304.17A-164 Limitations on insurers and pharmacy benefit managers regarding cost-sharing for prescription drugs -- Exceptions.

(1) As used in this section:

(a) "Cost sharing" means the cost to an insured under a health plan according to any coverage limit, copayment, coinsurance, deductible, or other out-of-pocket expense requirements imposed by the plan, which may be subject to annual limitations on cost sharing, including those imposed under 42 U.S.C. secs. 18022(c) and 300gg-6(b), in order for the insured to receive a specific health care service covered by the plan;

(b) "Generic alternative" means a drug that is designated to be therapeutically equivalent by the United States Food and Drug Administration's Approved Drug Products with Therapeutic Equivalence Evaluations, except that a drug shall not be considered a generic alternative until the drug is nationally available;

(c) "Health plan":

1. Means a policy, contract, certificate, or agreement offered or issued by an insurer to provide, deliver, arrange for, pay for, or reimburse any of the cost of health care services; and

2. Includes a health benefit plan;

(d) "Insured" means any individual who is enrolled in a health plan and on whose behalf the insurer is obligated to pay for or provide health care services;

(e) "Insurer" includes:

1. An insurer offering a health plan providing coverage for pharmacy benefits; or

2. Any other administrator of pharmacy benefits under a health plan;

(f) "Person" means a natural person, corporation, mutual company, unincorporated association, partnership, joint venture, limited liability company, trust, estate, foundation, nonprofit corporation, unincorporated organization, government, or governmental subdivision or agency;

(g) "Pharmacy" includes:

1. A pharmacy, as defined in KRS Chapter 315;

2. A pharmacist, as defined in KRS Chapter 315; and

3. Any employee of a pharmacy or pharmacist; and

(h) "Pharmacy benefit manager" has the same meaning as in KRS 304.17A-161.

(2) To the extent permitted under federal law and except as provided in subsection (4) of this section, an insurer issuing or renewing a health plan on or after January 1, 2022, or a pharmacy benefit manager, shall not:

(a) Require an insured purchasing a prescription drug to pay a cost-sharing amount greater than the amount the insured would pay for the drug if he or she were to purchase the drug without coverage;

(b) Exclude any cost-sharing amounts paid by an insured or on behalf of an insured by another person for a prescription drug, including any amount paid

under paragraph (a) of this subsection, when calculating an insured's contribution to any applicable cost-sharing requirement. The requirements of this paragraph shall not apply:

1. In the case of a prescription drug for which there is a generic alternative, unless the insured has obtained access to the brand prescription drug through prior authorization, a step therapy protocol, or the insurer's exceptions and appeals process; or
2. To any fully insured health benefit plan or self-insured plan provided to any employee under KRS 18A.225;

(c) Prohibit a pharmacy from discussing any information under subsection (3) of this section; or

(d) Impose a penalty on a pharmacy for complying with this section.

(3) A pharmacist shall have the right to provide an insured information regarding the applicable limitations on his or her cost sharing pursuant to this section for a prescription drug.

(4) If the application of any requirement of subsection (2)(b) of this section would be the sole cause of a health plan's failure to qualify as a Health Savings Account-qualified High Deductible Health Plan under 26 U.S.C. sec. 223, as amended, then the requirement shall not apply to that health plan until the minimum deductible under 26 U.S.C. sec. 223, as amended, is satisfied.

Effective: June 29, 2023

History: Amended 2023 Ky. Acts ch. 130, sec. 1, effective June 29, 2023. -- Amended 2021 Ky. Acts ch. 134, sec. 1, effective January 1, 2022. -- Created 2018 Ky. Acts ch. 144, sec. 1, effective January 1, 2019.

Legislative Research Commission Note (6/29/2023). 2023 Ky. Acts ch. 130, sec. 3, provides that in implementing the requirements of this statute, the state shall only regulate a pharmacy benefit manager or an insurer to the extent permissible under applicable law.