

1 AN ACT relating to treatment for Lyme disease.

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

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO
4 READ AS FOLLOWS:

5 *(1) As used in this section:*

6 *(a) "Board" means the State Board of Medical Licensure;*

7 *(b) "Long-term antibiotic therapy" means the administration of oral,*
8 *intramuscular, or intravenous antibiotics, singly or in combination, for*
9 *periods of greater than four (4) weeks;*

10 *(c) "Lyme disease" means the clinical diagnosis by a physician of the presence*
11 *in a patient of signs and symptoms compatible with acute infection with*
12 *Borrelia burgdorferi, or with late-stage or chronic infection with Borrelia*
13 *burgdorferi, or with complications related to such an infection. "Lyme*
14 *disease" includes infection that meets the most recent surveillance case*
15 *definition set forth by the United States Centers for Disease Control and*
16 *Prevention (CDC), but also includes other acute and chronic manifestations*
17 *of such an infection as determined by a physician; and*

18 *(d) "Therapeutic purpose" means the use of antibiotics to control a patient's*
19 *symptoms determined by the physician as reasonably related to Lyme*
20 *disease and conditions caused by Lyme disease.*

21 *(2) (a) A physician may prescribe, administer, or dispense antibiotic therapy for a*
22 *therapeutic purpose to a person diagnosed with and having symptoms of*
23 *Lyme disease if this diagnosis and treatment plan has been documented in*
24 *the physician's medical record for that patient. No physician shall be*
25 *subject to disciplinary action by the board solely for prescribing,*
26 *administering, or dispensing long-term antibiotic therapy for a therapeutic*
27 *purpose for a patient clinically diagnosed with Lyme disease, if this*

1 diagnosis and treatment plan has been documented in the physician's
2 medical record for that patient.

3 (b) Nothing in this section shall deny the right of the board to deny, revoke, or
4 suspend the license of any physician or discipline any physician who
5 prescribes, administers, or dispenses long-term antibiotic therapy for a
6 nontherapeutic purpose, or who fails to monitor the ongoing care of a
7 patient receiving long-term antibiotic therapy for Lyme disease, or who fails
8 to keep complete and accurate ongoing records of the diagnosis and
9 treatment of a patient receiving long-term antibiotic therapy for Lyme
10 disease.

11 (3) (a) Every physician, or his or her in-office designee, who orders a laboratory
12 test for the presence of Lyme disease shall provide to the patient or his or
13 her legal representative the following information in written form:

14 "Your healthcare provider has ordered a laboratory test for the presence of
15 Lyme disease for you. Current standard laboratory tests for Lyme disease
16 often result in false negative results, and if done too early, you may not have
17 produced enough antibodies to be considered positive for Lyme disease
18 because your immune response requires time to develop antibodies. If you
19 are tested for Lyme disease and the results are negative, this does not
20 necessarily mean that you do not have Lyme disease. If you continue to
21 experience symptoms, you should contact your health care provider and
22 inquire about the appropriateness of retesting or additional treatment."

23 (b) Physicians shall be immune from civil liability for the provision of the
24 written information required by this section absent failure to act as a
25 reasonably prudent physician, under the same or similar circumstances.

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

1 (1) All health benefit plans issued or renewed on or after the effective date of this Act
 2 shall cover diagnostic testing and long-term antibiotic therapy for Lyme disease if
 3 the testing or therapy is:

4 (a) Determined to be medically necessary; and

5 (b) Ordered by a physician licensed under KRS Chapter 311 acting in
 6 accordance with Section 1 of this Act after making a thorough evaluation of
 7 the patient's symptoms, diagnostic test results, and response to therapy.

8 (2) Coverage under this section:

9 (a) Shall not be denied, or determined not medically necessary, solely because
 10 the testing or therapy may be characterized as unproven, experimental, or
 11 investigational in nature; and

12 (b) May be subject to cost-sharing provisions, including copayments,
 13 deductibles, and coinsurance, that are no less favorable than those that
 14 apply to other ongoing medication therapies covered by the health benefit
 15 plan.

16 (3) This section shall not be construed to limit benefits that are otherwise available to
 17 a covered person under a health benefit plan.

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

19 (1) (a) The term "employee" for purposes of this section means:

- 20 1. Any person, including an elected public official, who is regularly
 21 employed by any department, office, board, agency, or branch of state
 22 government; or by a public postsecondary educational institution; or by
 23 any city, urban-county, charter county, county, or consolidated local
 24 government, whose legislative body has opted to participate in the state-
 25 sponsored health insurance program pursuant to KRS 79.080; and who
 26 is either a contributing member to any one (1) of the retirement systems
 27 administered by the state, including but not limited to the Kentucky

1 Retirement Systems, Kentucky Teachers' Retirement System, the
2 Legislators' Retirement Plan, or the Judicial Retirement Plan; or is
3 receiving a contractual contribution from the state toward a retirement
4 plan; or, in the case of a public postsecondary education institution, is an
5 individual participating in an optional retirement plan authorized by
6 KRS 161.567; or is eligible to participate in a retirement plan
7 established by an employer who ceases participating in the Kentucky
8 Employees Retirement System pursuant to KRS 61.522 whose
9 employees participated in the health insurance plans administered by the
10 Personnel Cabinet prior to the employer's effective cessation date in the
11 Kentucky Employees Retirement System;

12 2. Any certified or classified employee of a local board of education;

13 3. Any elected member of a local board of education;

14 4. Any person who is a present or future recipient of a retirement
15 allowance from the Kentucky Retirement Systems, Kentucky Teachers'
16 Retirement System, the Legislators' Retirement Plan, the Judicial
17 Retirement Plan, or the Kentucky Community and Technical College
18 System's optional retirement plan authorized by KRS 161.567, except
19 that a person who is receiving a retirement allowance and who is age
20 sixty-five (65) or older shall not be included, with the exception of
21 persons covered under KRS 61.702(4)(c), unless he or she is actively
22 employed pursuant to subparagraph 1. of this paragraph; and

23 5. Any eligible dependents and beneficiaries of participating employees
24 and retirees who are entitled to participate in the state-sponsored health
25 insurance program;

26 (b) The term "health benefit plan" for the purposes of this section means a health
27 benefit plan as defined in KRS 304.17A-005;

- 1 (c) The term "insurer" for the purposes of this section means an insurer as defined
2 in KRS 304.17A-005; and
- 3 (d) The term "managed care plan" for the purposes of this section means a
4 managed care plan as defined in KRS 304.17A-500.
- 5 (2) (a) The secretary of the Finance and Administration Cabinet, upon the
6 recommendation of the secretary of the Personnel Cabinet, shall procure, in
7 compliance with the provisions of KRS 45A.080, 45A.085, and 45A.090,
8 from one (1) or more insurers authorized to do business in this state, a group
9 health benefit plan that may include but not be limited to health maintenance
10 organization (HMO), preferred provider organization (PPO), point of service
11 (POS), and exclusive provider organization (EPO) benefit plans encompassing
12 all or any class or classes of employees. With the exception of employers
13 governed by the provisions of KRS Chapters 16, 18A, and 151B, all
14 employers of any class of employees or former employees shall enter into a
15 contract with the Personnel Cabinet prior to including that group in the state
16 health insurance group. The contracts shall include but not be limited to
17 designating the entity responsible for filing any federal forms, adoption of
18 policies required for proper plan administration, acceptance of the contractual
19 provisions with health insurance carriers or third-party administrators, and
20 adoption of the payment and reimbursement methods necessary for efficient
21 administration of the health insurance program. Health insurance coverage
22 provided to state employees under this section shall, at a minimum, contain
23 the same benefits as provided under Kentucky Kare Standard as of January 1,
24 1994, and shall include a mail-order drug option as provided in subsection
25 (13) of this section. All employees and other persons for whom the health care
26 coverage is provided or made available shall annually be given an option to
27 elect health care coverage through a self-funded plan offered by the

1 Commonwealth or, if a self-funded plan is not available, from a list of
2 coverage options determined by the competitive bid process under the
3 provisions of KRS 45A.080, 45A.085, and 45A.090 and made available
4 during annual open enrollment.

5 (b) The policy or policies shall be approved by the commissioner of insurance and
6 may contain the provisions the commissioner of insurance approves, whether
7 or not otherwise permitted by the insurance laws.

8 (c) Any carrier bidding to offer health care coverage to employees shall agree to
9 provide coverage to all members of the state group, including active
10 employees and retirees and their eligible covered dependents and
11 beneficiaries, within the county or counties specified in its bid. Except as
12 provided in subsection (20) of this section, any carrier bidding to offer health
13 care coverage to employees shall also agree to rate all employees as a single
14 entity, except for those retirees whose former employers insure their active
15 employees outside the state-sponsored health insurance program.

16 (d) Any carrier bidding to offer health care coverage to employees shall agree to
17 provide enrollment, claims, and utilization data to the Commonwealth in a
18 format specified by the Personnel Cabinet with the understanding that the data
19 shall be owned by the Commonwealth; to provide data in an electronic form
20 and within a time frame specified by the Personnel Cabinet; and to be subject
21 to penalties for noncompliance with data reporting requirements as specified
22 by the Personnel Cabinet. The Personnel Cabinet shall take strict precautions
23 to protect the confidentiality of each individual employee; however,
24 confidentiality assertions shall not relieve a carrier from the requirement of
25 providing stipulated data to the Commonwealth.

26 (e) The Personnel Cabinet shall develop the necessary techniques and capabilities
27 for timely analysis of data received from carriers and, to the extent possible,

1 provide in the request-for-proposal specifics relating to data requirements,
2 electronic reporting, and penalties for noncompliance. The Commonwealth
3 shall own the enrollment, claims, and utilization data provided by each carrier
4 and shall develop methods to protect the confidentiality of the individual. The
5 Personnel Cabinet shall include in the October annual report submitted
6 pursuant to the provisions of KRS 18A.226 to the Governor, the General
7 Assembly, and the Chief Justice of the Supreme Court, an analysis of the
8 financial stability of the program, which shall include but not be limited to
9 loss ratios, methods of risk adjustment, measurements of carrier quality of
10 service, prescription coverage and cost management, and statutorily required
11 mandates. If state self-insurance was available as a carrier option, the report
12 also shall provide a detailed financial analysis of the self-insurance fund
13 including but not limited to loss ratios, reserves, and reinsurance agreements.

14 (f) If any agency participating in the state-sponsored employee health insurance
15 program for its active employees terminates participation and there is a state
16 appropriation for the employer's contribution for active employees' health
17 insurance coverage, then neither the agency nor the employees shall receive
18 the state-funded contribution after termination from the state-sponsored
19 employee health insurance program.

20 (g) Any funds in flexible spending accounts that remain after all reimbursements
21 have been processed shall be transferred to the credit of the state-sponsored
22 health insurance plan's appropriation account.

23 (h) Each entity participating in the state-sponsored health insurance program shall
24 provide an amount at least equal to the state contribution rate for the employer
25 portion of the health insurance premium. For any participating entity that used
26 the state payroll system, the employer contribution amount shall be equal to
27 but not greater than the state contribution rate.

- 1 (3) The premiums may be paid by the policyholder:
- 2 (a) Wholly from funds contributed by the employee, by payroll deduction or
- 3 otherwise;
- 4 (b) Wholly from funds contributed by any department, board, agency, public
- 5 postsecondary education institution, or branch of state, city, urban-county,
- 6 charter county, county, or consolidated local government; or
- 7 (c) Partly from each, except that any premium due for health care coverage or
- 8 dental coverage, if any, in excess of the premium amount contributed by any
- 9 department, board, agency, postsecondary education institution, or branch of
- 10 state, city, urban-county, charter county, county, or consolidated local
- 11 government for any other health care coverage shall be paid by the employee.
- 12 (4) If an employee moves his place of residence or employment out of the service area
- 13 of an insurer offering a managed health care plan, under which he has elected
- 14 coverage, into either the service area of another managed health care plan or into an
- 15 area of the Commonwealth not within a managed health care plan service area, the
- 16 employee shall be given an option, at the time of the move or transfer, to change his
- 17 or her coverage to another health benefit plan.
- 18 (5) No payment of premium by any department, board, agency, public postsecondary
- 19 educational institution, or branch of state, city, urban-county, charter county,
- 20 county, or consolidated local government shall constitute compensation to an
- 21 insured employee for the purposes of any statute fixing or limiting the
- 22 compensation of such an employee. Any premium or other expense incurred by any
- 23 department, board, agency, public postsecondary educational institution, or branch
- 24 of state, city, urban-county, charter county, county, or consolidated local
- 25 government shall be considered a proper cost of administration.
- 26 (6) The policy or policies may contain the provisions with respect to the class or classes
- 27 of employees covered, amounts of insurance or coverage for designated classes or

1 groups of employees, policy options, terms of eligibility, and continuation of
2 insurance or coverage after retirement.

3 (7) Group rates under this section shall be made available to the disabled child of an
4 employee regardless of the child's age if the entire premium for the disabled child's
5 coverage is paid by the state employee. A child shall be considered disabled if he
6 has been determined to be eligible for federal Social Security disability benefits.

7 (8) The health care contract or contracts for employees shall be entered into for a period
8 of not less than one (1) year.

9 (9) The secretary shall appoint thirty-two (32) persons to an Advisory Committee of
10 State Health Insurance Subscribers to advise the secretary or his designee regarding
11 the state-sponsored health insurance program for employees. The secretary shall
12 appoint, from a list of names submitted by appointing authorities, members
13 representing school districts from each of the seven (7) Supreme Court districts,
14 members representing state government from each of the seven (7) Supreme Court
15 districts, two (2) members representing retirees under age sixty-five (65), one (1)
16 member representing local health departments, two (2) members representing the
17 Kentucky Teachers' Retirement System, and three (3) members at large. The
18 secretary shall also appoint two (2) members from a list of five (5) names submitted
19 by the Kentucky Education Association, two (2) members from a list of five (5)
20 names submitted by the largest state employee organization of nonschool state
21 employees, two (2) members from a list of five (5) names submitted by the
22 Kentucky Association of Counties, two (2) members from a list of five (5) names
23 submitted by the Kentucky League of Cities, and two (2) members from a list of
24 names consisting of five (5) names submitted by each state employee organization
25 that has two thousand (2,000) or more members on state payroll deduction. The
26 advisory committee shall be appointed in January of each year and shall meet
27 quarterly.

- 1 (10) Notwithstanding any other provision of law to the contrary, the policy or policies
2 provided to employees pursuant to this section shall not provide coverage for
3 obtaining or performing an abortion, nor shall any state funds be used for the
4 purpose of obtaining or performing an abortion on behalf of employees or their
5 dependents.
- 6 (11) Interruption of an established treatment regime with maintenance drugs shall be
7 grounds for an insured to appeal a formulary change through the established appeal
8 procedures approved by the Department of Insurance, if the physician supervising
9 the treatment certifies that the change is not in the best interests of the patient.
- 10 (12) Any employee who is eligible for and elects to participate in the state health
11 insurance program as a retiree, or the spouse or beneficiary of a retiree, under any
12 one (1) of the state-sponsored retirement systems shall not be eligible to receive the
13 state health insurance contribution toward health care coverage as a result of any
14 other employment for which there is a public employer contribution. This does not
15 preclude a retiree and an active employee spouse from using both contributions to
16 the extent needed for purchase of one (1) state sponsored health insurance policy for
17 that plan year.
- 18 (13) (a) The policies of health insurance coverage procured under subsection (2) of
19 this section shall include a mail-order drug option for maintenance drugs for
20 state employees. Maintenance drugs may be dispensed by mail order in
21 accordance with Kentucky law.
- 22 (b) A health insurer shall not discriminate against any retail pharmacy located
23 within the geographic coverage area of the health benefit plan and that meets
24 the terms and conditions for participation established by the insurer, including
25 price, dispensing fee, and copay requirements of a mail-order option. The
26 retail pharmacy shall not be required to dispense by mail.
- 27 (c) The mail-order option shall not permit the dispensing of a controlled

1 substance classified in Schedule II.

2 (14) The policy or policies provided to state employees or their dependents pursuant to
3 this section shall provide coverage for obtaining a hearing aid and acquiring hearing
4 aid-related services for insured individuals under eighteen (18) years of age, subject
5 to a cap of one thousand four hundred dollars (\$1,400) every thirty-six (36) months
6 pursuant to KRS 304.17A-132.

7 (15) Any policy provided to state employees or their dependents pursuant to this section
8 shall provide coverage for the diagnosis and treatment of autism spectrum disorders
9 consistent with KRS 304.17A-142.

10 (16) Any policy provided to state employees or their dependents pursuant to this section
11 shall provide coverage for obtaining amino acid-based elemental formula pursuant
12 to KRS 304.17A-258.

13 (17) If a state employee's residence and place of employment are in the same county, and
14 if the hospital located within that county does not offer surgical services, intensive
15 care services, obstetrical services, level II neonatal services, diagnostic cardiac
16 catheterization services, and magnetic resonance imaging services, the employee
17 may select a plan available in a contiguous county that does provide those services,
18 and the state contribution for the plan shall be the amount available in the county
19 where the plan selected is located.

20 (18) If a state employee's residence and place of employment are each located in counties
21 in which the hospitals do not offer surgical services, intensive care services,
22 obstetrical services, level II neonatal services, diagnostic cardiac catheterization
23 services, and magnetic resonance imaging services, the employee may select a plan
24 available in a county contiguous to the county of residence that does provide those
25 services, and the state contribution for the plan shall be the amount available in the
26 county where the plan selected is located.

27 (19) The Personnel Cabinet is encouraged to study whether it is fair and reasonable and

1 in the best interests of the state group to allow any carrier bidding to offer health
2 care coverage under this section to submit bids that may vary county by county or
3 by larger geographic areas.

4 (20) Notwithstanding any other provision of this section, the bid for proposals for health
5 insurance coverage for calendar year 2004 shall include a bid scenario that reflects
6 the statewide rating structure provided in calendar year 2003 and a bid scenario that
7 allows for a regional rating structure that allows carriers to submit bids that may
8 vary by region for a given product offering as described in this subsection:

9 (a) The regional rating bid scenario shall not include a request for bid on a
10 statewide option;

11 (b) The Personnel Cabinet shall divide the state into geographical regions which
12 shall be the same as the partnership regions designated by the Department for
13 Medicaid Services for purposes of the Kentucky Health Care Partnership
14 Program established pursuant to 907 KAR 1:705;

15 (c) The request for proposal shall require a carrier's bid to include every county
16 within the region or regions for which the bid is submitted and include but not
17 be restricted to a preferred provider organization (PPO) option;

18 (d) If the Personnel Cabinet accepts a carrier's bid, the cabinet shall award the
19 carrier all of the counties included in its bid within the region. If the Personnel
20 Cabinet deems the bids submitted in accordance with this subsection to be in
21 the best interests of state employees in a region, the cabinet may award the
22 contract for that region to no more than two (2) carriers; and

23 (e) Nothing in this subsection shall prohibit the Personnel Cabinet from including
24 other requirements or criteria in the request for proposal.

25 (21) Any fully insured health benefit plan or self-insured plan issued or renewed on or
26 after July 12, 2006, to public employees pursuant to this section which provides
27 coverage for services rendered by a physician or osteopath duly licensed under KRS

1 Chapter 311 that are within the scope of practice of an optometrist duly licensed
 2 under the provisions of KRS Chapter 320 shall provide the same payment of
 3 coverage to optometrists as allowed for those services rendered by physicians or
 4 osteopaths.

5 (22) Any fully insured health benefit plan or self-insured plan issued or renewed on or
 6 after the effective date of this Act~~[July 12, 2006]~~, to public employees pursuant to
 7 this section shall comply with:

8 (a) [the provisions of] KRS 304.17A-270 and 304.17A-525;

9 (b) KRS 304.17A-600 to 304.17A-633;

10 (c) KRS 205.593;

11 (d) KRS 304.17A-700 to 304.17A-730;

12 (e) KRS 304.14-135;

13 (f) KRS 304.17A-580 and 304.17A-641;

14 (g) KRS 304.99-123;

15 (h) KRS 304.17A-138;

16 (i) Section 2 of this Act; and

17 (j) Administrative regulations promulgated pursuant to statutes listed in this
 18 subsection.

19 ~~[(23) Any fully insured health benefit plan or self-insured plan issued or renewed on or~~
 20 ~~after July 12, 2006, to public employees shall comply with KRS 304.17A-600 to~~
 21 ~~304.17A-633 pertaining to utilization review, KRS 205.593 and 304.17A-700 to~~
 22 ~~304.17A-730 pertaining to payment of claims, KRS 304.14-135 pertaining to~~
 23 ~~uniform health insurance claim forms, KRS 304.17A-580 and 304.17A-641~~
 24 ~~pertaining to emergency medical care, KRS 304.99-123, and any administrative~~
 25 ~~regulations promulgated thereunder.~~

26 ~~(24) Any fully insured health benefit plan or self-insured plan issued or renewed on~~
 27 ~~or after July 1, 2019, to public employees pursuant to this section shall comply with KRS~~

1 ~~304.17A-138.]~~

2 ➔Section 4. This Act takes effect on January 1, 2021.