

HOUSE BILL No. 2290

By Committee on Health and Human Services

2-5

9 AN ACT concerning small employer health insurance plans; amending
10 K.S.A. 40-2209f and 40-2209h and K.S.A. 2008 Supp. 40-2242 and 40-
11 2246 and repealing the existing sections.
12

13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 40-2209f is hereby amended to read as follows: 40-
15 2209f. Health benefit plans covering small employers that are issued or
16 renewed within this state or outside this state covering persons residing
17 in this state shall be subject to the following provisions, as applicable:

18 (a) Such policy may impose a preexisting conditions exclusion, not to
19 exceed ~~90~~ 180 days following the date of enrollment, for conditions
20 whether physical or mental, regardless of the cause of the condition for
21 which medical advice, diagnosis, care or treatment was recommended or
22 received in the ~~six months~~ 180 days prior to the effective date of enroll-
23 ment. Any preexisting conditions exclusion shall run concurrently with
24 any waiting period.

25 (b) Such policy shall waive such a preexisting conditions exclusion to
26 the extent the employee or member or individual dependent or family
27 member was covered by (1) a group or individual sickness and accident
28 policy, (2) coverage under section 607(1) of the employees retirement
29 income security act of 1974 (ERISA), (3) a group specified in K.S.A. 40-
30 2222 and amendments thereto (4) part A or part B of title XVIII of the
31 social security act, (5) title XIX of the social security act, other than cov-
32 erage consisting solely of benefits under section 1928, (6) chapter 55 of
33 title 10 United States code, (7) a state children's health insurance program
34 established pursuant to title XXI of the social security act, (8) medical
35 care program of the indian health service or of a tribal organization, (9)
36 the Kansas uninsurable health plan act pursuant to K.S.A. 40-2217 et seq.
37 and amendments thereto or similar health benefits risk pool of another
38 state, (10) a health plan offered under chapter 89 of title 5, United States
39 code, (11) a health benefit plan under section 5(e) of the peace corps act
40 (22 U.S.C. 2504 (e) or (12) a group subject to K.S.A. 12-2616 et seq. and
41 amendments thereto which provided hospital, medical and surgical ex-
42 pense benefits within 63 days prior to the effective date of coverage under
43 a health benefit plan with no gap in coverage. A group policy shall credit

1 the periods of prior coverage specified in this subsection without regard
2 to the specific benefits covered during the period of prior coverage. Any
3 period that the employee or member is in a waiting period for any cov-
4 erage under a group health plan or is in an affiliation period shall be taken
5 into account in determining the continuous period under this subsection.

6 (c) A carrier may exclude a late enrollee except during an open en-
7 rollment period.

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

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

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

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

32 (2) A small employer carrier may vary application of minimum par-
33 ticipation requirements and minimum employer contribution require-
34 ments only by the size of the small employer group.

35 (3) (A) Except as provided in provision (B), in applying minimum
36 participation requirements with respect to a small employer, a small em-
37 ployer carrier shall not consider employees or dependents who have qual-
38 ifying existing coverage in a health benefit plan sponsored by another
39 employer in determining whether the applicable percentage of partici-
40 pation is met.

41 (B) With respect to a small employer, a small employer carrier may
42 consider employees or dependents who have coverage under another
43 health benefit plan sponsored by such small employer in applying mini-

1 mum participation requirements.

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

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

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

15 Sec. 2. On and after January 1, 2010, K.S.A. 40-2209h is hereby
16 amended to read as follows: 40-2209h. ~~From and after January 1, 1993:~~

17 (a) Premium rates applicable to Kansas residents for health benefit plans
18 subject to this act shall be subject to the following provisions:

19 (1) The index rate for a rating period for any class of business shall
20 not exceed the index rate for any other class of business by more than
21 ~~20%~~ 35%.

22 (2) For a class of business, the premium rates charged during a rating
23 period to small employers with similar case characteristics for the same
24 or similar coverage, or the rates that could be charged to such employers
25 under the rating system for that class of business, shall not vary from the
26 index rate by more than 25% of the index rate.

27 (3) The percentage increase in the premium rate charged to a small
28 employer for a new rating period may not exceed the sum of the following:

29 (A) The percentage change in the new business premium rate meas-
30 ured from the first day of the prior rating period to the first day of the
31 new rating period. In the case of a health benefit plan into which the
32 small employer carrier is no longer enrolling new small employers, the
33 small employer carrier shall use the percentage change in the base pre-
34 mium rate, if such change does not exceed, on a percentage basis, the
35 change in the new business premium rate for the most similar health
36 benefit plan into which the small employer carrier is actively enrolling
37 new small employers;

38 (B) any adjustment, not to exceed 15% annually and adjusted pro rata
39 for rating periods of less than one year, due to the claim experience,
40 health status or duration of coverage of the employees or dependents of
41 the small employer as determined from the small employer carrier’s rate
42 manual for the class of business; and

43 (C) any adjustment due to change in coverage or change in the case

1 characteristics of the small employer, as determined from the small em-
2 ployer carrier's rate manual for the class of business.

3 (4) Adjustments in rates for claim experience, health status and du-
4 ration of coverage shall not be charged to individual employees or de-
5 pendants. Any such adjustment shall be applied uniformly to the rates
6 charged for all employees and dependents of the small employer.

7 (5) A small employer carrier may utilize industry as a case character-
8 istic in establishing premium rates, if the highest rate factor associated
9 with any industry classification does not exceed the lowest rate factor
10 associated with any industry classification by more than 30% for each year
11 until the earlier of the first acquisition of coverage from a small employer
12 carrier which did not previously provide coverage to that small employer
13 or the first renewal date on or after December 31, 1996, and 15% each
14 year thereafter.

15 (6) A premium rate for a rating period may exceed the ranges set
16 forth in paragraphs (1) and (2) until the earlier of the first acquisition of
17 coverage from a small employer carrier which did not previously provide
18 coverage to that small employer or the first renewal date on or after
19 December 31, 1996. If premium rates for a small employer covered by a
20 small employer carrier prior to January 1, 1993, are below the lowest
21 range as set forth in paragraphs (1) and (2), such small employer carrier
22 must at least increase that small employer's rates commencing with re-
23 newals on or after December 31, 1995, to equally distribute the needed
24 increase to get that small employer's rates within the range over the re-
25 newal opportunities remaining so that the small employer's renewal rates
26 on or after December 31, 1999, would be within the ranges. In such case,
27 the percentage increase in the premium rate charged to a small employer
28 for a new rating period shall not exceed the sum of the following:

29 (A) The percentage change in the new business premium rate meas-
30 ured from the first day of the prior rating period to the first day of the
31 new rating period. In the case of a health benefit plan into which the
32 small employer carrier is no longer enrolling new small employers, the
33 small employer carrier shall use the percentage change in the base pre-
34 mium rate, if such change does not exceed, on a percentage basis, the
35 change in the new business premium rate for the most similar health
36 benefit plan into which the small employer carrier is actively enrolling
37 new small employers.

38 (B) Any adjustment due to change in coverage or change in the case
39 characteristics of the small employer, as determined from the carrier's
40 rate manual for the class of business.

41 (7) (A) Small employer carriers shall apply rating factors, including
42 case characteristics, consistently with respect to all small employers in a
43 class of business. Rating factors shall produce premiums for identical

1 groups which differ only by amounts attributable to plan design and do
2 not reflect differences due to the nature of the groups assumed to select
3 particular health benefit plans.

4 (B) A small employer carrier shall treat all health benefit plans issued
5 or renewed in a class of business in the same calendar month as having
6 the same rating period.

7 (8) For the purposes of this subsection, a health benefit plan that
8 utilizes a restricted provider network shall not be considered similar cov-
9 erage to a health benefit plan that does not utilize such a network, if
10 utilization of the restricted provider network results in substantial differ-
11 ences in claims costs.

12 (9) A small employer carrier shall not use case characteristics, other
13 than age, gender, industry, geographic area, family composition, and
14 group size without prior approval of the commissioner.

15 (10) The commissioner may establish regulations to implement the
16 provisions of this section and to assure that rating practices used by small
17 employer carriers are consistent with the purposes of this act, including:

18 (A) Assuring that differences in rates charged for health benefit plans
19 by small employer carriers are reasonable and reflect objective differ-
20 ences in plan design, not including differences due to the nature of the
21 groups assumed to select particular health benefit plans; and

22 (B) prescribing the manner in which case characteristics may be used
23 by small employer carriers.

24 (b) A small employer carrier shall not transfer a small employer in-
25 voluntarily into or out of a class of business. A small employer carrier shall
26 not offer to transfer a small employer into or out of a class of business
27 unless such offer is made to transfer all small employers in the class of
28 business without regard to case characteristics, claim experience, health
29 status or duration of coverage.

30 (c) The commissioner may suspend for a specified period the appli-
31 cation of subsection (a)(1) as to the premium rates applicable to one or
32 more small employers included within a class of business of a small em-
33 ployer carrier for one or more rating periods upon a filing by the small
34 employer carrier and a finding by the commissioner either that the sus-
35 pension is reasonable in light of the financial condition of the small em-
36 ployer carrier or that the suspension would enhance the efficiency and
37 fairness of the marketplace for small employer health insurance.

38 (d) Upon written application of the group policyholders, the com-
39 missioner may suspend the application of K.S.A. 40-2209g and 40-2209h
40 and amendments thereto to any group whose fundamental structure or
41 composition would otherwise be adversely affected.

42 Sec. 3. K.S.A. 2008 Supp. 40-2242 is hereby amended to read as
43 follows: 40-2242. As a condition to participation as a member of any small

1 employer health benefit plan as provided in K.S.A. 40-2240 and amend-
2 ments thereto, an employer shall have not contributed within the pre-
3 ceding ~~two years~~ *six months* to any health insurance premium or health
4 savings account on behalf of an employee who is to be covered by the
5 employer's contribution other than a contribution by an employer to a
6 health insurance premium or health savings account within the preceding
7 two years solely for the benefit of the employer or the employer's
8 dependents.

9 Sec. 4. K.S.A. 2008 Supp. 40-2246 is hereby amended to read as
10 follows: 40-2246. (a) A credit against the taxes otherwise due under the
11 Kansas income tax act shall be allowed to an employer for amounts paid
12 during the taxable year for purposes of this act on behalf of an eligible
13 employee as defined in K.S.A. 40-2239 and amendments thereto to pro-
14 vide health insurance or care and amounts contributed to health savings
15 accounts of eligible covered employees.

16 (b) (1) For employers that have established a small employer health
17 benefit plan after December 31, 1999, but prior to January 1, 2005, the
18 amount of the credit allowed by subsection (a) shall be \$35 per month
19 per eligible covered employee or 50% of the total amount paid by the
20 employer during the taxable year, whichever is less, for the first two years
21 of participation. In the third year, the credit shall be equal to 75% of the
22 lesser of \$35 per month per employee or 50% of the total amount paid
23 by the employer during the taxable year. In the fourth year, the credit
24 shall be equal to 50% of the lesser of \$35 per month per employee or
25 50% of the total amount paid by the employer during the taxable year.
26 In the fifth year, the credit shall be equal to 25% of the lesser of \$35 per
27 month per employee or 50% of the total amount paid by the employer
28 during the taxable year. For the sixth and subsequent years, no credit
29 shall be allowed.

30 (2) For employers that have established a small employer health ben-
31 efit plan or made contributions to a health savings account of an eligible
32 covered employee after December 31, 2004, the amount of credit allowed
33 by subsection (a) shall be \$70 per month per eligible covered employee
34 for the first 12 months of participation, \$50 per month per eligible cov-
35 ered employee for the next 12 months of participation and \$35 per eligible
36 covered employee for the next 12 months of participation. After 36
37 months of participation, no credit shall be allowed.

38 (3) (A) *For employers that already have an established small em-
39 ployer health benefit plan or had previously received this tax credit, such
40 employers may apply for a tax credit of \$35 per month for each eligible
41 covered employee.*

42 (B) *The provisions of this paragraph shall apply to all taxable years
43 commencing after December 31, 2009.*

- 1 (c) If the credit allowed by this section is claimed, the amount of any
2 deduction allowable under the Kansas income tax act for expenses de-
3 scribed in this section shall be reduced by the dollar amount of the credit.
4 The election to claim the credit shall be made at the time of filing the
5 tax return in accordance with law. If the credit allowed by this section
6 exceeds the taxes imposed under the Kansas income tax act for the taxable
7 year, that portion of the credit which exceeds those taxes shall be re-
8 funded to the taxpayer.
- 9 (d) Any amount of expenses paid by an employer under this act shall
10 not be included as income to the employee for purposes of the Kansas
11 income tax act. If such expenses have been included in federal taxable
12 income of the employee, the amount included shall be subtracted in ar-
13 riving at state taxable income under the Kansas income tax act.
- 14 (e) The secretary of revenue shall promulgate rules and regulations
15 to carry out the provisions of this section.
- 16 (f) *Except for the provisions of paragraph (3) of subsection (b)*, this
17 section shall apply to all taxable years commencing after December 31,
18 1999.
- 19 Sec. 5. K.S.A. 40-2209f and K.S.A. 2008 Supp. 40-2242 and 40-2246
20 are hereby repealed.
- 21 Sec. 6. On January 1, 2010, K.S.A. 40-2209h is hereby repealed.
- 22 Sec. 7. This act shall take effect and be in force from and after its
23 publication in the statute book.