

1 AN ACT relating to the regulation of air ambulance services.

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

3 ➔SECTION 1. A NEW SECTION OF SUBTITLE 5 OF KRS CHAPTER 304 IS
4 CREATED TO READ AS FOLLOWS:

5 (1) As used in this section, "limited health service benefit plan" shall have the same
6 meaning as in Section 5 of this Act.

7 (2) An air ambulance service provider or any affiliated entity that solicits air
8 ambulance membership subscriptions, accepts membership applications, or
9 charges membership fees shall be deemed to be engaged in the business of
10 insurance to the extent that it contracts, promises, guarantees, or in any other
11 way claims to pay, reimburse, or indemnify:

12 (a) The copayments, deductibles, or other cost-sharing amounts of a patient
13 relating to air ambulance transport as determined or set by the patient's
14 health insurance provider, health care provider, or other third parties; or

15 (b) Any post-service payments of costs to third parties relating to air ambulance
16 transport.

17 (3) An air ambulance service provider or any affiliated entity that is deemed to be
18 engaged in the business of insurance under subsection (2) of this section shall
19 obtain and maintain a certificate of authority or license from the commissioner
20 in accordance with:

21 (a) KRS 304.38A-020; or

22 (b) Other applicable provisions of this chapter which permit the offering of a
23 limited health service benefit plan.

24 (4) An air ambulance membership subject to subsection (2) of this section shall be:

25 (a) Considered a limited health service benefit plan; and

26 (b) Subject to the provisions of this chapter applicable to limited health service
27 benefit plans.

1 ➔SECTION 2. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 304
2 IS CREATED TO READ AS FOLLOWS:

3 *An entity selling air ambulance memberships subject to Section 1 of this Act shall*
4 *make the following general disclosures, in writing, bold type, and not less than twelve*
5 *(12) point font, on any advertisement, marketing material, brochure, or contract terms*
6 *and conditions made available to prospective members or the public:*

7 *(1) If eligible and covered by Medicaid or Medicaid managed care, the prospective*
8 *member is already covered, with no out-of-pocket cost liability, for air ambulance*
9 *services; and*

10 *(2) If eligible and covered under Medicare, or a Medicare Advantage or Medicare*
11 *supplement policy, or both, the prospective member may already be covered for*
12 *air ambulance services and should consult with a representative of the Medicare*
13 *program, or a representative of the prospective member's Medicare Advantage or*
14 *Medicare supplement plan, to determine:*

15 *(a) The level of existing coverage the prospective member has for air*
16 *ambulance services;*

17 *(b) Any out-of-pocket costs applicable to the coverage referenced under*
18 *paragraph (a) of this subsection; and*

19 *(c) Whether the program or plan provider recommends additional*
20 *supplemental insurance coverage for air ambulance services.*

21 ➔SECTION 3. A NEW SECTION OF SUBTITLE 17C OF KRS CHAPTER 304
22 IS CREATED TO READ AS FOLLOWS:

23 *(1) An entity operating an air ambulance membership program subject to Section 1*
24 *of this Act shall implement a patient advocacy program, which shall include, at a*
25 *minimum, the following components:*

26 *(a) A dedicated patient hotline number and dedicated patient resource e-mail*
27 *address to:*

- 1 1. Process patient billing and claims; and
- 2 2. Address patient questions, complaints, and concerns;
- 3 **(b) A dedicated patient advocacy page on the air ambulance service provider's**
- 4 Web site that:
- 5 1. Is clearly marked as the "patient portal" or "patient advocacy" page;
- 6 2. Is easily navigated to; and
- 7 3. Contains clearly written and comprehensive resources for patients,
- 8 including:
- 9 a. A layperson's explanation of what to expect during the claims
- 10 process;
- 11 b. Frequently asked questions and answers;
- 12 c. Frequently used forms;
- 13 d. Information regarding the air ambulance service provider's
- 14 financial assistance or charity care program required under
- 15 paragraph (f) of this subsection; and
- 16 e. Additional resources for patients, including but not limited to:
- 17 i. Contact information for the United States Department of
- 18 Transportation, Office of Aviation Consumer Protection;
- 19 ii. Contact information for state and federal health agencies
- 20 and insurance departments; and
- 21 iii. Other health consumer informational resources;
- 22 **(c) Dedicated individuals assigned to review patient complaints and disputes**
- 23 about air ambulance billing and to respond to patients, governmental
- 24 agencies, and any other concerned parties no later than thirty (30) calendar
- 25 days from the date the complaint is received;
- 26 **(d) The inclusion of the patient hotline number and e-mail address required by**
- 27 paragraph (a) of this subsection and the patient advocacy Web site address

1 required by paragraph (b) of this subsection on all patient communication
 2 materials, including but not limited to Web sites, brochures, letters,
 3 invoices, or billing statements, that are sent to or made available to patients;
 4 (e) Mandatory annual patient advocacy training for all air ambulance service
 5 provider personnel who have direct interaction with patients, or family
 6 members of patients, via written, verbal, or electronic communications; and
 7 (f) A financial assistance or charity care program to assist patients suffering
 8 financial hardship with resolving any unpaid balance owed to the air
 9 ambulance carrier.

10 (2) This section shall not be enforced in a manner that conflicts with federal law,
 11 including federal preemption of state regulation of air carriers.

12 ➔Section 4. KRS 304.1-120 is amended to read as follows:

13 No provision of this code shall apply to:

- 14 (1) Fraternal benefit societies (as identified in Subtitle 29), except as stated in Subtitle
 15 29.
- 16 (2) Nonprofit hospital, medical-surgical, dental, and health service corporations (as
 17 identified in Subtitle 32) except as stated in Subtitle 32.
- 18 (3) Burial associations (as identified in KRS Chapter 303), except as stated in Subtitle
 19 31.
- 20 (4) Assessment or cooperative insurers (as identified in KRS Chapter 299), except as
 21 stated in KRS Chapter 299.
- 22 (5) Insurance premium finance companies (as identified in Subtitle 30), except as stated
 23 in Subtitle 30.
- 24 (6) Qualified organizations which issue charitable gift annuities within the
 25 Commonwealth of Kentucky. For the purposes of this subsection:
 26 (a) A "qualified organization" means one which is:
 27 1. Exempt from taxation under Section 501(c)(3) of the Internal Revenue

- 1 Code as a charitable organization, if it files a copy of federal form 990
2 with the Division of Consumer Protection in the Office of the Attorney
3 General; or
- 4 2. Exempt from taxation under Section 501(c)(3) of the Internal Revenue
5 Code as a religious organization; or
- 6 3. Exempt as a publicly owned or nonprofit, privately endowed educational
7 institution approved or licensed by the State Board of Education, the
8 Southern Association of Colleges and Schools, or an equivalent public
9 authority of the jurisdiction where the institution is located; and
- 10 (b) A "charitable gift annuity" means a giving plan or method by which a gift of
11 cash or other property is made to a qualified organization in exchange for its
12 agreement to pay an annuity.
- 13 (7) A religious organization, as identified in this subsection, or its participants, that:
- 14 (a) Is a nonprofit religious organization;
- 15 (b) Is limited to participants who are members of the same denomination or
16 religion;
- 17 (c) Matches its participants who have financial, physical, or medical needs with
18 participants who choose to assist with those needs;
- 19 (d) 1. Includes the following notice for delivery to all participants, printed in
20 not less than ten (10) point, bold-faced type on or accompanying all
21 applications, guideline materials, or any similar documents:
- 22 "NOTICE: UNDER KENTUCKY LAW, THE RELIGIOUS
23 ORGANIZATION FACILITATING THE SHARING OF MEDICAL
24 EXPENSES IS NOT AN INSURANCE COMPANY, AND ITS
25 GUIDELINES, PLAN OF OPERATION, OR ANY OTHER
26 DOCUMENT OF THE RELIGIOUS ORGANIZATION DO NOT
27 CONSTITUTE OR CREATE AN INSURANCE POLICY.

1 PARTICIPATION IN THE RELIGIOUS ORGANIZATION OR A
 2 SUBSCRIPTION TO ANY OF ITS DOCUMENTS SHALL NOT BE
 3 CONSIDERED INSURANCE. ANY ASSISTANCE YOU RECEIVE
 4 WITH YOUR MEDICAL BILLS WILL BE TOTALLY VOLUNTARY.
 5 NEITHER THE ORGANIZATION OR ANY PARTICIPANT SHALL
 6 BE COMPELLED BY LAW TO CONTRIBUTE TOWARD YOUR
 7 MEDICAL BILLS. WHETHER OR NOT YOU RECEIVE ANY
 8 PAYMENTS FOR MEDICAL EXPENSES, AND WHETHER OR
 9 NOT THIS ORGANIZATION CONTINUES TO OPERATE, YOU
 10 SHALL BE PERSONALLY RESPONSIBLE FOR THE PAYMENT
 11 OF YOUR MEDICAL BILLS."

12 2. A participant shall acknowledge receipt of the "Notice" by signing
 13 below the "Notice" on the application;

14 (e) Suggests amounts to give that are voluntary among the participants, with no
 15 assumption of risk or promise to pay either among the participants or between
 16 the participants and the organization.

17 (8) (a) Except as provided in paragraph (b) of this subsection, a public or private
 18 ambulance service licensed and regulated by the Cabinet for Health and
 19 Family Services to the extent that it solicits membership subscriptions, accepts
 20 membership applications, charges membership fees, and furnishes prepaid or
 21 discounted ambulance services to subscription members and designated
 22 members of their households.

23 (b) This subsection shall not apply to air ambulance services.

24 (9) A direct primary care agreement established under KRS 311.6201, 311.6202,
 25 314.198, and 314.199.

26 ➔Section 5. KRS 304.17C-010 is amended to read as follows:

27 As used in this subtitle, unless the context requires otherwise:

- 1 (1) "At the time of enrollment" means the same as defined in KRS 304.17A-005(2);
- 2 (2) "Enrollee" means an individual who is enrolled in a limited health service benefit
3 plan;
- 4 (3) "Health care provider" or "provider" means the same as defined in KRS 304.17A-
5 005(23);
- 6 (4) "Insurer" means any insurance company, health maintenance organization, self-
7 insurer or multiple employer welfare arrangement not exempt from state regulation
8 by ERISA, provider-sponsored integrated health delivery network, self-insured
9 employer-organized association, nonprofit hospital, medical-surgical, dental, health
10 service corporation, or limited health service organization authorized to transact
11 health insurance business in Kentucky who offers a limited health service benefit
12 plan; and
- 13 (5) "Limited health service benefit plan":
- 14 **(a)** Means any policy or certificate that provides services for dental, vision,
15 mental health, substance abuse, chiropractic, pharmaceutical, podiatric, ***air***
16 ***ambulance transport as provided in Section 1 of this Act,*** or other such
17 services as may be determined by the commissioner to be offered under a
18 limited health service benefit plan; ***and*** ~~and~~
- 19 **(b)** ~~[A limited health service benefit plan]~~ ***Except for air ambulance transport as***
20 ***provided in Section 1 of this Act,*** shall not include hospital, medical, surgical,
21 or emergency services except as these services are provided incidental to the
22 plan.

23 ➔Section 6. KRS 304.38A-010 is amended to read as follows:

24 As used in this subtitle, unless the context requires otherwise:

- 25 (1) "Enrollee" means an individual who is enrolled in a limited health services benefit
26 plan;
- 27 (2) "Evidence of coverage" means any certificate, agreement, contract, or other

1 document issued to an enrollee stating the limited health services to which the
 2 enrollee is entitled. All coverages described in an evidence of coverage issued by a
 3 limited health service organization are deemed to be "limited health services benefit
 4 plans" to the extent defined in KRS 304.17C-010 unless exempted by the
 5 commissioner;

6 (3) "Limited health service":

7 **(a)** Means dental care services, vision care services, mental health services,
 8 substance abuse services, chiropractic services, pharmaceutical services,
 9 podiatric care services, **air ambulance transport as provided in Section 1 of**
 10 **this Act**, and such other services as may be determined by the commissioner
 11 to be limited health services; **and**[-]

12 **(b)** **Except for air ambulance transport as provided in Section 1 of this Act,**
 13 ~~limited health service~~ shall not include hospital, medical, surgical, or
 14 emergency services except as these services are provided incidental to the
 15 limited health services set forth in this subsection;

16 (4) "Limited health service contract" means any contract entered into by a limited
 17 health service organization with a policyholder to provide limited health services;

18 (5) "Limited health service organization" means:

19 **(a)** A corporation, partnership, limited liability company, or other entity that
 20 undertakes to provide or arrange limited health service or services to
 21 enrollees; **and**[-]

22 **(b)** ~~[A limited health service organization]~~ Does not include a provider or an
 23 entity when providing or arranging for the provision of limited health services
 24 under a contract with a limited health service organization, health
 25 maintenance organization, or a health insurer; and

26 (6) "Provider" means the same as defined in KRS 304.17A-005(23).

27 ➔Section 7. (1) This Act is intended to help preserve the long-standing

1 jurisdiction that states have over the regulation of the business of insurance as expressly
2 established by the McCarran-Ferguson Act, 15 U.S.C. sec. 1011 et seq., and affirm the
3 ability of states to regulate the business of insurance without threat of federal obstruction.

4 (2) This Act regulates the business of insurance consistent with the McCarran-
5 Ferguson Act, 15 U.S.C. sec. 1011 et seq., standards by defining and regulating the
6 particular practice of risk transferring and spreading under air ambulance subscription
7 memberships.

8 (3) Legislating protection from consumer harm in air ambulance membership
9 insurance contracts is an appropriate and necessary measure fulfilling the states'
10 responsibility and authority under the McCarran Ferguson Act, 15 U.S.C. sec. 1011 et
11 seq., to exercise broad regulatory authority over the business of insurance.

12 ➔Section 8. Any entity subject to Section 3 of this Act shall implement the
13 patient advocacy program required under that section within one year of the effective date
14 of this Act.

15 ➔Section 9. This Act shall take effect April 15, 2023.