AN ACT relating to health plan waiting periods.

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

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

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

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

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

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

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

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

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

(4) Any employer who violates KRS 337.060 shall be assessed a civil penalty of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) and shall also be liable to the affected employee for the amount withheld, plus interest at the rate of ten percent (10%) per annum.
(5) Any employer who violates the provisions of KRS 337.065 shall be assessed a civil penalty of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each offense and shall make full payment to the employee by reason of the violation.

(6) Any person who fails to comply with KRS 337.070 shall be assessed a civil penalty of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each offense and each day that the failure continues shall be deemed a separate offense.

(7) Any employer who violates any provision of KRS 337.275 to 337.325, KRS 337.345, and KRS 337.385 to 337.405, or willfully hinders or delays the commissioner or the commissioner's authorized representative in the performance of his or her duties under KRS 337.295, or fails to keep and preserve any records as required under KRS 337.320 and 337.325, or falsifies any record, or refuses to make any record or transcription thereof accessible to the commissioner or the commissioner's authorized representative shall be assessed a civil penalty of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000). A civil penalty of not less than one thousand dollars ($1,000) shall be assessed for any subsequent violation of KRS 337.285(4) to (9) and each day the employer violates KRS 337.285(4) to (9) shall constitute a separate offense and penalty.

(8) Any employer who pays or agrees to pay wages at a rate less than the rate applicable under KRS 337.275 and 337.285, or any wage order issued pursuant thereto shall be assessed a civil penalty of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000).

(9) Any employer who discharges or in any other manner discriminates against any employee because the employee has made any complaint to his or her employer, to the commission, or to the commission's authorized representative that he or she has not been paid wages in accordance with KRS 337.275 and 337.285 or
regulations issued thereunder, or because the employee has caused to be instituted
or is about to cause to be instituted any proceeding under or related to KRS
337.385, or because the employee has testified or is about to testify in any such
proceeding, shall be deemed in violation of KRS 337.275 to 337.325, KRS 337.345,
and KRS 337.385 to 337.405 and shall be assessed a civil penalty of not less than
one hundred dollars ($100) nor more than one thousand dollars ($1,000).

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

(11) A person shall be assessed a civil penalty of not less than one hundred dollars
($100) nor more than one thousand dollars ($1,000) when that person discharges or
in any other manner discriminates against an employee because the employee has:
(a) Made any complaint to his or her employer, the commissioner, or any other
person; or
(b) Instituted, or caused to be instituted, any proceeding under or related to KRS
337.420 to 337.433; or
(c) Testified, or is about to testify, in any such proceedings.

(12) Any employer who violates Section 1 of this Act shall:
(a) Be assessed a civil penalty of not less than one hundred dollars ($100) nor
more than one thousand dollars ($1,000) for each day the employee worked
without coverage under the health plan; and
(b) Be liable to the employee for any health care expenses incurred by the
employee as a result of the employer-imposed waiting period.

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

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

(2) Subject to subsection (8) of this section, a group health plan, and a health insurance
insurer offering group health insurance coverage, may, with respect to a participant
or beneficiary, impose a pre-existing condition exclusion only if:

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

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

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

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

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

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

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

(3) In reducing the pre-existing condition exclusion period that applies to an individual,
the amount of creditable coverage is determined by counting all the days on which
the individual has one (1) or more types of creditable coverage. For purposes of
counting creditable coverage:

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

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

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

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

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

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

(6) For purposes of this section:

(a) "Pre-existing condition exclusion" means, 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 effective date of coverage, whether or not
    any medical advice, diagnosis, care, or treatment was recommended or
    received before that day. A pre-existing condition exclusion includes any
exclusion applicable to an individual as a result of information relating to an
individual's health status before the individual's effective date of coverage
under a health benefit plan;

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

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

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

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

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

2. Through special enrollment;

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

(g) "Waiting period" means the period that must pass before coverage for an
employee or dependent who is otherwise eligible to enroll under the terms of a
group health plan can become effective. If an employee or dependent enrolls
as a late enrollee or special enrollee, any period before such late or special
enrollment is not a waiting period. If an individual seeks coverage in the
individual market, a waiting period begins on the date the individual submits a
substantially complete application for coverage and ends on:

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

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

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

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

a. Prominently state in any disclosure statements concerning the plan,
and state to each enrollee at the time of enrollment under the plan,
that the plan has made this election; and

b. Include in these statements a description of the effect of this
(b) Periods of creditable coverage with respect to an individual shall be established through presentation of certifications described in subsection (9) of this section or in such other manner as may be specified in administrative regulations.

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

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

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

(d) A group health plan may not impose a pre-existing condition exclusion
relating to a condition based solely on genetic information. If an individual is
diagnosed with a condition, even if the condition relates to genetic
information, the insurer may impose a pre-existing condition exclusion with
respect to the condition, subject to other requirements of this section.

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

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

a. At the time an individual ceases to be covered under a health
   benefit plan or otherwise becomes eligible under a COBRA
   continuation provision;

b. In the case of an individual becoming covered under a COBRA
   continuation provision, at the time the individual ceases to be
   covered under the COBRA continuation provision; and

c. On request on behalf of an individual made not later than twenty-
   four (24) months after the date of cessation of the coverage
   described in subdivision a. or b. of this subparagraph, whichever is
   later.

The certificate of creditable coverage as described under subdivision a.
of this subparagraph may be provided, to the extent practicable, at a time
consistent with notices required under any applicable COBRA
continuation provision.
2. The certification described in this subparagraph is a written certification of:
   a. The period of creditable coverage of the individual under the health benefit plan and the coverage, if any, under the COBRA continuation provision; and
   b. The waiting period, if any, and affiliation period, if applicable, imposed with respect to the individual for any coverage under the plan.

3. To the extent that medical care under a group health plan consists of group health insurance coverage, the plan is deemed to have satisfied the certification requirement under this paragraph if the health insurance insurer offering the coverage provides for the certification in accordance with this paragraph.

   (b) In the case of an election described in subsection (7)(a) of this section by a group health plan or health insurance insurer, if the plan or insurer enrolls an individual for coverage under the plan and the individual provides a certification of coverage of the individual under paragraph (a) of this subsection:

   1. Upon request of that plan or insurer, the entity that issued the certification provided by the individual shall promptly disclose to the requesting plan or insurer information on coverage of classes and categories of health benefits available under the entity's plan or coverage; and
   2. The entity may charge the requesting plan or insurer for the reasonable cost of disclosing this information.

(10) (a) A group health plan, and a health insurance insurer offering group health insurance coverage in connection with a group health plan, shall permit an
employee who is eligible but not enrolled for coverage under the terms of the
plan, or a dependent of that employee if the dependent is eligible but not
enrolled for coverage under these terms, to enroll for coverage under the terms
of the plan if each of the following conditions is met:

1. The employee or dependent was covered under a group health plan or
had health insurance coverage at the time coverage was previously
offered to the employee or dependent;

2. The employee stated in writing at that time that coverage under a group
health plan or health insurance coverage was the reason for declining
enrollment, but only if the plan sponsor or insurer, if applicable, required
that statement at that time and provided the employee with notice of the
requirement, and the consequences of the requirement, at that time;

3. The employee's or dependent's coverage described in subparagraph 1. of
this paragraph:
   a. Was under a COBRA continuation provision and the coverage
      under that provision was exhausted; or
   b. Was not under such a provision and either the coverage was
terminated as a result of loss of eligibility for the coverage,
      including as a result of legal separation, divorce, cessation of
      dependent status, such as obtaining the maximum age to be
      eligible as a dependent child, death of the employee, termination of
      employment, reduction in the number of hours of employment,
      employer contributions toward the coverage were terminated, a
      situation in which an individual incurs a claim that would meet or
      exceed a lifetime limit on all benefits, or a situation in which a
      plan no longer offers any benefits to the class of similarly situated
      individuals that includes the individual; or
c. Was offered through a health maintenance organization or other arrangement in the group market that does not provide benefits to individuals who no longer reside, live, or work in a service area and, loss of coverage in the group market occurred because an individual no longer resides, lives, or works in the service area, whether or not within the choice of the individual, and no other benefit package is available to the individual; and

4. An insurer shall allow an employee and dependent a period of at least thirty (30) days after an event described in this paragraph has occurred to request enrollment for the employee or the employee's dependent. Coverage shall begin no later than the first day of the first calendar month beginning after the date the insurer receives the request for special enrollment.

(b) A dependent of a current employee, including the employee's spouse, and the employee each are eligible for enrollment in the group health plan subject to plan eligibility rules conditioning dependent enrollment on enrollment of the employee if the requirements of paragraph (a) of this subsection are satisfied.

(c) 1. If:

a. A group health plan makes coverage available with respect to a dependent of an individual;

b. The individual is a participant under the plan, or has met any waiting period applicable to becoming a participant under the plan and is eligible to be enrolled under the plan but for a failure to enroll during a previous enrollment period; and

c. A person becomes such a dependent of the individual through marriage, birth, or adoption or placement for adoption; the group health plan shall provide for a dependent special enrollment.
period described in subparagraph 2. of this paragraph during which the
person or, if not otherwise enrolled, the individual, may be enrolled
under the plan as a dependent of the individual, and in the case of the
birth or adoption of a child, the spouse of the individual may be enrolled
as a dependent of the individual if the spouse is otherwise eligible for
coverage.

2. A dependent special enrollment period under this subparagraph shall be
a period of at least thirty (30) days and shall begin on the later of:
a. The date dependent coverage is made available; or
b. The date of the marriage, birth, or adoption or placement for
   adoption, as the case may be, described in subparagraph 1.c. of this
   paragraph.

3. If an individual seeks to enroll a dependent during the first thirty (30)
days of the dependent special enrollment period, the coverage of the
dependent shall become effective:
a. In the case of marriage, not later than the first day of the first
   month beginning after the date the completed request for
   enrollment is received;
b. In the case of a dependent's birth, as of the date of the birth; or
c. In the case of a dependent's adoption or placement for adoption,
   the date of the adoption or placement for adoption.

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

{(11)(a) In the case of a group health plan that offers medical care through health
insurance coverage offered by a health maintenance organization, the plan
may provide for an affiliation period with respect to coverage through the
organization only if:

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

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

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

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

2. This period shall begin on the enrollment date.

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

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

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

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

1. "Eligible employee" means any full time or part time employee who is actively engaged in the conduct of business of the employer, who has satisfied any employer waiting period requirements, and who has been given a voucher by the employer to purchase a health benefit plan;
(2) "Eligible person" means an employer, eligible employee, self-employed person, unemployed person, or retiree who is not eligible for Medicare;

(3) "Employer" means any corporation, partnership, sole proprietorship, or other business entity doing business in Kentucky that provides a voucher for a health benefit plan to its eligible employees to purchase a health benefit plan;

(4) "Insurance purchasing outlet" means a business entity licensed as an administrator in accordance with Subtitle 9 of Chapter 304, which collects premiums and vouchers from or on behalf of health purchasing outlet members, and which is issued a certificate of registration in accordance with KRS 304.17A-750 to 304.17A-770 and 304.47-020;

(5) "Insurance purchasing outlet member" means an eligible person, including a dependent of an eligible person, who is enrolled in a health benefit plan offered through an insurance purchasing outlet by a participating insurer;

(6) "Participating insurer" means an authorized insurer that contracts with an insurance purchasing outlet to provide coverage to insurance purchasing outlet members under a health benefit plan; and

(7) "Voucher" means an instrument that is issued to an eligible employee by an employer to purchase a health benefit plan.

Section 5. Section 1 of this Act shall apply to health plans issued or renewed on or after the effective date of this Act.