

CHAPTER 126**(HB 165)**

AN ACT relating to health insurance.

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

➔Section 1. KRS 304.17B-015 is amended to read as follows:

- (1) Any individual who is an eligible individual **and a resident of Kentucky** is eligible for coverage under Kentucky Access, except as specified in paragraphs (a), (b), (d), and (e) of subsection (4) of this section.
- (2) Any individual who is not an eligible individual who has been a resident of the Commonwealth for at least twelve (12) months immediately preceding the application for Kentucky Access coverage is eligible for coverage under Kentucky Access if one (1) of the following conditions is met:
 - (a) The individual has been rejected by at least one (1) insurer for coverage of a health benefit plan that is substantially similar to Kentucky Access coverage;
 - (b) The individual has been offered coverage substantially similar to Kentucky Access coverage at a premium rate greater than the Kentucky Access premium rate at the time of enrollment or upon renewal; or
 - (c) The individual has a high-cost condition listed in KRS 304.17B-001.
- (3) A Kentucky Access enrollee whose premium rates exceed claims for a three (3) year period shall be issued a notice of insurability. The notice shall indicate that the Kentucky Access enrollee has not had claims exceed premium rates for a three (3) year period and may be used by the enrollee to obtain insurance in the regular individual market.
- (4) An individual shall not be eligible for coverage under Kentucky Access if:
 - (a) **1.** The individual has, or is eligible for, on the effective date of coverage under Kentucky Access, substantially similar coverage under another contract or policy, unless the individual was issued coverage from a GAP participating insurer as a GAP qualified individual prior to January 1, 2001. A GAP qualified individual shall be automatically eligible for coverage under Kentucky Access without regard to the requirements of subsection (2) of this section; **or**
 - 2. For individuals meeting the requirements of KRS 304.17A-005(11), the individual has, or is eligible for, on the effective date of coverage under Kentucky Access, coverage under a group health plan.**

An individual who is ineligible for coverage pursuant to this paragraph shall not preclude the individual's spouse or dependents from being eligible for Kentucky Access coverage. As used in this paragraph, "eligible for" includes any individual **and an individual's spouse or dependent** who was eligible for coverage but waived that coverage. That individual **and the individual's spouse or dependent** shall be ineligible for Kentucky Access coverage through the period of waived coverage;

 - (b) The individual is eligible for coverage under Medicaid or Medicare;
 - (c) The individual previously terminated Kentucky Access coverage and twelve (12) months have not elapsed since the coverage was terminated, unless the individual demonstrates a good faith reason for the termination;
 - (d) Except for covered benefits paid under the standard health benefit plan as specified in KRS 304.17B-019, Kentucky Access has paid two million dollars (\$2,000,000) in covered benefits per individual. The maximum limit under this paragraph may be increased by the office;~~or~~
 - (e) The individual is confined to a public institution or incarcerated in a federal, state, or local penal institution or in the custody of federal, state, or local law enforcement authorities, including work release programs; **or**
 - (f) **The individual's premium, deductible, coinsurance, or copayment is partially or entirely paid or reimbursed by an individual or entity other than the individual or the individual's parent,**

grandparent, spouse, child, stepchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, sibling, brother-in-law, sister-in-law, grandchild, guardian, or court-appointed payor.

- (5) The coverage of any person who ceases to meet the requirements of this section or the requirements of any administrative regulation promulgated under this subtitle may be terminated.

➔Section 2. KRS 304.17B-019 is amended to read as follows:

- (1) Kentucky Access shall offer at least three (3) health benefit plans to enrollees, which shall be similar to the health benefit plans currently being marketed to individuals in the individual market. ~~One (1) plan shall be the standard health benefit plan set forth in KRS 304.17A-250.~~
- (2) At least one (1) plan shall be offered in a traditional fee-for-service form. At least one (1) plan may be offered in a managed-care form at such time as the office can establish an appropriate provider network in available service areas.
- (3) The office shall provide for utilization review and case management for all health benefit plans issued under Kentucky Access.
- (4) The office shall review and compare health benefit plans provided under Kentucky Access to health benefit plans provided in the individual market. Based on the review, the office may amend or replace the health benefit plans issued under Kentucky Access ~~except for the standard health benefit plan as specified in subsection (1) of this section.~~
- (5) Individuals who apply and are determined eligible for health benefit plans issued under Kentucky Access shall have coverage effective the first day of the month after the application month.
- (6) For eligible individuals, health benefit plans issued under Kentucky Access shall not impose any pre-existing condition exclusions. In all other cases, a pre-existing condition exclusion may be imposed in accordance with KRS 304.17A-230.
- (7) Health benefit plans issued under Kentucky Access shall be guaranteed renewable except as otherwise specified in KRS 304.17B-015 and KRS 304.17A-240.
- (8) All health benefit plans issued under Kentucky Access shall provide that, upon the death or divorce of the individual in whose name the contract was issued, every other person covered in the contract may elect within sixty-three (63) days to continue under the same or a different contract.
- (9) Health benefit plans issued under Kentucky Access shall coordinate benefits with other health benefit plans and be the payor of last resort.
- (10) ~~Except for the standard health benefit plan specified in subsection (1) of this section,~~ Health benefit plans issued under Kentucky Access shall pay covered benefits up to a lifetime limit of two million dollars (\$2,000,000) per covered individual. The maximum limit under this subsection may be increased by the office.

➔Section 3. KRS 344.040 is amended to read as follows:

- (1) It is an unlawful practice for an employer:
- (a) ~~(1)~~ To fail or refuse to hire, or to discharge any individual, or otherwise to discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment, because of the individual's race, color, religion, national origin, sex, age forty (40) and over, because the person is a qualified individual with a disability, or because the individual is a smoker or nonsmoker, as long as the person complies with any workplace policy concerning smoking;
- (b) ~~(2)~~ To limit, segregate, or classify employees in any way which would deprive or tend to deprive an individual of employment opportunities or otherwise adversely affect status as an employee, because of the individual's race, color, religion, national origin, sex, or age forty (40) and over, because the person is a qualified individual with a disability, or because the individual is a smoker or nonsmoker, as long as the person complies with any workplace policy concerning smoking; or
- (c) ~~(3)~~ To require as a condition of employment that any employee or applicant for employment abstain from smoking or using tobacco products outside the course of employment, as long as the person complies with any workplace policy concerning smoking.
- (2) (a) *A difference in employee contribution rates for smokers and nonsmokers in relation to an employer-sponsored health plan shall not be deemed to be an unlawful practice in violation of this section.*

- (b) *The offering of incentives or benefits offered by an employer to employees who participate in a smoking cessation program shall not be deemed to be an unlawful practice in violation of this section.*

Signed by Governor April 12, 2010