AN ACT relating to health benefit plans which include a tiered formulary for prescription drugs.

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

➔SECTION 1. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

As used in this section and Section 2 of this Act, unless the context requires otherwise:

(1) "Coinsurance" means a cost-sharing amount set as a percentage of the total cost of a drug;

(2) "Copayment" means a cost-sharing amount set as a dollar value;

(3) "Exceptions process" means a process established by a health benefit plan that allows an insured to request an exception to the tiered cost-sharing structure;

(4) "Non-preferred drug" means certain drugs deemed non-preferred by the health benefit plan and subject to higher cost-sharing amounts than preferred drugs;

(5) "Preferred drug" means certain drugs deemed preferred by the health benefit plan and subject to lower cost-sharing amounts than non-preferred drugs;

(6) "Out-of pocket expenditure" means a copayment, coinsurance, deductible, or other cost-sharing mechanism; and

(7) "Tiered formulary" means a formulary that provides coverage for prescription drugs as part of a health benefit plan for which cost-sharing, including copayments, coinsurance, deductibles, or other cost-sharing mechanism, is determined by category or tier of prescription drugs, and that includes at least two (2) different tiers.

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

(1) A health benefit plan that provides coverage for prescription drugs subject to a tiered formulary shall ensure that:

(a) Any required out-of-pocket expenditure, including copayments,

coinsurance, or deductibles, applicable to drugs shall not exceed one hundred dollars ($100) per month for up to a thirty (30) day supply of any single oral, injectable, or infusible drug product; and

(b) Any required out-of-pocket expenditure, including copayments, coinsurance, or deductibles for oral, injectable, or infusible drug products shall not exceed, in the aggregate, two hundred dollars ($200) per month per insured.

(2) Any health benefit plan that provides coverage for prescription drugs and utilizes a tiered formulary shall implement an exceptions process that allows an insured to request an exception to the tiered cost-sharing structure. Under the exception, a non-preferred drug may be covered by cost-sharing applicable under the plan for preferred drugs if the prescribing physician determines that the preferred drug for treatment of the same condition would not be as effective for the insured, would have adverse effects for the insured, or both. If an insured is denied a cost-sharing exception, the denial shall be considered coverage denial subject to an external review pursuant to KRS 304.17A-623.

(3) A health benefit plan that provides coverage for prescription drugs shall not place all drugs of the same class on the highest cost tier.

(4) A high-deductible health plan shall comply with the deductible amounts required by the Internal Revenue Code, 26 U.S.C. sec. 223(c)(2)(A)(1). If the plan offers prescription drug benefits, the deductible shall be met before the prescription drug benefits are covered. High-deductible health plans shall comply with subsection (1) of this section after the minimum deductible amounts are met.

(5) The commissioner shall promulgate administrative regulations necessary to implement and enforce this section.

(6) Nothing in this section shall be construed to require a health benefit plan to:

(a) Provide coverage for any additional drugs not otherwise required by law;

(b) Implement specific utilization management techniques such as prior authorization or step therapy; or

(c) Cease utilization of tiered cost-sharing structures, including strategies used to encourage use of preventive services, disease management, and low-cost treatment options.

➔Section 3. The provisions of Sections 1 and 2 of this Act shall apply to health benefit plans issued, amended, or renewed on or after January 1, 2016.