

CHAPTER 70**(HB 97)**

AN ACT relating to the Personnel Cabinet, and declaring an emergency.

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

Section 1. KRS 12.020 is amended to read as follows:

Departments, program cabinets and their departments, and the respective major administrative bodies that they include are enumerated in this section. It is not intended that this enumeration of administrative bodies be all-inclusive. Every authority, board, bureau, interstate compact, commission, committee, conference, council, office, or any other form of organization shall be included in or attached to the department or program cabinet in which they are included or to which they are attached by statute or statutorily authorized executive order; except in the case of the Personnel Board and where the attached department or administrative body is headed by a constitutionally elected officer, the attachment shall be solely for the purpose of dissemination of information and coordination of activities and shall not include any authority over the functions, personnel, funds, equipment, facilities, or records of the department or administrative body.

I. Cabinet for General Government - Departments headed by elected officers:

1. The Governor.
2. Lieutenant Governor.
3. Department of State.
 - (a) Secretary of State.
 - (b) Board of Elections.
 - (c) Registry of Election Finance.
4. Department of Law.
 - (a) Attorney General.
5. Department of the Treasury.
 - (a) Treasurer.
6. Department of Agriculture.
 - (a) Commissioner of Agriculture.
 - (b) Kentucky Council on Agriculture.
7. Superintendent of Public Instruction.
8. Auditor of Public Accounts.

II. Program cabinets headed by appointed officers:

1. Justice Cabinet:
 - (a) Department of State Police.
 - (b) Department of Criminal Justice Training.
 - (c) Department of Corrections.

- (d) Department of Juvenile Justice.
 - (e) Office of the Secretary.
 - (f) Offices of the Deputy Secretaries.
 - (g) Office of General Counsel.
 - (h) Division of Kentucky State Medical Examiners Office.
 - (i) Parole Board.
 - (j) Kentucky State Corrections Commission.
 - (k) Commission on Correction and Community Service.
2. Education, Arts, and Humanities Cabinet:
- (a) Department of Education.
 - (1) Kentucky Board of Education.
 - (2) Education Professional Standards Board.
 - (b) Department for Libraries and Archives.
 - (c) Kentucky Arts Council.
 - (d) Kentucky Educational Television.
 - (e) Kentucky Historical Society.
 - (f) Kentucky Teachers' Retirement System Board of Trustees.
 - (g) Kentucky Center for the Arts.
 - (h) Kentucky Craft Marketing Program.
 - (i) Kentucky Commission on the Deaf and Hard of Hearing.
 - (j) Governor's Scholars Program.
 - (k) Governor's School for the Arts.
 - (l) Operations and Development Office.
 - (m) Kentucky Heritage Council.
 - (n) Kentucky African-American Heritage Commission.
 - (o) Board of Directors for the Center for School Safety.
3. Natural Resources and Environmental Protection Cabinet:
- (a) Environmental Quality Commission.
 - (b) Kentucky Nature Preserves Commission.
 - (c) Department for Environmental Protection.
 - (d) Department for Natural Resources.
 - (e) Department for Surface Mining Reclamation and Enforcement.
 - (f) Office of Legal Services.
 - (g) Office of Information Services.

- (h) Office of Inspector General.
- 4. Transportation Cabinet:
 - (a) Department of Highways.
 - 1. Office of Program Planning and Management.
 - 2. Office of Project Development.
 - 3. Office of Construction and Operations.
 - 4. Office of Intermodal Programs.
 - 5. Highway District Offices One through Twelve.
 - (b) Department of Vehicle Regulation.
 - (c) Department of Administrative Services.
 - (d) Department of Fiscal Management.
 - (e) Department of Rural and Municipal Aid.
 - (f) Department of Human Resources Management.
 - (g) Office of the Secretary.
 - (h) Office of General Counsel and Legislative Affairs.
 - (i) Office of Public Affairs.
 - (j) Office of Transportation Delivery.
 - (k) Office of Minority Affairs.
 - (l) Office of Policy and Budget.
- 5. Cabinet for Economic Development:
 - (a) Department of Administration and Support.
 - (b) Department for Business Development.
 - (c) Department of Financial Incentives.
 - (d) Department of Community Development.
 - (e) Tobacco Research Board.
 - (f) Kentucky Economic Development Finance Authority.
- 6. Public Protection and Regulation Cabinet:
 - (a) Public Service Commission.
 - (b) Department of Insurance.
 - (c) Department of Housing, Buildings and Construction.
 - (d) Department of Financial Institutions.
 - (e) Department of Mines and Minerals.
 - (f) Department of Public Advocacy.
 - (g) Department of Alcoholic Beverage Control.

- (h) Kentucky Racing Commission.
 - (i) Board of Claims.
 - (j) Crime Victims Compensation Board.
 - (k) Kentucky Board of Tax Appeals.
 - (l) Backside Improvement Commission.
 - (m) Office of Petroleum Storage Tank Environmental Assurance Fund.
 - (n) Department of Charitable Gaming.
7. Cabinet for Families and Children:
- (a) Department for Community Based Services.
 - (b) Department for Disability Determination Services.
 - (c) Public Assistance Appeals Board.
 - (d) Office of the Secretary.
 - (1) Kentucky Commission on Community Volunteerism and Service.
 - (e) Office of the General Counsel.
 - (f) Office of Program Support.
 - (g) Office of Family Resource and Youth Services Centers.
 - (h) Office of Technology Services.
 - (i) Office of the Ombudsman.
 - (j) Office of Performance Enhancement.
8. Cabinet for Health Services.
- (a) Department for Public Health.
 - (b) Department for Medicaid Services.
 - (c) Department for Mental Health and Mental Retardation Services.
 - (d) Kentucky Commission on Children with Special Health Care Needs.
 - (e) Office of Certificate of Need.
 - (f) Office of the Secretary.
 - (g) Office of the General Counsel.
 - (h) Office of Program Support.
 - (i) Office of the Inspector General.
 - (j) Office of Aging Services.
9. Finance and Administration Cabinet:
- (a) Office of Legal and Legislative Services.
 - (b) Office of Management and Budget.
 - (c) Office of Financial Management.

- (d) Office of the Controller.
 - (e) Department for Administration.
 - (f) Department of Facilities Management.
 - (g) State Property and Buildings Commission.
 - (h) Kentucky Pollution Abatement Authority.
 - (i) Kentucky Savings Bond Authority.
 - (j) Deferred Compensation Systems.
 - (k) Office of Equal Employment Opportunity Contract Compliance.
 - (l) Office of Capital Plaza Operations.
 - (m) County Officials Compensation Board.
 - (n) Kentucky Employees Retirement Systems.
 - (o) Commonwealth Credit Union.
 - (p) State Investment Commission.
 - (q) Kentucky Housing Corporation.
 - (r) Governmental Services Center.
 - (s) Kentucky Local Correctional Facilities Construction Authority.
 - (t) Kentucky Turnpike Authority.
 - (u) Historic Properties Advisory Commission.
 - (v) Kentucky Kare Health Insurance Authority.
 - (w) Kentucky Tobacco Settlement Trust Corporation.
10. Labor Cabinet:
- (a) Department of Workplace Standards.
 - (b) Department of Workers' Claims.
 - (c) Kentucky Labor-Management Advisory Council.
 - (d) Occupational Safety and Health Standards Board.
 - (e) Prevailing Wage Review Board.
 - (f) Workers' Compensation Board.
 - (g) Kentucky Employees Insurance Association.
 - (h) Apprenticeship and Training Council.
 - (i) State Labor Relations Board.
 - (j) Kentucky Occupational Safety and Health Review Commission.
 - (k) Office of Administrative Services.
 - (l) Office of Labor-Management Relations and Mediation.
 - (m) Office of General Counsel.

- (n) Workers' Compensation Funding Commission.
 - (o) Employers Mutual Insurance Authority.
11. Revenue Cabinet:
- (a) Department of Property Valuation.
 - (b) Department of Tax Administration.
 - (c) Office of Financial and Administrative Services.
 - (d) Department of Law.
 - (e) Department of Information Technology.
 - (f) Office of Taxpayer Ombudsman.
12. Tourism Development Cabinet:
- (a) Department of Travel.
 - (b) Department of Parks.
 - (c) Department of Fish and Wildlife Resources.
 - (d) Kentucky Horse Park Commission.
 - (e) State Fair Board.
 - (f) Office of Administrative Services.
 - (g) Office of General Counsel.
13. Cabinet for Workforce Development:
- (a) Department for Adult Education and Literacy.
 - (b) Department for Technical Education.
 - (c) Department of Vocational Rehabilitation.
 - (d) Department for the Blind.
 - (e) Department for Employment Services.
 - (f) State Board for Adult and Technical Education.
 - (g) The State Board for Proprietary Education.
 - (h) The Foundation for Adult Education.
 - (i) Office of Training and Reemployment.
 - (j) Office of General Counsel.
 - (k) Office of Communication Services.
 - (l) Office of Development and Industry Relations.
 - (m) Office of Workforce Analysis and Research.
 - (n) Office for Administrative Services.
 - (o) Office for Policy and Budget.
 - (p) Office of Personnel Services.

(q) Unemployment Insurance Commission.

14. Personnel Cabinet:

- (a) Office of Administrative and Legal Services.
- (b) Department for Personnel Administration.
- (c) Department for Employee Relations.
- (d) Kentucky Public Employees Deferred Compensation Authority.
- (e) Kentucky Kare.
- (f) Division of Performance Management.
- (g) Division of Employee Records.
- (h) Division of Staffing Services.
- (i) Division of Classification and Compensation.
- (j) Division of Employee Benefits.
- (k) Division of Communications and Recognition.
- (l) ***Office of Public Employee Health Insurance.***

III. Other departments headed by appointed officers:

- 1. Department of Military Affairs.
- 2. Council on Postsecondary Education.
- 3. Department for Local Government.
- 4. Kentucky Commission on Human Rights.
- 5. Kentucky Commission on Women.
- 6. Department of Veterans' Affairs.
- 7. Kentucky Commission on Military Affairs.
- 8. The Governor's Office for Technology.
- 9. Commission on Small Business Advocacy.

Section 2. KRS 18A.025 is amended to read as follows:

- (1) The Governor shall appoint the secretary of personnel as provided in KRS 18A.015, who shall be considered an employee of the state. He shall be a graduate of an accredited college or university and have at least five (5) years' experience in personnel administration or in related fields, have known sympathies with the merit principle in government and shall be dedicated to the preservation of this principle. Additional education may be substituted for the required experience and additional experience may be substituted for the required education.
- (2) The secretary of the Personnel Cabinet or his designee, shall be responsible for the coordination of the state's affirmative action plan, established by KRS 18A.138.
- (3) There is established within the Personnel Cabinet the following offices and departments, each of which shall be headed by a commissioner appointed by the secretary, subject to the prior approval of the Governor, pursuant to KRS 12.050, except that the Kentucky

Employees Deferred Compensation Authority shall be headed by an executive director who shall be appointed by the authority's board of directors:

- (a) Office of the Secretary, composed of the:
 1. Office of Administrative and Legal Services, which shall:
 - a. Provide all administrative information systems management, and legal services to the Cabinet; and
 - b. Coordinate the state's affirmative action plan established in KRS 18A.138;
and
 2. Kentucky Public Employees Deferred Compensation Authority which shall be attached to the Office of the secretary for administrative purposes only. The authority shall be governed by a board of trustees composed of seven (7) members including the secretary of Finance and Administration, ex officio; the secretary of Personnel, ex officio; the state controller, ex officio; and four (4) at large members appointed by the Governor, one (1) of whom shall have at least five (5) years of investment or banking experience and one (1) of whom shall represent a nonstate employer. The authority shall be headed by an executive director who shall be appointed by the board of directors of the authority without the limitations imposed by KRS 12.040 and KRS Chapter 18A; ~~and~~
 3. ~~Kentucky Kare;~~
- (b) Department for Personnel Administration, composed of the:
 1. Division of Performance Management, which shall coordinate and implement the employee performance evaluation systems throughout state government;
 2. Division of Employee Records, which shall:
 - a. Maintain the central personnel files mandated by KRS 18A.020;
 - b. Process personnel documents and position actions;
 - c. Operate and maintain a uniform payroll system;
 - d. Implement lay-off plans mandated by KRS 18A.113 to KRS 18A.1132;
 - e. Certify payrolls as required by KRS 18A.125; and
 - f. Monitor and assist state agencies in complying with the provisions of the Federal Fair Labor Standards Act (FLSA);
 3. Division of Staffing Services, which shall:
 - a. Operate a centralized applicant and employee counseling program;
 - b. Operate the examination program for State employment;
 - c. Prepare registers of candidate employment;
 - d. Coordinate outreach programs, such as recruitment and the Administrative Intern Program; and
 - e. Construct merit examinations; and
 4. Division of Classification and Compensation, which shall:

- a. Maintain plans of classification and compensation for the State Service; and
 - b. Review and evaluate the plans;~~and~~
- (c) Department for Employee Relations, composed of the:
- 1. Division of Employee Benefits, which shall be responsible for administering and assisting state employees with the following benefits and programs:
 - a. Workers' Compensation (KRS 18A.375);
 - b. Life Insurance (KRS 18A.205 to KRS 18A.220);
 - c.~~Health Insurance (KRS 18A.225);~~
 - d.~~Flexible Benefit Plan (KRS 18A.227);~~
 - e.~~Sick leave Sharing Program (KRS 18A.197);~~
 - d.~~f.~~ Annual Leave Sharing Program;
 - e.~~g.~~ Health and Safety Programs (OSHA); and
 - f.~~h.~~ Assessment and referral services provided to state employees;
 - 2. Division of Communications and Recognition, which shall:
 - a. Communicate with state employees about personnel issues and other relevant issues through publications;
 - b. Administer the employee incentive programs established by KRS 18A.202; and
 - c. Provide dispute resolution assistance to state employees and agencies; *and*
- (d) *Office of Public Employee Health Insurance, which shall be composed of the:*
- 1. *Health Insurance Program (KRS 18A.225); and*
 - 2. *Flexible Benefit Plan (KRS 18A.227).*
- (4) The cabinet shall include principal assistants appointed by the secretary, pursuant to KRS 12.050, as necessary for the development and implementation of policy. The secretary may employ, pursuant to the provisions of this chapter, personnel necessary to execute the functions and duties of the department.

Section 3. KRS 18A.225 is amended to read as follows:

- (1) (a) The term "health maintenance organization" for the purposes of this section means a health maintenance organization as defined in KRS 304.38-030 or as a nonprofit hospital, medical-surgical, dental, and health service corporation, which has been licensed by the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board or its successor agency and issued a certificate of authority by the Department of Insurance as a health maintenance organization or as a nonprofit hospital, medical-surgical, dental, and health service corporation and which is qualified under the requirements of the United States Department of Health, Education and Welfare except as provided in subsection (2) of this section; and
- (b) The term "state employee" for purposes of this section shall include a person, including an elected public official, who is regularly employed by any department,

board, agency, branch of state government, or any municipal, urban-county, charter county, or county government, whose legislative body has opted to participate in the state health insurance program pursuant to KRS 79.080 and who is a contributing member to any one (1) of the retirement systems administered by the state. It shall also include a person who must fulfill the requirements established by the Kentucky Board of Education for eligibility and a person who is a present or future recipient of a retirement allowance from any of the Kentucky Retirement Systems who either satisfies the requirements of KRS 61.559 or who is board authorized under KRS 61.702(1), including a beneficiary of a retired employee as defined in KRS 61.542 who is receiving a retirement allowance from any of the Kentucky Retirement Systems and includes members of the Legislators' Retirement Plan as provided in KRS 18A.2287. It shall also include a person who is a present or future recipient of a retirement allowance from the Teachers' Retirement System of Kentucky who either satisfies the requirements of KRS 161.525, 161.620, and 161.675 or who is board certified, including a beneficiary of a retired member who is receiving a retirement allowance from the Teachers' Retirement System of Kentucky, except that a member who is receiving a retirement allowance from the Teachers' Retirement System and who is age sixty-five (65) or older shall not be included.

- (2) (a) The secretary of the Finance and Administration Cabinet, upon the recommendation of the secretary of the Personnel Cabinet, shall procure, in compliance with the provisions of KRS 45A.080, 45A.085, and 45A.090, from one (1) or more health insurance companies or from one (1) or more health maintenance organizations authorized to do business in this state, a policy or policies of group health care coverage including, but not limited to, indemnity, health maintenance organization (HMO), preferred provider organization (PPO), point of service (POS), and exclusive provider organization (EPO) benefit plans encompassing all or any class or classes of state employees. Health insurance coverage provided to state employees under this section shall, at a minimum, contain the same benefits as provided under Kentucky Kare Standard as of January 1, 1994. All state employees and other persons for whom the health care coverage is provided or made available shall annually be given an option to elect health care coverage through a self-funded plan offered by the state or, if a self-funded plan is not available, from a list of coverage options determined by the competitive bid process under the provisions of KRS 45A.080, 45A.085, and 45A.090 and made available during annual open enrollment. ***For calendar year 2001 only, an emergency shall exist when any county in which only one (1) health insurance company offers a single plan to state employees and, subsequent to the open enrollment period, the health insurance company fails to maintain at least sixty-five percent (65%) of its contracts within the geographic region with specialty physicians who were participating in the network at the time of open enrollment. The Finance and Administration Cabinet shall immediately notify the Governor, the Legislative Research Commission, and the secretary of the Personnel Cabinet and shall be authorized to immediately negotiate and contract with additional health insurance companies for additional plans to serve any county without meeting the requirements of the Model Procurement Code under KRS Chapter 45.***
- (b) The policy or policies shall be approved by the commissioner of insurance and may contain the provisions he approves, whether or not otherwise permitted by the insurance laws.

- (c) Any carrier bidding to offer health care coverage to members of the state group shall agree to provide coverage to all members of the state group, including both active employees and retirees within the county or counties specified in its bid. Furthermore, any carrier bidding to offer health care coverage to members of the state group shall also agree to rate all such members of the state group as a single entity, except for those retirees whose former employers insure their active employees outside the state health insurance program.
 - (d) Any carrier bidding to offer health care coverage to any member of the state group shall agree to provide enrollment, claims, and utilization data to the Commonwealth in a format specified by the Personnel Cabinet with the understanding that the data shall be owned by the Commonwealth; to provide data in an electronic form and within a time frame specified by the Personnel Cabinet; and to be subject to penalties for noncompliance of data reporting requirements as specified by the Personnel Cabinet. The Personnel Cabinet shall take strict precautions to protect the confidentiality of each individual member; however, confidentiality assertions shall not relieve a carrier from the requirement of providing stipulated data to the Commonwealth.
 - (e) The Personnel Cabinet shall develop the necessary techniques and capabilities for timely analysis of data received from carriers and, to the extent possible, provide in the request-for-proposal specifics relating to data requirements, electronic reporting, and penalties for noncompliance. The Commonwealth shall own the enrollment, claims, and utilization data provided by each carrier and shall develop methods to protect the confidentiality of the individual. The Personnel Cabinet shall provide to the General Assembly in June of each year an analysis of enrollment, claims, utilization data of all carriers for the prior plan year ending December 31, and on the financial stability of the program. The report shall include, but not be limited to, loss ratios, methods of risk adjustment, measurements of carrier quality of service, prescription coverage and cost management, paid dependent coverage, and statutorially required mandates. If state self-insurance was available as a carrier option, the report also shall provide a detailed financial analysis of the self-insurance fund including, but not limited to, loss ratios, reserves, and reinsurance agreements.
 - (f) If any agency participating in the state employee health insurance program for its active members terminates participation in the state employee health insurance program for its active members and there is a state appropriation for the employer's contribution for active employees' health insurance coverage, neither the agency nor the employees shall receive the state-funded contribution after termination from the state employee health insurance program.
 - (g) Any funds in flexible spending accounts that remain after all reimbursements have been processed shall be transferred to the credit of the state health insurance plan's appropriation account.
- (3) The secretary of the Finance and Administration Cabinet, upon the recommendation of the secretary of the Personnel Cabinet, may procure from one (1) or more dental insurance companies, one (1) or more nonprofit hospital, medical-surgical, dental, and health service corporations organized under Subtitle 32 of KRS Chapter 304, or one (1) or more prepaid dental plan organizations organized under Subtitle 43 of KRS Chapter 304, a policy or policies of group dental insurance or prepaid dental plan coverage encompassing all or any class or classes of state employees. All state employees for whom the dental insurance or

prepaid dental plan coverage is provided shall annually be given an option to elect either standard dental insurance coverage or coverage by a prepaid dental plan. The policy or policies shall be approved by the commissioner of insurance and may contain the provisions he approves, whether or not otherwise permitted by the insurance laws. It is intended that either dental insurance or prepaid dental plan coverage may be made available for state employees, except that the procuring of each is permissive.

- (4) The premiums may be paid by the policyholder:
 - (a) Wholly from funds contributed by the insured employee, by payroll deduction or otherwise;
 - (b) Wholly from funds contributed by any department, board, agency, or branch of state, municipal, urban-county, charter county, or county government; or
 - (c) Partly from each, except that any premium due for health care coverage or dental coverage, if any, in excess of the premium amount contributed by any department, board, agency, or branch of state, municipal, urban-county, charter county, or county government for any other health care coverage shall be paid by the employee.
- (5) If an employee moves his place of residence or employment out of the service area of a managed health care plan or of a prepaid dental plan, under which he has elected coverage, into either the service area of another managed health care plan or prepaid dental plan or into an area of the state not within a managed health care plan service area or prepaid dental plan service area, the employee shall be given an option, at the time of the move or transfer, to change his or her coverage to another health care plan or dental plan.
- (6) No payment of premium by any department, board, agency, or branch of state, municipal, urban-county, charter county, or county government shall constitute compensation to an insured employee for the purposes of any statute fixing or limiting the compensation of such an employee. Any premium or other expense incurred by any department, board, agency, or branch of state, municipal, urban-county, charter county, or county government shall be considered a proper cost of administration.
- (7) The policy or policies may contain the provisions with respect to the class or classes of employees covered, amounts of insurance or coverage for designated classes or groups of employees, policy options, terms of eligibility, continuation of insurance or coverage after retirement, and other provisions the commissioner of insurance may approve.
- (8) The policy or policies shall contain the provision that employees or retired employees shall be allowed to change health care plans during the reopening period without any limitation for pre-existing conditions if the employee has met the pre-existing condition limitation upon initial employment or reemployment with the group.
- (9) The secretary of the Finance and Administration Cabinet is authorized to perform all acts necessary or advisable for the purpose of contracting for and maintaining health care coverage and dental coverage under the provisions of this section.
- (10) Group rates under this section shall be made available to the disabled child of a state employee regardless of the child's age if the entire premium for the disabled child's coverage is paid by the state employee. A child shall be considered disabled if he has been determined to be eligible for federal Social Security disability benefits.

- (11) The health care contract or contracts for state employees shall be entered into for a period of not less than one (1) year.
- (12) The secretary shall appoint twenty-eight (28) persons to an Advisory Committee of State Health Insurance Subscribers to advise the secretary or his designee regarding the state health insurance program for state employees. The secretary shall appoint, from a list of names submitted by appointing authorities, members representing school districts from each of the seven (7) Supreme Court districts, members representing state government from each of the seven (7) Supreme Court districts, two (2) members representing retirees under age sixty-five (65), one (1) member representing local health departments, two (2) members representing the Kentucky Teachers' Retirement System, and three (3) members at large. The secretary shall also appoint two (2) members from a list of five (5) names submitted by the Kentucky Education Association, two (2) members from a list of five (5) names submitted by the largest state employee organization of nonschool state employees, and two (2) members from a list of names consisting of five (5) names submitted by each state employee organization that has two thousand (2,000) or more members on state payroll deduction. The advisory committee shall be appointed in January of each year and shall meet quarterly.
- (13) Notwithstanding any other provision of law to the contrary, the policy or policies provided to state employees pursuant to this section shall not provide coverage for obtaining or performing an abortion, nor shall any state funds be used for the purpose of obtaining or performing an abortion on behalf of state employees or their dependents.
- (14) Interruption of an established treatment regime with maintenance drugs shall be grounds for an insured to appeal a formulary change through the established appeal procedures approved by the Personnel Cabinet, if the physician supervising the treatment certifies that the change is not in the best interests of the patient.

Section 4. The General Assembly confirms Executive Order 2000-1316, dated October 4, 2000, to the extent that it is not otherwise confirmed or superseded by this Act.

Section 5. Whereas thousands of citizens of this Commonwealth have lost access to medical care because of contractual issues, an emergency is declared to exist and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Approved March 15, 2001