

**40-2209f. Same; preexisting conditions exclusion, waiver; late enrollee exclusion; underwriting and rating; waiting periods; uniform employer coverage eligibility requirements; minimum participation and contribution requirements.** Health benefit plans covering small employers that are issued or renewed within this state or outside this state covering persons residing in this state shall be subject to the following provisions, as applicable:

(a) Such policy may impose a preexisting conditions exclusion, not to exceed 90 days following the date of enrollment, for conditions whether physical or mental, regardless of the cause of the condition for which medical advice, diagnosis, care or treatment was recommended or received in the six months prior to the effective date of enrollment. Any preexisting conditions exclusion shall run concurrently with any waiting period.

(b) Such policy shall waive such a preexisting conditions exclusion to the extent the employee or member or individual dependent or family member was covered by (1) a group or individual sickness and accident policy, (2) coverage under section 607(1) of the employees retirement income security act of 1974 (ERISA), (3) a group specified in K.S.A. 40-2222, and amendments thereto, (4) part A or part B of title XVIII of the social security act, (5) title XIX of the social security act, other than coverage consisting solely of benefits under section 1928, (6) chapter 55 of title 10 United States code, (7) a state children's health insurance program established pursuant to title XXI of the social security act, (8) medical care program of the Indian health service or of a tribal organization, (9) the Kansas uninsurable health plan act pursuant to K.S.A. 40-2217 et seq., and amendments thereto or similar health benefits risk pool of another state, (10) a health plan offered under chapter 89 of title 5, United States code, (11) a health benefit plan under section 5(e) of the peace corps act (22 U.S.C. § 2504 (e) or (12) a group subject to K.S.A. 12-2616 et seq., and amendments thereto which provided hospital, medical and surgical expense benefits within 63 days prior to the effective date of coverage under a health benefit plan with no gap in coverage. A group policy shall credit the periods of prior coverage specified in this subsection without regard to the specific benefits covered during the period of prior coverage. Any period that the employee or member is in a waiting period for any coverage under a group health plan or is in an affiliation period shall be taken into account in determining the continuous period under this subsection.

(c) A carrier may exclude a late enrollee except during an open enrollment period.

(d) Except as expressly provided by this act, every carrier doing business in the small employer market retains the authority to underwrite and rate individual accident and sickness insurance policies, and to rate small employer groups using generally accepted actuarial practices.

(e) No health benefit plan issued by a carrier may limit or exclude, by use of a rider or amendment applicable to a specific individual, coverage by type of illness, treatment, medical condition or accident, except for preexisting conditions as permitted under subsection (a).

(f) In the absence of the small employer's decision to the contrary, all health benefit plans shall make coverage available to all the eligible employees of a small employer without a waiting period. The decision of whether to impose a waiting period for eligible employees of a small employer shall be made by the small employer, who may only choose from the waiting periods offered by the carrier. No waiting period shall be greater than 90 days and shall permit coverage to become effective no later than the first day of the month immediately following completion of the waiting period.

(g) (1) Except as provided in subsection (f), requirements used by a small employer carrier in determining whether to provide coverage to a small employer, including requirements for minimum participation of eligible employees and minimum employer contributions, shall be applied uniformly among all small employers with the same number of eligible employees applying for coverage or receiving coverage from the small employer carrier.

(2) A small employer carrier may vary application of minimum participation requirements and minimum employer contribution requirements only by the size of the small employer group.

(3) (A) Except as provided in provision (B), in applying minimum participation requirements with respect to a small employer, a small employer carrier shall not consider employees or dependents who have qualifying existing coverage in a health benefit plan sponsored by another employer in determining whether the applicable percentage of participation is met.

(B) With respect to a small employer, a small employer carrier may consider employees or dependents who have coverage under another health benefit plan sponsored by such small employer in applying minimum participation requirements.

(h) For the purposes of this section, the term "preexisting conditions exclusion" shall mean, with respect to coverage, a limitation or exclusion of benefits relating to a condition based on the fact that the condition was present before the date of enrollment for such coverage whether or not any medical advice, diagnosis, care or treatment was recommended or received before such date.

(i) For the purposes of this section, the term "date of enrollment" means the date the individual is enrolled under the group policy or, if earlier, the first day of the waiting period for such enrollment.

(j) For the purposes of this section, the term "waiting period" means with respect to a group policy the period which must pass before the individual is eligible to be covered for benefits under the terms of the policy.

**History:** L. 1992, ch. 200, § 5; L. 1994, ch. 355, § 6; L. 1997, ch. 190, § 3; L. 1998, ch. 174, § 8; L. 2000, ch. 34, § 2; July 1.