

CHAPTER 120**(HB 186)**

AN ACT relating to fiscal impacts of health insurance mandates and declaring an emergency.

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

➔SECTION 1. KRS 6.948 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

(1) As used in this section:

- (a) "Amendment" includes a committee substitute;**
- (b) "Department" means the Department of Insurance;**
- (c) "Federal cost defrayal impact statement" means a statement prepared and transmitted in accordance with subsection (6) of this section;**
- (d) "Health benefit plan" has the same meaning as in KRS 304.17A-005, except that for purposes of this section the term does not include:**
 - 1. A state employee health plan; or**
 - 2. Any other self-insured policy, certificate, plan, or contract;**
- (e) "Health mandate impact statement" means a statement prepared and transmitted in accordance with subsection (5) of this section;**
- (f) "Mandated health benefit" means a requirement that any health benefit plan or state employee health plan:**
 - 1. Provide a specified benefit, including but not limited to a specified coverage;**
 - 2. Pay, indemnify, or reimburse for a specified medical service; or**
 - 3. Pay, indemnify, or reimburse specified health care providers for specific health care services;**
- (g) "Sponsor" means a member of the General Assembly that has made a request to the Legislative Research Commission for a bill or amendment;**
- (h) "State employee health plan" means any fully insured health benefit plan or self-insured plan issued or renewed to public employees under KRS 18A.225 or 18A.2254; and**
- (i) "State employee health plan impact statement" means a statement prepared and transmitted in accordance with subsection (7) of this section.**

(2) (a) Any bill or amendment that contains a mandated health benefit shall be identified by the staff of, and on a form specified by, the Legislative Research Commission.

- (b) If a bill or amendment is identified as having a mandated health benefit under paragraph (a) of this subsection, the staff of the Legislative Research Commission shall:**
 - 1. Notify the sponsor of the bill or amendment that a health mandate impact statement, federal cost defrayal impact statement, and state employee health plan impact statement, as applicable, are required; and**
 - 2. Upon introduction, adoption, or filing of the legislation:**
 - a. For a mandated health benefit that applies to any health benefit plan, request the department to prepare and transmit a health mandate impact statement and federal cost defrayal impact statement in accordance with this section; and**
 - b. For a mandated health benefit that applies to any state employee health plan, request the Department of Employee Insurance to prepare and transmit a state employee health plan impact statement in accordance with this section.**

- (3) (a) *The individuals referenced in paragraph (b) of this subsection may, in accordance with that paragraph, request the department or the Department of Employee Insurance, as applicable, to prepare any or all of the following:*
1. *A health mandate impact statement;*
 2. *A federal cost defrayal impact statement; or*
 3. *A state employee health plan impact statement.*
- (b) *Any or all of the following may make a request under paragraph (a) of this subsection:*
1. *For any introduced bill or adopted or filed amendment:*
 - a. *The sponsor of the bill or amendment; or*
 - b. *Any of the following members from a chamber of the General Assembly with possession of the legislation:*
 - i. *Any member of the majority or minority leadership; or*
 - ii. *A chair of a standing committee; and*
 2. *For any bill or amendment that has not been introduced, filed, or adopted, the sponsor of the bill or amendment.*
- (4) (a) *Except as provided in paragraph (b) of this subsection, when a request is made under this section, the department or Department of Employee Insurance, including its staff and third-party contractors, shall:*
1. *Keep the bill or amendment confidential until the bill or amendment is published for public distribution by the Legislative Research Commission; and*
 2. *Keep the impact statement, including the request for the statement and any information relating thereto, confidential until the statement is published for public distribution by the Legislative Research Commission.*
- (b) *Paragraph (a) of this subsection shall not apply to any communications with or transmittals to:*
1. *Staff or third-party contractors designated by the department or Department of Employee Insurance to receive and prepare the impact statements required under this section;*
 2. *Staff designated by the Legislative Research Commission;*
 3. *The requester; or*
 4. *Any other person designated by the requester.*
- (c) *Any health mandate impact statement, federal cost defrayal impact statement, or state employee health plan impact statement requested under this section shall be prepared and transmitted by the department or Department of Employee Insurance as provided in this section.*
- (5) *A health mandate impact statement shall:*
- (a) *Be in writing;*
 - (b) *Be signed by the commissioner of the department or the commissioner's designee;*
 - (c) *Determine the extent to which the mandated health benefit will:*
 1. *Increase or decrease administrative expenses of insurers offering health benefit plans;*
 2. *Increase or decrease health benefit plan premiums in the market or markets to which the mandate applies; and*
 3. *Impact the total cost of health care for health benefit plan insureds, including any potential cost savings that may be realized; and*
 - (d) *Be completed and transmitted to staff designated by the Legislative Research Commission and the requester as soon as possible, but not later than thirty (30) days after the request is made to the department, unless the requestor and commissioner of the department agree otherwise.*
- (6) (a) *A federal cost defrayal impact statement shall:*

1. *Be in writing;*
 2. *Be signed by the commissioner of the department or the commissioner's designee;*
 3. *a. Indicate:*
 - i. *Whether a bill or amendment that contains a mandated health benefit may result in the state being required to make payments to defray costs under 42 U.S.C. sec. 18031(d)(3) and 45 C.F.R. sec. 155.170, as amended; and*
 - ii. *If applicable, which provision or provisions of the bill or amendment may trigger the requirement to make payments to defray costs under 42 U.S.C. sec. 18031(d)(3) and 45 C.F.R. sec. 155.170, as amended.*
 - b. When making a determination under subdivision a. of this subparagraph, the department shall consider whether the provision or provisions would apply under subsection (2) of Section 2 of this Act;*
 4. *If it is indicated under subparagraph 3. of this paragraph that the bill or amendment may result in the state being required to make payments, include a cost defrayal fiscal analysis prepared in accordance with paragraph (b) of this subsection; and*
 5. *Be completed and transmitted to staff designated by the Legislative Research Commission and the requestor as soon as possible, but not later than the following, unless the requestor and the commissioner of the department agree otherwise:*
 - a. *For an indication required under subparagraph 3. of this paragraph, ten (10) business days after the request is made to the department; and*
 - b. *For a cost defrayal fiscal analysis required under subparagraph 4. of this paragraph, thirty (30) days after the request is made to the department.*
- (b) *A cost defrayal fiscal analysis shall:*
1. *Be conducted by:*
 - a. *The department; and*
 - b. *An actuary selected by the department;*
 2. *Be based on an analysis performed in accordance with generally accepted actuarial principles and methodologies;*
 3. *Determine the extent to which benefits required under the bill or amendment are already covered by health insurers; and*
 4. *Include an estimate of the payments the state may be required to make under 42 U.S.C. sec. 18031(d)(3) and 45 C.F.R. sec. 155.170, as amended, if the bill or amendment is enacted into law.*
- (7) *A state employee health plan impact statement shall:*
- (a) *Be in writing;*
 - (b) *Be signed by the commissioner of the Department of Employee Insurance or the commissioner's designee;*
 - (c) *Determine the extent to which:*
 1. *The mandated health benefit will increase or decrease state employee health plan premiums; and*
 2. *The increased or decreased premiums identified in subparagraph 1. of this paragraph may be passed on to public employees; and*
 - (d) *Be completed and transmitted to staff designated by the Legislative Research Commission and the requester as soon as possible, but not later than thirty (30) days after the request is made to the Department of Employee Insurance, unless the requestor and commissioner of the Department of Employee Insurance agree otherwise.*

➔SECTION 2. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section, "qualified health plan" has the same meaning as in 42 U.S.C. sec. 18021(a)(1), as amended.*
- (2) *Notwithstanding any other provision of this chapter:*
 - (a) *Except as provided in paragraph (b) of this subsection, if the application of a provision of this chapter results, or would result, in a determination that the state must make payments to defray the cost of the provision under 42 U.S.C. sec. 18031(d)(3) and 45 C.F.R. sec. 155.170, as amended, then the provision shall not apply to a qualified health plan or any other health insurance policy, certificate, plan, or contract until the requirement to make cost defrayal payments is no longer applicable; and*
 - (b) *This subsection shall not apply to a provision of this chapter that became effective on or before January 1, 2024.*
- (3) *To the extent permitted by federal law, if the state is required under 42 U.S.C. sec. 18031(d)(3) and 45 C.F.R. sec. 155.170, as amended, to make payments to defray the cost of a provision of this chapter:*
 - (a) *1. Each qualified health plan issuer shall determine, and provide to the commissioner, the cost attributable to the provision for the qualified health plan.*
 - 2. The cost attributable to a provision for a qualified health plan under subparagraph 1. of this paragraph shall be:*
 - a. Calculated in accordance with generally accepted actuarial principles and methodologies;*
 - b. Conducted by a member of the American Academy of Actuaries; and*
 - c. Reported by the qualified health plan issuer to:*
 - i. The commissioner; and*
 - ii. The Division of Health Benefit Exchange within the Office of Data Analytics;*
 - (b) *The commissioner shall use the information obtained under paragraph (a) of this subsection to determine the statewide average of the cost attributable to the provision for all qualified health plan issuers to which the provision is applicable; and*
 - (c) *The required payments shall be:*
 - 1. Calculated based on the statewide average of the cost attributable to the provision as determined by the commissioner under paragraph (b) of this subsection; and*
 - 2. Submitted directly to qualified health plan issuers by the department through a process established by the commissioner.*
- (4) *A qualified health plan issuer that receives a payment under subsection (3)(c)2. of this section shall:*
 - (a) *Reduce the premium charged to an individual on whose behalf the issuer received the payment in an amount equal to the amount of the payment; or*
 - (b) *Notwithstanding KRS 304.12-090, provide a premium rebate to an individual on whose behalf the issuer received the payment in an amount equal to the amount of the payment.*
- (5) *Any fines collected for violations of this section shall be:*
 - (a) *Placed in a trust and agency account within the department, which shall not lapse; and*
 - (b) *Used solely by the department to make payments in accordance with subsection (3)(c)2. of this section.*
- (6) *The commissioner shall promulgate any administrative regulations necessary to enforce and effectuate this section.*

➔Section 3. KRS 194A.099 is amended to read as follows:

Except as provided in Section 2 of this Act:

- (1) The Division of Health Benefit Exchange *within the Office of Data Analytics* shall administer the provisions of the Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111-148; ~~{-}~~
- (2) The Division of Health Benefit Exchange shall:
 - (a) Facilitate enrollment in health coverage and the purchase and sale of qualified health plans in the individual market;
 - (b) Facilitate the ability of eligible individuals to receive premium tax credits and cost-sharing reductions and enable eligible small businesses to receive tax credits, in compliance with all applicable federal and state laws and regulations;
 - (c) Oversee the consumer assistance programs of navigators, in-person assisters, certified application counselors, and insurance agents as appropriate;
 - (d) At a minimum, carry out the functions and responsibilities required pursuant to 42 U.S.C. sec. 18031 to implement and comply with federal regulations in accordance with 42 U.S.C. sec. 18041; and
 - (e) Regularly consult with stakeholders in accordance with 45 C.F.R. sec. 155.130; *and* ~~{-}~~
- (3) The Office of *Data Analytics*:
 - (a) May enter into contracts and other agreements with appropriate entities, including but not limited to federal, state, and local agencies, as permitted under 45 C.F.R. sec. 155.110, to the extent necessary to carry out the duties and responsibilities of the office, provided that the agreements incorporate adequate protections with respect to the confidentiality of any information to be shared; ~~{-}~~
 - (b)~~{(4)}~~ ~~{The office}~~ Shall pursue all available federal funding for the further development and operation of the Division of Health Benefit Exchange; ~~{-}~~
 - (c)~~{(5)}~~ ~~{The Office of Health Data and Analytics}~~ Shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section; *and* ~~{-}~~
 - (d)~~{(6)}~~ ~~{The office}~~ Shall not establish procedures and rules that conflict with or prevent the application of the Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111-148.

➔Section 4. Whereas there is an immediate, significant, and legitimate need to assess, calculate, and limit the fiscal impacts of health insurance mandates, 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.

Signed by Governor April 9, 2024.