

1 AN ACT relating to health plan waiting periods.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 337 IS CREATED TO
4 READ AS FOLLOWS:

5 **(1) No employer shall offer a health plan that imposes a waiting period for the**
6 **commencement of health insurance coverage under the plan.**

7 **(2) Employer-sponsored health plans, whether self-insured or fully insured, shall**
8 **begin coverage of new employees on the first day of the new employee's**
9 **employment.**

10 ➔Section 2. KRS 337.990 is amended to read as follows:

11 The following civil penalties shall be imposed, in accordance with the provisions in KRS
12 336.985, for violations of the provisions of this chapter:

13 (1) Any firm, individual, partnership, or corporation that violates KRS 337.020 shall be
14 assessed a civil penalty of not less than one hundred dollars (\$100) nor more than
15 one thousand dollars (\$1,000) for each offense. Each failure to pay an employee the
16 wages when due him under KRS 337.020 shall constitute a separate offense.

17 (2) Any employer who violates KRS 337.050 shall be assessed a civil penalty of not
18 less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).

19 (3) Any employer who violates KRS 337.055 shall be assessed a civil penalty of not
20 less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000)
21 for each offense and shall make full payment to the employee by reason of the
22 violation. Each failure to pay an employee the wages as required by KRS 337.055
23 shall constitute a separate offense.

24 (4) Any employer who violates KRS 337.060 shall be assessed a civil penalty of not
25 less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000)
26 and shall also be liable to the affected employee for the amount withheld, plus
27 interest at the rate of ten percent (10%) per annum.

- 1 (5) Any employer who violates the provisions of KRS 337.065 shall be assessed a civil
2 penalty of not less than one hundred dollars (\$100) nor more than one thousand
3 dollars (\$1,000) for each offense and shall make full payment to the employee by
4 reason of the violation.
- 5 (6) Any person who fails to comply with KRS 337.070 shall be assessed a civil penalty
6 of not less than one hundred dollars (\$100) nor more than one thousand dollars
7 (\$1,000) for each offense and each day that the failure continues shall be deemed a
8 separate offense.
- 9 (7) Any employer who violates any provision of KRS 337.275 to 337.325, KRS
10 337.345, and KRS 337.385 to 337.405, or willfully hinders or delays the
11 commissioner or the commissioner's authorized representative in the performance
12 of his or her duties under KRS 337.295, or fails to keep and preserve any records as
13 required under KRS 337.320 and 337.325, or falsifies any record, or refuses to
14 make any record or transcription thereof accessible to the commissioner or the
15 commissioner's authorized representative shall be assessed a civil penalty of not less
16 than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000). A
17 civil penalty of not less than one thousand dollars (\$1,000) shall be assessed for any
18 subsequent violation of KRS 337.285(4) to (9) and each day the employer violates
19 KRS 337.285(4) to (9) shall constitute a separate offense and penalty.
- 20 (8) Any employer who pays or agrees to pay wages at a rate less than the rate applicable
21 under KRS 337.275 and 337.285, or any wage order issued pursuant thereto shall be
22 assessed a civil penalty of not less than one hundred dollars (\$100) nor more than
23 one thousand dollars (\$1,000).
- 24 (9) Any employer who discharges or in any other manner discriminates against any
25 employee because the employee has made any complaint to his or her employer, to
26 the commissioner, or to the commissioner's authorized representative that he or she
27 has not been paid wages in accordance with KRS 337.275 and 337.285 or

1 regulations issued thereunder, or because the employee has caused to be instituted
2 or is about to cause to be instituted any proceeding under or related to KRS
3 337.385, or because the employee has testified or is about to testify in any such
4 proceeding, shall be deemed in violation of KRS 337.275 to 337.325, KRS 337.345,
5 and KRS 337.385 to 337.405 and shall be assessed a civil penalty of not less than
6 one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).

7 (10) Any employer who violates KRS 337.365 shall be assessed a civil penalty of not
8 less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).

9 (11) A person shall be assessed a civil penalty of not less than one hundred dollars
10 (\$100) nor more than one thousand dollars (\$1,000) when that person discharges or
11 in any other manner discriminates against an employee because the employee has:

12 (a) Made any complaint to his or her employer, the commissioner, or any other
13 person; or

14 (b) Instituted, or caused to be instituted, any proceeding under or related to KRS
15 337.420 to 337.433; or

16 (c) Testified, or is about to testify, in any such proceedings.

17 **(12) Any employer who violates Section 1 of this Act shall:**

18 **(a) Be assessed a civil penalty of not less than one hundred dollars (\$100) nor**
19 **more than one thousand dollars (\$1,000) for each day the employee worked**
20 **without coverage under the health plan; and**

21 **(b) Be liable to the employee for any health care expenses incurred by the**
22 **employee as a result of the employer-imposed waiting period.**

23 ➔Section 3. KRS 304.17A-220 is amended to read as follows:

24 (1) All group health plans and insurers offering group health insurance coverage in the
25 Commonwealth shall comply with the provisions of this section.

26 (2) Subject to subsection (8) of this section, a group health plan, and a health insurance
27 insurer offering group health insurance coverage, may, with respect to a participant

1 or beneficiary, impose a pre-existing condition exclusion only if:

2 (a) The exclusion relates to a condition, whether physical or mental, regardless of
3 the cause of the condition, for which medical advice, diagnosis, care, or
4 treatment was recommended or received within the six (6) month period
5 ending on the enrollment date. For purposes of this paragraph:

6 1. Medical advice, diagnosis, care, or treatment is taken into account only
7 if it is recommended by, or received from, an individual licensed or
8 similarly authorized to provide such services under state law and
9 operating within the scope of practice authorized by state law; and

10 2. The six (6) month period ending on the enrollment date begins on the
11 six (6) month anniversary date preceding the enrollment date;

12 (b) The exclusion extends for a period of not more than twelve (12) months, or
13 eighteen (18) months in the case of a late enrollee, after the enrollment date;

14 (c) 1. The period of any pre-existing condition exclusion that would otherwise
15 apply to an individual is reduced by the number of days of creditable
16 coverage the individual has as of the enrollment date, as counted under
17 subsection (3) of this section; and

18 2. Except for ineligible individuals who apply for coverage in the
19 individual market, the period of any pre-existing condition exclusion
20 that would otherwise apply to an individual may be reduced by the
21 number of days of creditable coverage the individual has as of the
22 effective date of coverage under the policy; and

23 (d) A written notice of the pre-existing condition exclusion is provided to
24 participants under the plan, and the insurer cannot impose a pre-existing
25 condition exclusion with respect to a participant or a dependent of the
26 participant until such notice is provided.

27 (3) In reducing the pre-existing condition exclusion period that applies to an individual,

1 the amount of creditable coverage is determined by counting all the days on which
2 the individual has one (1) or more types of creditable coverage. For purposes of
3 counting creditable coverage:

4 (a) If on a particular day the individual has creditable coverage from more than
5 one (1) source, all the creditable coverage on that day is counted as one (1)
6 day;

7 (b) Any days in a waiting period for coverage are not creditable coverage;

8 (c) Days of creditable coverage that occur before a significant break in coverage
9 are not required to be counted; and

10 (d) Days in a waiting period and days in an affiliation period are not taken into
11 account in determining whether a significant break in coverage has occurred.

12 (4) An insurer may determine the amount of creditable coverage in another manner than
13 established in subsection (3) of this section that is at least as favorable to the
14 individual as the method established in subsection (3) of this section.

15 (5) If an insurer receives creditable coverage information, the insurer shall make a
16 determination regarding the amount of the individual's creditable coverage and the
17 length of any pre-existing exclusion period that remains. A written notice of the
18 length of the pre-existing condition exclusion period that remains after offsetting for
19 prior creditable coverage shall be issued by the insurer. An insurer may not impose
20 any limit on the amount of time that an individual has to present a certificate or
21 evidence of creditable coverage.

22 (6) For purposes of this section:

23 (a) "Pre-existing condition exclusion" means, with respect to coverage, a
24 limitation or exclusion of benefits relating to a condition based on the fact that
25 the condition was present before the effective date of coverage, whether or not
26 any medical advice, diagnosis, care, or treatment was recommended or
27 received before that day. A pre-existing condition exclusion includes any

1 exclusion applicable to an individual as a result of information relating to an
2 individual's health status before the individual's effective date of coverage
3 under a health benefit plan;

4 (b) "Enrollment date" means, with respect to an individual covered under a group
5 health plan or health insurance coverage, the first day of coverage or, if there
6 is a waiting period, the first day of the waiting period. If an individual
7 receiving benefits under a group health plan changes benefit packages, or if
8 the employer changes its group health insurer, the individual's enrollment date
9 does not change;

10 (c) "First day of coverage" means, in the case of an individual covered for
11 benefits under a group health plan, the first day of coverage under the plan
12 and, in the case of an individual covered by health insurance coverage in the
13 individual market, the first day of coverage under the policy or contract;

14 (d) "Late enrollee" means an individual whose enrollment in a plan is a late
15 enrollment;

16 (e) "Late enrollment" means enrollment of an individual under a group health
17 plan other than:

18 1. On the earliest date on which coverage can become effective for the
19 individual under the terms of the plan; or

20 2. Through special enrollment;

21 (f) "Significant break in coverage" means a period of sixty-three (63) consecutive
22 days during each of which an individual does not have any creditable
23 coverage; and

24 (g) "Waiting period" means the period that must pass before coverage for an
25 employee or dependent who is otherwise eligible to enroll under the terms of a
26 group health plan can become effective. If an employee or dependent enrolls
27 as a late enrollee or special enrollee, any period before such late or special

1 enrollment is not a waiting period. If an individual seeks coverage in the
2 individual market, a waiting period begins on the date the individual submits a
3 substantially complete application for coverage and ends on:

- 4 1. If the application results in coverage, the date coverage begins; or
- 5 2. If the application does not result in coverage, the date on which the
6 application is denied by the insurer or the date on which the offer of
7 coverage lapses.

8 (7) (a) 1. Except as otherwise provided under subsection (3) of this section, for
9 purposes of applying subsection (2)(c) of this section, a group health
10 plan, and a health insurance insurer offering group health insurance
11 coverage, shall count a period of creditable coverage without regard to
12 the specific benefits covered during the period.

13 2. A group health plan, or a health insurance insurer offering group health
14 insurance coverage, may elect to apply subsection (2)(c) of this section
15 based on coverage of benefits within each of several classes or
16 categories of benefits specified in federal regulations. This election shall
17 be made on a uniform basis for all participants and beneficiaries. Under
18 this election, a group health plan or insurer shall count a period of
19 creditable coverage with respect to any class or category of benefits if
20 any level of benefits is covered within this class or category.

21 3. In the case of an election with respect to a group health plan under
22 subparagraph 2. of this paragraph, whether or not health insurance
23 coverage is provided in connection with the plan, the plan shall:

- 24 a. Prominently state in any disclosure statements concerning the plan,
25 and state to each enrollee at the time of enrollment under the plan,
26 that the plan has made this election; and
- 27 b. Include in these statements a description of the effect of this

1 election.

2 (b) Periods of creditable coverage with respect to an individual shall be
3 established through presentation of certifications described in subsection (9)
4 of this section or in such other manner as may be specified in administrative
5 regulations.

6 (8) (a) Subject to paragraph (e) of this subsection, a group health plan, and a health
7 insurance insurer offering group health insurance coverage, may not impose
8 any pre-existing condition exclusion on a child who, within thirty (30) days
9 after birth, is covered under any creditable coverage. If a child is enrolled in a
10 group health plan or other creditable coverage within thirty (30) days after
11 birth and subsequently enrolls in another group health plan without a
12 significant break in coverage, the other group health plan may not impose any
13 pre-existing condition exclusion on the child.

14 (b) Subject to paragraph (e) of this subsection, a group health plan, and a health
15 insurance insurer offering group health insurance coverage, may not impose
16 any pre-existing condition exclusion on a child who is adopted or placed for
17 adoption before attaining eighteen (18) years of age and who, within thirty
18 (30) days after the adoption or placement for adoption, is covered under any
19 creditable coverage. If a child is enrolled in a group health plan or other
20 creditable coverage within thirty (30) days after adoption or placement for
21 adoption and subsequently enrolls in another group health plan without a
22 significant break in coverage, the other group health plan may not impose any
23 pre-existing condition exclusion on the child. This shall not apply to coverage
24 before the date of the adoption or placement for adoption.

25 (c) A group health plan may not impose any pre-existing condition exclusion
26 relating to pregnancy.

27 (d) A group health plan may not impose a pre-existing condition exclusion

1 relating to a condition based solely on genetic information. If an individual is
2 diagnosed with a condition, even if the condition relates to genetic
3 information, the insurer may impose a pre-existing condition exclusion with
4 respect to the condition, subject to other requirements of this section.

5 (e) Paragraphs (a) and (b) of this subsection shall no longer apply to an individual
6 after the end of the first sixty-three (63) day period during all of which the
7 individual was not covered under any creditable coverage.

8 (9) (a) 1. A group health plan, and a health insurance insurer offering group health
9 insurance coverage, shall provide a certificate of creditable coverage as
10 described in subparagraph 2. of this subsection. A certificate of
11 creditable coverage shall be provided, without charge, for participants or
12 dependents who are or were covered under a group health plan upon the
13 occurrence of any of the following events:

- 14 a. At the time an individual ceases to be covered under a health
15 benefit plan or otherwise becomes eligible under a COBRA
16 continuation provision;
- 17 b. In the case of an individual becoming covered under a COBRA
18 continuation provision, at the time the individual ceases to be
19 covered under the COBRA continuation provision; and
- 20 c. On request on behalf of an individual made not later than twenty-
21 four (24) months after the date of cessation of the coverage
22 described in subdivision a. or b. of this subparagraph, whichever is
23 later.

24 The certificate of creditable coverage as described under subdivision a.
25 of this subparagraph may be provided, to the extent practicable, at a time
26 consistent with notices required under any applicable COBRA
27 continuation provision.

- 1 2. The certification described in this subparagraph is a written certification
2 of:
3 a. The period of creditable coverage of the individual under the
4 health benefit plan and the coverage, if any, under the COBRA
5 continuation provision; and
6 b. The waiting period, if any, and affiliation period, if applicable,
7 imposed with respect to the individual for any coverage under the
8 plan.
- 9 3. To the extent that medical care under a group health plan consists of
10 group health insurance coverage, the plan is deemed to have satisfied the
11 certification requirement under this paragraph if the health insurance
12 insurer offering the coverage provides for the certification in accordance
13 with this paragraph.
- 14 (b) In the case of an election described in subsection (7)(a)2. of this section by a
15 group health plan or health insurance insurer, if the plan or insurer enrolls an
16 individual for coverage under the plan and the individual provides a
17 certification of coverage of the individual under paragraph (a) of this
18 subsection:
- 19 1. Upon request of that plan or insurer, the entity that issued the
20 certification provided by the individual shall promptly disclose to the
21 requesting plan or insurer information on coverage of classes and
22 categories of health benefits available under the entity's plan or
23 coverage; and
- 24 2. The entity may charge the requesting plan or insurer for the reasonable
25 cost of disclosing this information.
- 26 (10) (a) A group health plan, and a health insurance insurer offering group health
27 insurance coverage in connection with a group health plan, shall permit an

1 employee who is eligible but not enrolled for coverage under the terms of the
2 plan, or a dependent of that employee if the dependent is eligible but not
3 enrolled for coverage under these terms, to enroll for coverage under the terms
4 of the plan if each of the following conditions is met:

- 5 1. The employee or dependent was covered under a group health plan or
6 had health insurance coverage at the time coverage was previously
7 offered to the employee or dependent;
- 8 2. The employee stated in writing at that time that coverage under a group
9 health plan or health insurance coverage was the reason for declining
10 enrollment, but only if the plan sponsor or insurer, if applicable, required
11 that statement at that time and provided the employee with notice of the
12 requirement, and the consequences of the requirement, at that time;
- 13 3. The employee's or dependent's coverage described in subparagraph 1. of
14 this paragraph:
 - 15 a. Was under a COBRA continuation provision and the coverage
16 under that provision was exhausted; or
 - 17 b. Was not under such a provision and either the coverage was
18 terminated as a result of loss of eligibility for the coverage,
19 including as a result of legal separation, divorce, cessation of
20 dependent status, such as obtaining the maximum age to be
21 eligible as a dependent child, death of the employee, termination of
22 employment, reduction in the number of hours of employment,
23 employer contributions toward the coverage were terminated, a
24 situation in which an individual incurs a claim that would meet or
25 exceed a lifetime limit on all benefits, or a situation in which a
26 plan no longer offers any benefits to the class of similarly situated
27 individuals that includes the individual; or

- 1 c. Was offered through a health maintenance organization or other
2 arrangement in the group market that does not provide benefits to
3 individuals who no longer reside, live, or work in a service area
4 and, loss of coverage in the group market occurred because an
5 individual no longer resides, lives, or works in the service area,
6 whether or not within the choice of the individual, and no other
7 benefit package is available to the individual; and
- 8 4. An insurer shall allow an employee and dependent a period of at least
9 thirty (30) days after an event described in this paragraph has occurred to
10 request enrollment for the employee or the employee's dependent.
11 Coverage shall begin no later than the first day of the first calendar
12 month beginning after the date the insurer receives the request for
13 special enrollment.
- 14 (b) A dependent of a current employee, including the employee's spouse, and the
15 employee each are eligible for enrollment in the group health plan subject to
16 plan eligibility rules conditioning dependent enrollment on enrollment of the
17 employee if the requirements of paragraph (a) of this subsection are satisfied.
- 18 (c) 1. If:
- 19 a. A group health plan makes coverage available with respect to a
20 dependent of an individual;
- 21 b. The individual is a participant under the plan, or has met any
22 waiting period applicable to becoming a participant under the plan
23 and is eligible to be enrolled under the plan but for a failure to
24 enroll during a previous enrollment period; and
- 25 c. A person becomes such a dependent of the individual through
26 marriage, birth, or adoption or placement for adoption;
- 27 the group health plan shall provide for a dependent special enrollment

1 period described in subparagraph 2. of this paragraph during which the
2 person or, if not otherwise enrolled, the individual, may be enrolled
3 under the plan as a dependent of the individual, and in the case of the
4 birth or adoption of a child, the spouse of the individual may be enrolled
5 as a dependent of the individual if the spouse is otherwise eligible for
6 coverage.

7 2. A dependent special enrollment period under this subparagraph shall be
8 a period of at least thirty (30) days and shall begin on the later of:

- 9 a. The date dependent coverage is made available; or
10 b. The date of the marriage, birth, or adoption or placement for
11 adoption, as the case may be, described in subparagraph 1.c. of this
12 paragraph.

13 3. If an individual seeks to enroll a dependent during the first thirty (30)
14 days of the dependent special enrollment period, the coverage of the
15 dependent shall become effective:

- 16 a. In the case of marriage, not later than the first day of the first
17 month beginning after the date the completed request for
18 enrollment is received;
19 b. In the case of a dependent's birth, as of the date of the birth; or
20 c. In the case of a dependent's adoption or placement for adoption,
21 the date of the adoption or placement for adoption.

22 (d) At or before the time an employee is initially offered the opportunity to enroll
23 in a group health plan, the employer shall provide the employee with a notice
24 of special enrollment rights.

25 ~~[(11)(a) In the case of a group health plan that offers medical care through health~~
26 ~~insurance coverage offered by a health maintenance organization, the plan~~
27 ~~may provide for an affiliation period with respect to coverage through the~~

1 ~~organization only if:~~

2 ~~1. No pre-existing condition exclusion is imposed with respect to coverage~~
3 ~~through the organization;~~

4 ~~2. The period is applied uniformly without regard to any health status-~~
5 ~~related factors; and~~

6 ~~3. The period does not exceed two (2) months, or three (3) months in the~~
7 ~~case of a late enrollee.~~

8 (b) ~~1. For purposes of this section, the term "affiliation period" means a period~~
9 ~~which, under the terms of the health insurance coverage offered by the~~
10 ~~health maintenance organization, must expire before the health~~
11 ~~insurance coverage becomes effective. The organization is not required~~
12 ~~to provide health care services or benefits during this period and no~~
13 ~~premium shall be charged to the participant or beneficiary for any~~
14 ~~coverage during the period.~~

15 ~~2. This period shall begin on the enrollment date.~~

16 ~~3. An affiliation period under a plan shall run concurrently with any~~
17 ~~waiting period under the plan.~~

18 (c) ~~A health maintenance organization described in paragraph (a) of this~~
19 ~~subsection may use alternative methods other than those described in that~~
20 ~~paragraph to address adverse selection as approved by the commissioner.]~~

21 ➔ Section 4. KRS 304.17A-750 is amended to read as follows:

22 As used in KRS 304.17A-750 to 304.17A-770 and 304.47-020, unless the context
23 requires otherwise:

24 (1) "Eligible employee" means any full time or part time employee who is actively
25 engaged in the conduct of business of the employer~~[, who has satisfied any~~
26 ~~employer waiting period requirements,]~~ and who has been given a voucher by the
27 employer to purchase a health benefit plan;

- 1 (2) "Eligible person" means an employer, eligible employee, self-employed person,
2 unemployed person, or retiree who is not eligible for Medicare;
- 3 (3) "Employer" means any corporation, partnership, sole proprietorship, or other
4 business entity doing business in Kentucky that provides a voucher for a health
5 benefit plan to its eligible employees to purchase a health benefit plan;
- 6 (4) "Insurance purchasing outlet" means a business entity licensed as an administrator
7 in accordance with Subtitle 9 of Chapter 304, which collects premiums and
8 vouchers from or on behalf of health purchasing outlet members, and which is
9 issued a certificate of registration in accordance with KRS 304.17A-750 to
10 304.17A-770 and 304.47-020;
- 11 (5) "Insurance purchasing outlet member" means an eligible person, including a
12 dependent of an eligible person, who is enrolled in a health benefit plan offered
13 through an insurance purchasing outlet by a participating insurer;
- 14 (6) "Participating insurer" means an authorized insurer that contracts with an insurance
15 purchasing outlet to provide coverage to insurance purchasing outlet members
16 under a health benefit plan; and
- 17 (7) "Voucher" means an instrument that is issued to an eligible employee by an
18 employer to purchase a health benefit plan.
- 19 ➔Section 5. Section 1 of this Act shall apply to health plans issued or renewed on
20 or after the effective date of this Act.