

1 AN ACT relating to cost defrayment under the Affordable Care Act.

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

3 ➔SECTION 1. KRS 6.948 IS REPEALED AND REENACTED TO READ AS  
4 FOLLOWS:

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

6 *(a) "Amendment" includes a committee substitute;*

7 *(b) "Department" means the Department of Insurance;*

8 *(c) "Federal cost defrayal impact statement" means a statement prepared and*  
9 *transmitted in accordance with subsection (6) of this section;*

10 *(d) "Health benefit plan" has the same meaning as in KRS 304.17A-005,*  
11 *except that for purposes of this section the term does not include:*

12 *1. A state employee health plan; or*

13 *2. Any other self-insured policy, certificate, plan, or contract;*

14 *(e) "Health mandate impact statement" means a statement prepared and*  
15 *transmitted in accordance with subsection (5) of this section;*

16 *(f) "Mandated health benefit" means a requirement that any health benefit*  
17 *plan or state employee health plan:*

18 *1. Provide a specified benefit, including but not limited to a specified*  
19 *coverage;*

20 *2. Pay, indemnify, or reimburse for a specified medical service; or*

21 *3. Pay, indemnify, or reimburse specified health care providers for*  
22 *specific health care services;*

23 *(g) "Sponsor" means a member of the General Assembly that has made a*  
24 *request to the Legislative Research Commission for a bill or amendment;*

25 *(h) "State employee health plan" means any fully insured health benefit plan*  
26 *or self-insured plan issued or renewed to public employees under KRS*  
27 *18A.225 or 18A.2254; and*

1 (i) "State employee health plan impact statement" means a statement prepared  
2 and transmitted in accordance with subsection (7) of this section.

3 (2) (a) Any bill or amendment that contains a mandated health benefit shall be  
4 identified by the staff of, and on a form specified by, the Legislative  
5 Research Commission.

6 (b) If a bill or amendment is identified as having a mandated health benefit  
7 under paragraph (a) of this subsection, the staff of the Legislative Research  
8 Commission shall:

9 1. Notify the sponsor of the bill or amendment that a health mandate  
10 impact statement, federal cost defrayal impact statement, and state  
11 employee health plan impact statement, as applicable, are required;  
12 and

13 2. Upon introduction, adoption, or filing of the legislation:

14 a. For a mandated health benefit that applies to any health benefit  
15 plan, request the department to prepare and transmit a health  
16 mandate impact statement and federal cost defrayal impact  
17 statement in accordance with this section; and

18 b. For a mandated health benefit that applies to any state employee  
19 health plan, request the Department of Employee Insurance to  
20 prepare and transmit a state employee health plan impact  
21 statement in accordance with this section.

22 (3) (a) The individuals referenced in paragraph (b) of this subsection may, in  
23 accordance with that paragraph, request the department or the Department  
24 of Employee Insurance, as applicable, to prepare any or all of the  
25 following:

26 1. A health mandate impact statement;

27 2. A federal cost defrayal impact statement; or

1           3. A state employee health plan impact statement.

2           (b) Any or all of the following may make a request under paragraph (a) of this  
3           subsection:

4           1. For any introduced bill or adopted or filed amendment:

5           a. The sponsor of the bill or amendment; or

6           b. Any of the following members from a chamber of the General  
7           Assembly with possession of the legislation:

8           i. Any member of the majority or minority leadership; or

9           ii. A chair of a standing committee; and

10          2. For any bill or amendment that has not been introduced, filed, or  
11          adopted, the sponsor of the bill or amendment.

12         (4) (a) Except as provided in paragraph (b) of this subsection, when a request is  
13         made under this section, the department or Department of Employee  
14         Insurance, including its staff and third-party contractors, shall:

15         1. Keep the bill or amendment confidential until the bill or amendment is  
16         published for public distribution by the Legislative Research  
17         Commission; and

18         2. Keep the impact statement, including the request for the statement and  
19         any information relating thereto, confidential until the statement is  
20         published for public distribution by the Legislative Research  
21         Commission.

22         (b) Paragraph (a) of this subsection shall not apply to any communications  
23         with or transmittals to:

24         1. Staff or third-party contractors designated by the department or  
25         Department of Employee Insurance to receive and prepare the impact  
26         statements required under this section;

27         2. Staff designated by the Legislative Research Commission;

1           3. The requester; or

2           4. Any other person designated by the requester.

3           (c) Any health mandate impact statement, federal cost defrayal impact  
4           statement, or state employee health plan impact statement requested under  
5           this section shall be prepared and transmitted by the department or  
6           Department of Employee Insurance as provided in this section.

7           (5) A health mandate impact statement shall:

8           (a) Be in writing;

9           (b) Be signed by the commissioner of the department or the commissioner's  
10           designee;

11           (c) Determine the extent to which the mandated health benefit will:

12           1. Increase or decrease administrative expenses of insurers offering  
13           health benefit plans;

14           2. Increase or decrease health benefit plan premiums in the market or  
15           markets to which the mandate applies; and

16           3. Impact the total cost of health care for health benefit plan insureds,  
17           including any potential cost savings that may be realized; and

18           (d) Be completed and transmitted to staff designated by the Legislative  
19           Research Commission and the requester as soon as possible, but not later  
20           than thirty (30) days after the request is made to the department, unless the  
21           requestor and commissioner of the department agree otherwise.

22           (6) (a) A federal cost defrayal impact statement shall:

23           1. Be in writing;

24           2. Be signed by the commissioner of the department or the  
25           commissioner's designee;

26           3. a. Indicate:

27           i. Whether a bill or amendment that contains a mandated

1 health benefit may result in the state being required to  
2 make payments to defray costs under 42 U.S.C. sec.  
3 18031(d)(3) and 45 C.F.R. sec. 155.170, as amended; and  
4 ii. If applicable, which provision or provisions of the bill or  
5 amendment may trigger the requirement to make payments  
6 to defray costs under 42 U.S.C. sec. 18031(d)(3) and 45  
7 C.F.R. sec. 155.170, as amended.

8 b. When making a determination under subdivision a. of this  
9 subparagraph, the department shall consider whether the  
10 provision or provisions would apply under subsection (2) of  
11 Section 2 of this Act;

12 4. If it is indicated under subparagraph 3. of this paragraph that the bill  
13 or amendment may result in the state being required to make  
14 payments, include a cost defrayal fiscal analysis prepared in  
15 accordance with paragraph (b) of this subsection; and

16 5. Be completed and transmitted to staff designated by the Legislative  
17 Research Commission and the requestor as soon as possible, but not  
18 later than the following, unless the requestor and the commissioner of  
19 the department agree otherwise:

20 a. For an indication required under subparagraph 3. of this  
21 paragraph, ten (10) business days after the request is made to the  
22 department; and

23 b. For a cost defrayal fiscal analysis required under subparagraph  
24 4. of this paragraph, thirty (30) days after the request is made to  
25 the department.

26 (b) A cost defrayal fiscal analysis shall:

27 1. Be conducted by:

- 1                    a. The department; and  
 2                    b. An actuary selected by the department;  
 3                    2. Be based on an analysis performed in accordance with generally  
 4                    accepted actuarial principles and methodologies;  
 5                    3. Determine the extent to which benefits required under the bill or  
 6                    amendment are already covered by health insurers; and  
 7                    4. Include an estimate of the payments the state may be required to make  
 8                    under 42 U.S.C. sec. 18031(d)(3) and 45 C.F.R. sec. 155.170, as  
 9                    amended, if the bill or amendment is enacted into law.

10 (7) A state employee health plan impact statement shall:

- 11                    (a) Be in writing;  
 12                    (b) Be signed by the commissioner of the Department of Employee Insurance  
 13                    or the commissioner's designee;  
 14                    (c) Determine the extent to which:  
 15                    1. The mandated health benefit will increase or decrease state employee  
 16                    health plan premiums; and  
 17                    2. The increased or decreased premiums identified in subparagraph 1. of  
 18                    this paragraph may be passed on to public employees; and  
 19                    (d) Be completed and transmitted to staff designated by the Legislative  
 20                    Research Commission and the requester as soon as possible, but not later  
 21                    than thirty (30) days after the request is made to the Department of  
 22                    Employee Insurance, unless the requestor and commissioner of the  
 23                    Department of Employee Insurance agree otherwise.

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

- 26 (1) As used in this section, "qualified health plan" has the same meaning as in 42  
 27 U.S.C. sec. 18021(a)(1), as amended.

- 1 (2) Notwithstanding any other provision of this chapter, if the application of a  
2 provision of this chapter results, or would result, in a determination that the state  
3 must make payments to defray the cost of the provision under 42 U.S.C. sec.  
4 18031(d)(3) and 45 C.F.R. sec. 155.170, as amended, then the provision shall not  
5 apply to a qualified health plan or any other health insurance policy, certificate,  
6 plan, or contract until the requirement to make cost defrayal payments is no  
7 longer applicable.
- 8 (3) To the extent permitted by federal law, if the state is required under 42 U.S.C. sec.  
9 18031(d)(3) and 45 C.F.R. sec. 155.170, as amended, to make payments to defray  
10 the cost of a provision of this chapter:
- 11 (a) 1. Each qualified health plan issuer shall determine, and provide to the  
12 commissioner, the cost attributable to the provision for the qualified  
13 health plan.
- 14 2. The cost attributable to a provision for a qualified health plan under  
15 subparagraph 1. of this paragraph shall be:
- 16 a. Calculated in accordance with generally accepted actuarial  
17 principles and methodologies;
- 18 b. Conducted by a member of the American Academy of Actuaries;  
19 and
- 20 c. Reported by the qualified health plan issuer to:
- 21 i. The commissioner; and  
22 ii. The Division of Health Benefit Exchange within the Office  
23 of Data Analytics;
- 24 (b) The commissioner shall use the information obtained under paragraph (a)  
25 of this subsection to determine the statewide average of the cost attributable  
26 to the provision for all qualified health plan issuers to which the provision is  
27 applicable; and

1 (c) The required payments shall be:

- 2 1. Calculated based on the statewide average of the cost attributable to  
 3 the provision as determined by the commissioner under paragraph (b)  
 4 of this subsection; and  
 5 2. Submitted directly to qualified health plan issuers by the department  
 6 through a process established by the commissioner.

7 (4) A qualified health plan issuer that receives a payment under subsection (3)(c)2.  
 8 of this section shall:

- 9 (a) Reduce the premium charged to an individual on whose behalf the issuer  
 10 received the payment in an amount equal to the amount of the payment; or  
 11 (b) Notwithstanding KRS 304.12-090, provide a premium rebate to an  
 12 individual on whose behalf the issuer received the payment in an amount  
 13 equal to the amount of the payment.

14 (5) Any fines collected for violations of this section shall be:

- 15 (a) Placed in a trust and agency account within the department, which shall not  
 16 lapse; and  
 17 (b) Used solely by the department to make payments in accordance with  
 18 subsection (3)(c)2. of this section.

19 (6) The commissioner shall promulgate any administrative regulations necessary to  
 20 enforce and effectuate this section.

21 ➔Section 3. KRS 194A.099 is amended to read as follows:

22 Except as provided in Section 2 of this Act:

- 23 (1) The Division of Health Benefit Exchange within the Office of Data Analytics shall  
 24 administer the provisions of the Patient Protection and Affordable Care Act of  
 25 2010, Pub. L. No. 111-148;[.]  
 26 (2) The Division of Health Benefit Exchange shall:  
 27 (a) Facilitate enrollment in health coverage and the purchase and sale of qualified



- 1 health plans in the individual market;
- 2 (b) Facilitate the ability of eligible individuals to receive premium tax credits and  
3 cost-sharing reductions and enable eligible small businesses to receive tax  
4 credits, in compliance with all applicable federal and state laws and  
5 regulations;
- 6 (c) Oversee the consumer assistance programs of navigators, in-person assisters,  
7 certified application counselors, and insurance agents as appropriate;
- 8 (d) At a minimum, carry out the functions and responsibilities required pursuant  
9 to 42 U.S.C. sec. 18031 to implement and comply with federal regulations in  
10 accordance with 42 U.S.C. sec. 18041; and
- 11 (e) Regularly consult with stakeholders in accordance with 45 C.F.R. sec.  
12 155.130; and[-]
- 13 (3) The Office of Data Analytics:
- 14 (a) May enter into contracts and other agreements with appropriate entities,  
15 including but not limited to federal, state, and local agencies, as permitted  
16 under 45 C.F.R. sec. 155.110, to the extent necessary to carry out the duties  
17 and responsibilities of the office, provided that the agreements incorporate  
18 adequate protections with respect to the confidentiality of any information to  
19 be shared;[-]
- 20 (b)(4) [-] ~~The office~~ [-] Shall pursue all available federal funding for the further  
21 development and operation of the Division of Health Benefit Exchange;[-]
- 22 (c)(5) [-] ~~The Office of Health Data and Analytics~~ [-] Shall promulgate  
23 administrative regulations in accordance with KRS Chapter 13A to implement  
24 this section; and[-]
- 25 (d)(6) [-] ~~The office~~ [-] Shall not establish procedures and rules that conflict with or  
26 prevent the application of the Patient Protection and Affordable Care Act of  
27 2010, Pub. L. No. 111-148.

1           ➔Section 4. Subsection (2) of Section 2 of this Act applies to qualified health  
2 plans and any other health insurance policies, certificates, plans, and contracts issued or  
3 renewed on or after the effective date of this Act.

4           ➔Section 5. Whereas there is an immediate, significant, and legitimate need to  
5 assess, calculate, and limit the fiscal impacts of health insurance mandates, an emergency  
6 is declared to exist, and this Act takes effect upon its passage and approval by the  
7 Governor or upon its otherwise becoming a law.