) The Start-Up Reserve – State Funds. State funds appropriated to this Fund shall be used to
396 support reasonable expenses for personnel to carry out the Board's responsibilities under the Pool, including
397 contracting a third-party administrator. Funds shall be allocated by the Joint Finance Committee for the reasonable
398 expenses of the Board in conducting its duties under this Article that are incurred on or before July 1, 2009. At the
399 end of the fiscal year, any unspent and unencumbered State funds and any interest or investment income earned on

400 these funds shall not revert to the General Fund but shall be transferred to the Delaware Health Insurance Risk
401 Pool Special Fund.

402 (2) The Start-Up Reserve – Federal Funds. Federal funds received in lump sum or as a draw-down
403 grant for the purposes of this Article shall be deposited to this Reserve and shall be expended and accounted for in
404 accordance with requirements of the federal grant.

405 § 3518A. Proceeds credited to High Risk Pool.

406 Within 75 days after the end of each fiscal year, the State Treasurer must transfer from the General Fund to the
407 Delaware Health Insurance Risk Pool Special Fund established in Title 18 of the Delaware Code an amount equal to the
408 growth in net revenue from the tax applied to gross premiums under Title 18 of the Delaware Code. The growth in
409 revenue from this tax is the difference between the amount of revenue collected during the preceding fiscal year on
410 premiums taxed under that subdivision less the dollar amount of revenue collected during fiscal year 2006-2007 on
411 premiums taxed under that subdivision. The Treasurer must draw the amount required under this Section from revenue
412 collected on premiums taxed under that subdivision.”.

413 § 3519A. Tax Proceeds Distribution.

414 Within 75 days after the end of each fiscal year, the State Treasurer must transfer from the General Fund to the
415 Delaware Health Insurance Risk Pool Special Fund established in Title 18 of the Delaware Code an amount equal to thirty
416 percent (30%) of the growth in revenue from the tax applied to gross premiums under Title 18 of the Delaware Code. The
417 growth in revenue from this tax is the difference between the amount of revenue collected during the preceding fiscal year
418 on premiums taxed under that subdivision less the dollar amount of revenue collected during fiscal year 2006-2007 on
419 premiums taxed under that subdivision. The Treasurer must draw the amount required under this Section from revenue
420 collected on premiums taxed under that subdivision.”.

421 SECTION 2. On or before January 1, 2009, the Executive Director shall notify the Centers for Medicare and
422 Medicaid Services that the State has established the Delaware Health Insurance Risk Pool and shall request that the
423 Delaware Health Insurance Risk Pool be approved as an acceptable ‘alternative mechanism’ under the federal Health
424 Insurance Portability and Accountability Act in accordance with 45 C.F.R. § 148.128(e). The Executive Director shall
425 notify the Commissioner when the Centers for Medicare and Medicaid Services approve the request.

426 SECTION.3. The Executive Director shall study methods for encouraging healthy behaviors among the
427 Pool's insureds and report the Executive Director's findings to the Board and to the General Assembly not later than one (1)
428 year after initial implementation of the Pool.

429 SECTION 4. Notwithstanding Title 18 of the Delaware Code, individuals enrolling in the Pool within six (6)
430 months of the date that enrollment into the Pool first begins shall be subject to a six-month preexisting condition waiting
431 period.

432 SECTION 5. There is appropriated from the General Fund to the Start-Up Reserve – State Funds established
433 under Section 2 of this Act, the sum of two hundred fifty thousand dollars (\$250,000) for the 2008-2009 fiscal year. These
434 funds shall be allocated for the purposes of and in accordance with Section 2 of this Act. Unspent and unencumbered funds
435 remaining on June 30, 2009, shall not revert to the General Fund but shall be used for the purposes described in Section 2
436 of this Act.

437 SECTION 6. The provisions of this act are severable. If any provision of this Act is held invalid by a court of
438 competent jurisdiction, the invalidity does not affect other provisions of the Act that can be given effect without the invalid
439 provision.

SYNOPSIS

This Bill establishes the Delaware State Health Insurance Risk Pool.