

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 not be for a term*  
14 *longer than two (2) years but may be renewed for like or lesser periods.*

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

17 *(a) Have at least five (5) years of experience reviewing and auditing pharmacy*  
18 *claims and pharmacy benefit manager operations;*

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

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

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

26 *1. An insurer contracted pursuant to KRS 18A.225;*

27 *2. A third-party administrator contracted pursuant to KRS 18A.2254; or*

1           3. A pharmacy benefit manager contracted by:

2           a. The Personnel Cabinet;

3           b. An insurer contracted pursuant to KRS 18A.225; or

4           c. A third-party administrator contracted pursuant to KRS  
5           18A.2254.

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

7           (a) Be granted full access to:

8           1. Any contract awarded to a pharmacy benefit manager for the purpose  
9           of administering pharmacy benefits in the Public Employee Health  
10           Insurance Program and all pertinent reference documents within that  
11           contract, including but not limited to any price lists or specialty drug  
12           price lists which shall be provided to the monitoring entity contracted  
13           pursuant to this section by the Personnel Cabinet and which shall be  
14           updated by the Personnel Cabinet within five (5) days of the effective  
15           date of any pricing changes;

16           2. Any other contract that defines a pharmacy benefit manager's  
17           obligations and responsibilities as it relates to processing Public  
18           Employee Health Insurance Program pharmacy benefit claims,  
19           including any contract between the pharmacy benefit manager and a  
20           an insurer contracted pursuant to KRS 18A.225 or a third-party  
21           administrator contracted pursuant to KRS 18A.2254; and

22           3. Invoices and unaltered claims files associated with the Public  
23           Employee Health Insurance Program pharmacy benefits;

24           (b) Analyze one hundred percent (100%) of invoices or claims submitted for  
25           payment by the Public Employee Health Insurance Program. The entity  
26           shall not utilize statistical sampling methods in lieu of analyzing all invoices  
27           and claims;

- 1        (c) Identify and correct errors in pharmacy benefit claims in order to avoid or  
2        reduce erroneous overpayments by an insurer contracted pursuant to KRS  
3        18A.225, a third-party administrator contracted pursuant to KRS 18A.2254,  
4        or a pharmacy benefit manager contracted to administer pharmacy benefits  
5        in the Public Employee Health Insurance Program;
- 6        (d) Identify underpayments made by an insurer contracted pursuant to KRS  
7        18A.225, a third-party administrator contracted pursuant to KRS 18A.2254,  
8        or a pharmacy benefit manager contracted to administer pharmacy benefits  
9        in the Public Employee Health Insurance Program;
- 10       (e) Identify inappropriate or erroneous fees imposed by an insurer contracted  
11       pursuant to KRS 18A.225, a third-party administrator contracted pursuant  
12       to KRS 18A.2254, or a pharmacy benefit manager contracted to administer  
13       pharmacy benefits in the Public Employee Health Insurance Program; and
- 14       (f) Beginning on April 30, 2023, and quarterly thereafter, submit a report to  
15       the Legislative Research Commission. The report shall include a summary  
16       of the analysis and errors identified pursuant to paragraphs (c), (d), and (e),  
17       of this subsection during the previous quarter.
- 18       (4) The entity contracted pursuant to subsection (1) of this section shall not perform  
19       drug utilization reviews.
- 20       (5) The analysis of claims and the identification of potential errors required by  
21       subsection (3)(b), (c), and (d) of this section shall:
- 22       (a) Occur prior to the due date of each claim or invoice submitted by an insurer  
23       contracted pursuant to KRS 18A.225, a third-party administrator contracted  
24       pursuant to KRS 18A.2254, or a pharmacy benefit manager contracted to  
25       administer pharmacy benefits in the Public Employee Health Insurance  
26       Program or within five (5) days of receipt of the claim or invoice, whichever  
27       is later; and

1 (b) Consider at least the following:

- 2 1. Compliance with all relevant administrative regulations promulgated  
 3 by the Personnel Cabinet;  
 4 2. Compliance with all state and federal law relating to or applicable to  
 5 the Public Employee Health Insurance Program;  
 6 3. Compliance with any contract between a pharmacy benefit manager  
 7 and the Personnel Cabinet, an insurer contracted pursuant to KRS  
 8 18A.225, or a third-party administrator contracted pursuant to KRS  
 9 18A.2254; and  
 10 4. The market competitiveness of pharmacy benefit payments, including  
 11 the adequacy of payments to pharmacies.

12 (6) The Personnel Cabinet may promulgate administrative regulations necessary to  
 13 carry out this section.

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

16 (1) As used in this section:

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

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

20 (c) "State pharmacy benefit manager" has the same meaning as in KRS  
 21 205.5510.

22 (2) (a) By December 31, 2022, the department shall, in accordance with KRS  
 23 Chapter 45A, select and enter into a contract, the effective date of which  
 24 shall not be later than January 1, 2023, with a single independent entity for  
 25 the purpose of monitoring all Medicaid pharmacy benefit claims for every  
 26 Medicaid beneficiary regardless of whether the beneficiary's Medicaid  
 27 benefits are managed through a fee-for-service or managed-care model.

1       **(b) A contract entered into pursuant to this subsection shall not be for a term**  
2               **longer than two (2) years but may be renewed for like or lesser periods.**

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

5               **(a) Have at least five (5) years of experience reviewing and auditing pharmacy**  
6                       **claims and pharmacy benefit manager operations;**

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

9               **(c) Not be an entity that performs annual retroactive audits of pharmacy**  
10                      **benefit claims for the department; and**

11               **(d) Not be affiliated by common parent company or holding company, share**  
12                      **any common members of the board of directors, or share managers in**  
13                      **common with the state pharmacy benefit manager or a managed care**  
14                      **organization.**

15       **(4) The entity contracted by the department pursuant to subsection (2) of this section**  
16               **shall:**

17               **(a) Be granted full access to:**

18                      **1. The state pharmacy benefit manager contract awarded by the**  
19                               **department pursuant to KRS 205.5512, and all pertinent reference**  
20                               **documents within that contract, including but not limited to any price**  
21                               **lists or specialty drug price lists which shall be provided to the**  
22                               **monitoring entity contracted pursuant to this section by the state**  
23                               **pharmacy benefit manager and which shall be updated by the state**  
24                               **pharmacy benefit manager within five (5) days of the effective date of**  
25                               **any pricing changes;**

26                      **2. Any other contract that defines the state pharmacy benefit manager's**  
27                               **obligations and responsibilities as it relates to processing Medicaid**

- 1                   pharmacy benefit claims in the Commonwealth, including any  
2                   contract between the state pharmacy benefit manager and a managed  
3                   care organization; and
- 4                   3. Invoices and unaltered claims files associated with Medicaid  
5                   pharmacy benefits;
- 6                   (b) Analyze one hundred percent (100%) of invoices or claims submitted for  
7                   payment by the department or a managed care organization. The entity  
8                   shall not utilize statistical sampling methods in lieu of analyzing all invoices  
9                   and claims;
- 10                  (c) Identify and correct errors in pharmacy benefit claims in order to avoid or  
11                  reduce erroneous overpayments by the department to the state pharmacy  
12                  benefit manager, either directly or indirectly through a managed care  
13                  organization;
- 14                  (d) Identify underpayments made by the state pharmacy benefit manager to  
15                  pharmacies licensed in this state;
- 16                  (e) Identify inappropriate or erroneous fees imposed by the state pharmacy  
17                  benefit manager in violation of KRS 205.5512;
- 18                  (f) Analyze the state pharmacy benefit manager's performance and compliance  
19                  with:
- 20                    1. The contract between the department and the state pharmacy benefit  
21                    manager;
- 22                    2. The state pharmacy benefit manager and each managed care  
23                    organization; and
- 24                    3. KRS 205.5512, 205.5514, 205.5516, and 205.5518; and
- 25                  (g) Beginning on April 30, 2023, and quarterly thereafter, submit a report to  
26                  the Medicaid Oversight and Advisory Committee. The report shall include a  
27                  summary of the analysis and errors identified pursuant to paragraphs (c),

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

22       ➔Section 3. Whereas there is urgent need to improve the administration and  
23 provision of pharmacy benefits for Medicaid beneficiaries and state employees, an  
24 emergency is declared to exist, and this Act takes effect upon its passage and approval by  
25 the Governor or upon its otherwise becoming law.