§ 4318. Pre-existing condition provisions. Every individual health insurance contract and every group or blanket accident and health insurance contract issued or issued for delivery in this state which includes a pre-existing condition provision shall contain in substance the following provision or provisions which in the opinion of the superintendent are more favorable to individuals, members of the group and their eligible dependents:

(a) In determining whether a pre-existing condition provision applies to a covered person, the contract shall credit the time the covered person was previously covered under creditable coverage, if the previous creditable coverage was continuous to a date not more than sixty-three days prior to the enrollment date of the new coverage. In the case of previous health maintenance organization coverage, any affiliation period prior to that previous coverage becoming effective shall also be credited pursuant to this subsection.

(b) No pre-existing condition provision shall exclude coverage for a period in excess of twelve months following the enrollment date for the covered person and may only relate 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 month period ending on the enrollment date. For purposes of this section "enrollment date" means the first day of coverage of the individual under the contract or, if earlier, the first day of the waiting period that must pass with respect to an individual before the individual is eligible to be covered for benefits. If an individual seeks and obtains coverage in the individual market, any period after the date the individual files a substantially complete application for coverage and before the first day of coverage is a waiting period. For purposes of this section, genetic information shall not be treated as a pre-existing condition in the absence of a diagnosis of the condition related to such information. No pre-existing condition provision shall exclude coverage in the case of:

(1) an individual who, as of the last day of the thirty-day period beginning with the date of birth, is covered under creditable coverage as defined in subsection (c) of this section;

(2) a child who is adopted or placed for adoption before attaining eighteen years of age and who, as of the last day of the thirty-day

period beginning on the date of the adoption or placement for adoption, is covered under creditable coverage as defined in subsection (c) of this section;

(3) pregnancy (except in an individual direct payment contract or a student blanket accident and health insurance contract in which a corporation may exclude coverage, subject to a credit for previous creditable coverage, for a period not to exceed ten months for a pregnancy existing on the enrollment date); or

(4) an individual, and any dependent of such individual, who is eligible for a federal tax credit under the federal Trade Adjustment Assistance Reform Act of 2002 and who has three months or more of creditable coverage.

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

(c) For purposes of this section, "creditable coverage" means, with respect to an individual, coverage of the individual under any of the following:

(1) A group health plan;

(2) Health insurance coverage;

(3) Part A or B of title XVIII of the Social Security Act;

(4) Title XIX of the Social Security Act, other than coverage consisting solely of benefits under section 1928;

(5) Chapter 55 of title 10, United States Code;

(6) A medical care program of the Indian Health Service or of a tribal organization;

(7) A state health benefits risk pool;

(8) A health plan offered under chapter 89 of title 5, United States Code;

(9) A public health plan (as defined in regulations);

(10) A health benefit plan under section 5(e) of the Peace Corps Act (22 U.S.C. 2504(e)).

(d)(1) For purposes of applying the credit of such creditable coverage, a corporation shall count a period of creditable coverage without regard to the specific benefits covered during the period.

(2) Alternatively, a corporation may elect to count the period of

coverage based on coverage of benefits within each of several classes or categories of benefits as specified in regulations. Such election shall be made on a uniform basis for all subscribers, participants and beneficiaries. Pursuant to such election a corporation shall count a period of creditable coverage with respect to any class or category of benefits if any level of benefits is covered within such class or category. A corporation making such election shall prominently state in any disclosure statement, and shall set forth in any contract or certificate issued in connection with the coverage, that the corporation has made such election. Such disclosure statement shall include a description of the effect of the election with regard to the application of creditable coverage.

(3) Notwithstanding the foregoing paragraph, for purposes of determining the extent to which a pre-existing condition limitation has been satisfied in a contract issued pursuant to section four thousand three hundred twenty-one or four thousand three hundred twenty-two of this article within thirty days of discontinuance of a class of health maintenance organization direct payment contract for enrollees whose contract was discontinued, a corporation shall credit the coverage of an enrollee under a health maintenance organization direct payment contract issued prior to January first, nineteen hundred ninety-six, without regard to the specific benefits covered under the health maintenance organization contract.

(4) With respect to an "eligible individual", as defined in section 2741(b) of the federal Public Health Service Act, 42 U.S.C. § 300gg-41(b), a corporation may not impose any pre-existing condition exclusion in an individual health insurance contract. For all other covered persons, the pre-existing condition crediting requirement of subsection (a) of this section shall be applicable.

(e) For the purposes of this section the term "group health plan" means an employee welfare benefit plan (as defined in section 3(1) of the Employee Retirement Income Security Act of 1974) to the extent that the plan provides medical care (including items and services paid for as medical care) to employees or their dependents (as defined under the terms of the plan) directly or through insurance, reimbursement or otherwise.

(f) A corporation shall not impose any pre-existing condition

exclusion in an individual or group contract of hospital, medical, surgical or prescription drug expense insurance.