

1 AN ACT relating to pharmacy benefit claim verification and declaring an
2 emergency.

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

4 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 18A IS CREATED TO
5 READ AS FOLLOWS:

6 *(1) (a) By December 31, 2022, the secretary of the Finance and Administration*
7 *Cabinet shall, upon the recommendation of the secretary of the Personnel*
8 *Cabinet and in accordance with KRS Chapter 45A, select and enter into a*
9 *contract, the effective date of which shall not be later than January 1, 2023,*
10 *with a single independent entity for the purpose of monitoring all pharmacy*
11 *benefit claims for every individual enrolled in the Public Employee Health*
12 *Insurance Program.*

13 *(b) A contract entered into pursuant to this subsection shall:*

14 *1. Not be for a term longer than two (2) years but may be renewed for*
15 *like or lesser periods; and*

16 *2. Limit compensation paid to the contracted entity to not more than*
17 *thirty percent (30%) of the total savings generated by the contracted*
18 *entity as determined by the Personnel Cabinet.*

19 *(2) To be eligible to receive a contract pursuant to subsection (1) of this section, an*
20 *entity shall:*

21 *(a) Be capable of performing the analysis of pharmacy benefit claims to*
22 *validate accuracy and identify errors in near real-time;*

23 *(b) Not be an entity that performs annual retroactive audits of pharmacy*
24 *benefit claims for the Public Employee Health Insurance Program; and*

25 *(c) Not be affiliated by common parent company or holding company, share*
26 *any common members of the board of directors, or share managers in*
27 *common with:*

- 1 1. An insurer contracted pursuant to KRS 18A.225;
- 2 2. A third-party administrator contracted pursuant to KRS 18A.2254; or
- 3 3. A pharmacy benefit manager contracted by:
 - 4 a. The Personnel Cabinet;
 - 5 b. An insurer contracted pursuant to KRS 18A.225; or
 - 6 c. A third-party administrator contracted pursuant to KRS
7 18A.2254.

8 (3) The entity contracted pursuant to subsection (1) of this section shall:

- 9 (a) Be granted full access to:
 - 10 1. Any contract awarded to a pharmacy benefit manager for the purpose
11 of administering pharmacy benefits in the Public Employee Health
12 Insurance Program and all pertinent reference documents within that
13 contract, including but not limited to any price lists or specialty drug
14 price lists which shall be provided to the monitoring entity contracted
15 pursuant to this section by the Personnel Cabinet and which shall be
16 updated by the Personnel Cabinet within five (5) days of the effective
17 date of any pricing changes;
 - 18 2. Any other contract that defines a pharmacy benefit manager's
19 obligations and responsibilities as it relates to processing Public
20 Employee Health Insurance Program pharmacy benefit claims,
21 including any contract between the pharmacy benefit manager and an
22 insurer contracted pursuant to KRS 18A.225 or a third-party
23 administrator contracted pursuant to KRS 18A.2254; and
 - 24 3. Invoices and unaltered claims files associated with the Public
25 Employee Health Insurance Program pharmacy benefits;
- 26 (b) Analyze one hundred percent (100%) of invoices or claims submitted for
27 payment by the Public Employee Health Insurance Program. The entity

1 shall not utilize statistical sampling methods in lieu of analyzing all invoices
2 and claims;

3 (c) Identify and correct errors in pharmacy benefit claims in order to avoid or
4 reduce erroneous overpayments by an insurer contracted pursuant to KRS
5 18A.225, a third-party administrator contracted pursuant to KRS 18A.2254,
6 or a pharmacy benefit manager contracted to administer pharmacy benefits
7 in the Public Employee Health Insurance Program;

8 (d) Identify underpayments made by an insurer contracted pursuant to KRS
9 18A.225, a third-party administrator contracted pursuant to KRS 18A.2254,
10 or a pharmacy benefit manager contracted to administer pharmacy benefits
11 in the Public Employee Health Insurance Program;

12 (e) Identify inappropriate or erroneous fees imposed by an insurer contracted
13 pursuant to KRS 18A.225, a third-party administrator contracted pursuant
14 to KRS 18A.2254, or a pharmacy benefit manager contracted to administer
15 pharmacy benefits in the Public Employee Health Insurance Program; and

16 (f) Beginning on April 30, 2023, and quarterly thereafter, submit a report to
17 the Legislative Research Commission. The report shall include a summary
18 of the analysis and errors identified pursuant to paragraphs (c), (d), and (e),
19 of this subsection during the previous quarter.

20 (4) The entity contracted pursuant to subsection (1) of this section shall not perform
21 drug utilization reviews.

22 (5) The analysis of claims and the identification of potential errors required by
23 subsection (3)(b), (c), and (d) of this section shall:

24 (a) Occur prior to the due date of each claim or invoice submitted by an insurer
25 contracted pursuant to KRS 18A.225, a third-party administrator contracted
26 pursuant to KRS 18A.2254, or a pharmacy benefit manager contracted to
27 administer pharmacy benefits in the Public Employee Health Insurance

1 Program or within five (5) days of receipt of the claim or invoice, whichever
 2 is later; and

3 **(b) Consider at least the following:**

4 1. Compliance with all relevant administrative regulations promulgated
 5 by the Personnel Cabinet;

6 2. Compliance with all state and federal laws relating to or applicable to
 7 the Public Employee Health Insurance Program;

8 3. Compliance with any contract between a pharmacy benefit manager
 9 and the Personnel Cabinet, an insurer contracted pursuant to KRS
 10 18A.225, or a third-party administrator contracted pursuant to KRS
 11 18A.2254; and

12 4. The market competitiveness of pharmacy benefit payments, including
 13 the adequacy of payments to pharmacies.

14 **(6) The Personnel Cabinet may promulgate administrative regulations necessary to**
 15 **carry out this section.**

16 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO
 17 READ AS FOLLOWS:

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

19 (a) "Department" means the Department for Medicaid Services;

20 (b) "Managed care organization" has the same meaning as in KRS 205.532;
 21 and

22 (c) "State pharmacy benefit manager" has the same meaning as in KRS
 23 205.5510.

24 **(2) (a) By December 31, 2022, the department shall, in accordance with KRS**
 25 **Chapter 45A, select and enter into a contract, the effective date of which**
 26 **shall not be later than January 1, 2023, with a single independent entity for**
 27 **the purpose of monitoring all Medicaid pharmacy benefit claims for every**

1 Medicaid beneficiary regardless of whether the beneficiary's Medicaid
2 benefits are managed through a fee-for-service or managed-care model.

3 (b) A contract entered into pursuant to this subsection shall:

4 1. Not be for a term longer than two (2) years but may be renewed for
5 like or lesser periods; and

6 2. Limit compensation paid to the contracted entity to not more than
7 thirty percent (30%) of the total savings generated by the contracted
8 entity as determined by the department.

9 (3) To be eligible to receive a contract pursuant to subsection (2) of this section, an
10 entity shall:

11 (a) Be capable of performing the analysis of pharmacy benefit claims to
12 validate accuracy and identify errors in near real-time;

13 (b) Not be an entity that performs annual retroactive audits of pharmacy
14 benefit claims for the department; and

15 (c) Not be affiliated by common parent company or holding company, share
16 any common members of the board of directors, or share managers in
17 common with the state pharmacy benefit manager or a managed care
18 organization.

19 (4) The entity contracted by the department pursuant to subsection (2) of this section
20 shall:

21 (a) Be granted full access to:

22 1. The state pharmacy benefit manager contract awarded by the
23 department pursuant to KRS 205.5512, and all pertinent reference
24 documents within that contract, including but not limited to any price
25 lists or specialty drug price lists which shall be provided to the
26 monitoring entity contracted pursuant to this section by the state
27 pharmacy benefit manager and which shall be updated by the state

- 1 pharmacy benefit manager within five (5) days of the effective date of
2 any pricing changes;
- 3 2. Any other contract that defines the state pharmacy benefit manager's
4 obligations and responsibilities as it relates to processing Medicaid
5 pharmacy benefit claims in the Commonwealth, including any
6 contract between the state pharmacy benefit manager and a managed
7 care organization; and
- 8 3. Invoices and unaltered claims files associated with Medicaid
9 pharmacy benefits;
- 10 (b) Analyze one hundred percent (100%) of invoices or claims submitted for
11 payment by the department or a managed care organization. The entity
12 shall not utilize statistical sampling methods in lieu of analyzing all invoices
13 and claims;
- 14 (c) Identify and correct errors in pharmacy benefit claims in order to avoid or
15 reduce erroneous overpayments by the department to the state pharmacy
16 benefit manager, either directly or indirectly through a managed care
17 organization;
- 18 (d) Identify underpayments made by the state pharmacy benefit manager to
19 pharmacies licensed in this state;
- 20 (e) Identify inappropriate or erroneous fees imposed by the state pharmacy
21 benefit manager in violation of KRS 205.5512;
- 22 (f) Analyze the state pharmacy benefit manager's performance and compliance
23 with:
- 24 1. The contract between the department and the state pharmacy benefit
25 manager;
- 26 2. The state pharmacy benefit manager and each managed care
27 organization; and

- 1 3. KRS 205.5512, 205.5514, 205.5516, and 205.5518; and
 2 (g) Beginning on April 30, 2023, and quarterly thereafter, submit a report to
 3 the Medicaid Oversight and Advisory Committee. The report shall include a
 4 summary of the analysis and errors identified pursuant to paragraphs (c),
 5 (d), (e), and (f) of this subsection during the previous quarter.
- 6 (5) The entity contracted by the department pursuant to subsection (2) of this section
 7 shall not perform drug utilization reviews.
- 8 (6) The analysis of claims and the identification of potential errors required by
 9 subsection (4)(b), (c), and (d) of this section shall:
- 10 (a) Occur prior to the due date of each claim or invoice submitted by the state
 11 pharmacy benefit manager or within five (5) days of receipt of the claim or
 12 invoice, whichever is later; and
- 13 (b) Consider at least the following:
- 14 1. Compliance with all relevant administrative regulations promulgated
 15 by the department;
- 16 2. Compliance with the Medicaid State Plan;
- 17 3. Compliance with the contract between the department and the state
 18 pharmacy benefit manager;
- 19 4. Compliance with any contract between the state pharmacy benefit
 20 manager and a managed care organization; and
- 21 5. The market competitiveness of pharmacy benefit payments, including
 22 the adequacy of the state pharmacy benefit manager's payments to
 23 pharmacies.
- 24 (7) The department may promulgate administrative regulations necessary to carry
 25 out this section.

26 ➔Section 3. Whereas there is urgent need to improve the administration and
 27 provision of pharmacy benefits for Medicaid beneficiaries and state employees, an

- 1 emergency is declared to exist, and this Act takes effect upon its passage and approval by
- 2 the Governor or upon its otherwise becoming law.