

1 AN ACT relating to prescription drugs.

2 WHEREAS, citizens of Kentucky frequently rely on state-regulated insurers to
3 secure access to the prescription medications needed to protect their health; and

4 WHEREAS, commercial insurance plans increasingly require patients to bear
5 significant out-of-pocket costs for their prescription medications; and

6 WHEREAS, high out-of-pocket costs for prescription medications impact the
7 ability of patients to start new and necessary treatments and to stay adherent with current
8 medications; and

9 WHEREAS, high or unpredictable cost-sharing requirements are a main driver of
10 elevated out-of-pocket costs and allow insurers to capture discounts and price
11 concessions that are intended to benefit patients at the pharmacy counter; and

12 WHEREAS, insurers unfairly increase cost-sharing burdens on patients by refusing
13 to count third-party assistance toward patients' cost-sharing contributions, and the burdens
14 of high or unpredictable cost-sharing requirements are borne disproportionately by
15 patients with chronic or debilitating conditions; and

16 WHEREAS, restrictions are needed on the ability of insurers and their
17 intermediaries to use unfair cost-sharing designs to retain rebates and price concessions
18 that instead should be directly passed on to the patient as cost savings; and

19 WHEREAS, patients need equitable and accessible health coverage that does not
20 impose unfair cost-sharing burdens upon them;

21 NOW, THEREFORE,

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

23 ➔Section 1. KRS 304.17A-164 is amended to read as follows:

24 (1) As used in this section:

25 (a) "Cost sharing" means the cost to an individual insured under a health[~~benefit~~]
26 plan according to any coverage limit, copayment, coinsurance, deductible, or
27 other out-of-pocket expense requirements imposed by the plan, ***which may be***

1 subject to annual limitations on cost sharing, including those imposed
 2 under 42 U.S.C. secs. 18022(c) and 300gg-6(b), in order for an individual to
 3 receive a specific health care service covered by the plan;

4 (b) "Generic alternative" means a drug that is designated to be therapeutically
 5 equivalent by the United States Food and Drug Administration's Approved
 6 Drug Products with Therapeutic Equivalence Evaluations, except that a
 7 drug shall not be considered a generic alternative until the drug is
 8 nationally available;

9 (c) "Health plan":

10 1. Means a policy, contract, certificate, or agreement offered or issued by
 11 an insurer to provide, deliver, arrange for, pay for, or reimburse any
 12 of the cost of health care services; and

13 2. Includes a health benefit plan as defined in KRS 304.17A-005;

14 (d) "Insured" means any individual who is enrolled in a health plan and on
 15 whose behalf the insurer is obligated to pay for or provide health care
 16 services;

17 (e) "Insurer" includes:

18 1. An insurer offering a health ~~benefit~~ plan providing coverage for
 19 pharmacy benefits; or

20 2. Any other administrator of pharmacy benefits under a health~~benefit~~
 21 plan;

22 (f) "Person" means a natural person, corporation, mutual company,
 23 unincorporated association, partnership, joint venture, limited liability
 24 company, trust, estate, foundation, nonprofit corporation, unincorporated
 25 organization, government, or governmental subdivision or agency;

26 (g)~~(e)}~~ "Pharmacy" includes:

27 1. A pharmacy, as defined in KRS Chapter 315;

1 2. A pharmacist, as defined in KRS Chapter 315; or

2 3. Any employee of a pharmacy or pharmacist; and

3 ~~(h)~~~~(d)~~ "Pharmacy benefit manager" has the same meaning as in KRS 304.17A-
4 161.

5 (2) **To the extent permitted under federal law,** an insurer issuing or renewing a health
6 ~~benefit plan~~ on or after **the effective date of this Act**~~[January 1, 2019]~~, or a
7 pharmacy benefit manager, shall not:

8 (a) Require an insured purchasing a prescription drug to pay a cost-sharing
9 amount greater than the amount the insured would pay for the drug if he or she
10 were to purchase the drug without coverage~~[under a health benefit plan]~~;

11 (b) **Exclude any cost-sharing amounts paid by an insured or on behalf of an**
12 **insured by another person for a prescription drug, including any amount**
13 **paid under paragraph (a) of this subsection, when calculating an insured's**
14 **contribution to any applicable cost-sharing requirement. The requirements**
15 **of this paragraph shall not apply in the case of a prescription drug for**
16 **which there is a generic alternative, unless:**

17 **1. The prescriber determines that the brand prescription drug is**
18 **medically necessary; or**

19 **2. The insured has obtained access to the brand prescription drug**
20 **through prior authorization, a step therapy protocol, or the insurer's**
21 **exceptions and appeals process;**

22 (c) Prohibit a pharmacy from discussing any information under subsection (3) of
23 this section; ~~or~~~~and~~

24 ~~(d)~~~~(e)~~ Impose a penalty on a pharmacy for complying with this section.

25 (3) A pharmacist shall have the right to provide an insured information regarding the
26 applicable limitations on his or her cost-sharing pursuant to this section for a
27 prescription drug.

1 (4) *Subsection (2)(b) of this section shall not apply to any fully insured health benefit*
2 *plan or self-insured plan provided to an employee under KRS 18A.225*~~[Any~~
3 ~~amount paid by an insured under subsection (2)(a) of this section shall be~~
4 ~~attributable toward any annual out-of-pocket maximums under the insured's health~~
5 ~~benefit plan].~~

6 ➔Section 2. The Department of Insurance may promulgate administrative
7 regulations necessary to carry out Section 1 of this Act.

8 ➔Section 3. This Act takes effect January 1, 2022.