

1 AN ACT relating to fiscal impacts of health insurance mandates and declaring an
2 emergency.

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

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 KRS 6.948 IS REPEALED AND REENACTED TO READ AS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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 *(h) "State employee health plan" means any fully insured health benefit plan*
27 *or self-insured plan issued or renewed to public employees under KRS*

1 18A.225 or 18A.2254; and

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

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

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

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

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

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

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

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

27 1. A health mandate impact statement;

1 2. A federal cost defrayal impact statement; or

2 3. A state employee health plan impact statement.

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

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

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

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

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

10 ii. A chair of a standing committee; and

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

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

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

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

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

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

- 1 2. Staff designated by the Legislative Research Commission;
2 3. The requester; or
3 4. Any other person designated by the requester.
4 (c) Any health mandate impact statement, federal cost defrayal impact
5 statement, or state employee health plan impact statement requested under
6 this section shall be prepared and transmitted by the department or
7 Department of Employee Insurance as provided in this section.
8 (5) A health mandate impact statement shall:
9 (a) Be in writing;
10 (b) Be signed by the commissioner of the department or the commissioner's
11 designee;
12 (c) Determine the extent to which the mandated health benefit will:
13 1. Increase or decrease administrative expenses of insurers offering
14 health benefit plans;
15 2. Increase or decrease health benefit plan premiums in the market or
16 markets to which the mandate applies; and
17 3. Impact the total cost of health care for health benefit plan insureds,
18 including any potential cost savings that may be realized; 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, unless the
22 requestor and commissioner of the department agree otherwise.
23 (6) (a) A federal cost defrayal impact statement shall:
24 1. Be in writing;
25 2. Be signed by the commissioner of the department or the
26 commissioner's designee;
27 3. a. Indicate:

- 1 i. Whether a bill or amendment that contains a mandated
2 health benefit may result in the state being required to
3 make payments to defray costs under 42 U.S.C. sec.
4 18031(d)(3) and 45 C.F.R. sec. 155.170, as amended; and
5 ii. If applicable, which provision or provisions of the bill or
6 amendment may trigger the requirement to make payments
7 to defray costs under 42 U.S.C. sec. 18031(d)(3) and 45
8 C.F.R. sec. 155.170, as amended.
- 9 b. When making a determination under subdivision a. of this
10 subparagraph, the department shall consider whether the
11 provision or provisions would apply under subsection (2) of
12 Section 2 of this Act;
- 13 4. If it is indicated under subparagraph 3. of this paragraph that the bill
14 or amendment may result in the state being required to make
15 payments, include a cost defrayal fiscal analysis prepared in
16 accordance with paragraph (b) of this subsection; and
- 17 5. Be completed and transmitted to staff designated by the Legislative
18 Research Commission and the requestor as soon as possible, but not
19 later than the following, unless the requestor and the commissioner of
20 the department agree otherwise:
- 21 a. For an indication required under subparagraph 3. of this
22 paragraph, ten (10) business days after the request is made to the
23 department; and
- 24 b. For a cost defrayal fiscal analysis required under subparagraph
25 4. of this paragraph, thirty (30) days after the request is made to
26 the department.
- 27 (b) A cost defrayal fiscal analysis shall:

- 1 1. Be conducted by:
- 2 a. The department; and
- 3 b. An actuary selected by the department;
- 4 2. Be based on an analysis performed in accordance with generally
- 5 accepted actuarial principles and methodologies;
- 6 3. Determine the extent to which benefits required under the bill or
- 7 amendment are already covered by health insurers; and
- 8 4. Include an estimate of the payments the state may be required to make
- 9 under 42 U.S.C. sec. 18031(d)(3) and 45 C.F.R. sec. 155.170, as
- 10 amended, if the bill or amendment is enacted into law.
- 11 (7) A state employee health plan impact statement shall:
- 12 (a) Be in writing;
- 13 (b) Be signed by the commissioner of the Department of Employee Insurance
- 14 or the commissioner's designee;
- 15 (c) Determine the extent to which:
- 16 1. The mandated health benefit will increase or decrease state employee
- 17 health plan premiums; and
- 18 2. The increased or decreased premiums identified in subparagraph 1. of
- 19 this paragraph may be passed on to public employees; and
- 20 (d) Be completed and transmitted to staff designated by the Legislative
- 21 Research Commission and the requester as soon as possible, but not later
- 22 than thirty (30) days after the request is made to the Department of
- 23 Employee Insurance, unless the requestor and commissioner of the
- 24 Department of Employee Insurance agree otherwise.

25 ➔SECTION 2. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304

26 IS CREATED TO READ AS FOLLOWS:

27 (1) As used in this section, "qualified health plan" has the same meaning as in 42

1 U.S.C. sec. 18021(a)(1), as amended.

2 (2) Notwithstanding any other provision of this chapter:

3 (a) Except as provided in paragraph (b) of this subsection, if the application of
4 a provision of this chapter results, or would result, in a determination that
5 the state must make payments to defray the cost of the provision under 42
6 U.S.C. sec. 18031(d)(3) and 45 C.F.R. sec. 155.170, as amended, then the
7 provision shall not apply to a qualified health plan or any other health
8 insurance policy, certificate, plan, or contract until the requirement to make
9 cost defrayal payments is no longer applicable; and

10 (b) This subsection shall not apply to a provision of this chapter that became
11 effective on or before January 1, 2024.

12 (3) To the extent permitted by federal law, if the state is required under 42 U.S.C. sec.
13 18031(d)(3) and 45 C.F.R. sec. 155.170, as amended, to make payments to defray
14 the cost of a provision of this chapter:

15 (a) 1. Each qualified health plan issuer shall determine, and provide to the
16 commissioner, the cost attributable to the provision for the qualified
17 health plan.

18 2. The cost attributable to a provision for a qualified health plan under
19 subparagraph 1. of this paragraph shall be:

20 a. Calculated in accordance with generally accepted actuarial
21 principles and methodologies;

22 b. Conducted by a member of the American Academy of Actuaries;
23 and

24 c. Reported by the qualified health plan issuer to:

25 i. The commissioner; and

26 ii. The Division of Health Benefit Exchange within the Office
27 of Data Analytics;

1 **(b) The commissioner shall use the information obtained under paragraph (a)**
2 **of this subsection to determine the statewide average of the cost attributable**
3 **to the provision for all qualified health plan issuers to which the provision is**
4 **applicable; and**

5 **(c) The required payments shall be:**

6 **1. Calculated based on the statewide average of the cost attributable to**
7 **the provision as determined by the commissioner under paragraph (b)**
8 **of this subsection; and**

9 **2. Submitted directly to qualified health plan issuers by the department**
10 **through a process established by the commissioner.**

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

13 **(a) Reduce the premium charged to an individual on whose behalf the issuer**
14 **received the payment in an amount equal to the amount of the payment; or**

15 **(b) Notwithstanding KRS 304.12-090, provide a premium rebate to an**
16 **individual on whose behalf the issuer received the payment in an amount**
17 **equal to the amount of the payment.**

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

19 **(a) Placed in a trust and agency account within the department, which shall not**
20 **lapse; and**

21 **(b) Used solely by the department to make payments in accordance with**
22 **subsection (3)(c)2. of this section.**

23 **(6) The commissioner shall promulgate any administrative regulations necessary to**
24 **enforce and effectuate this section.**

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

26 **Except as provided in Section 2 of this Act:**

27 (1) The Division of Health Benefit Exchange **within the Office of Data Analytics** shall

1 administer the provisions of the Patient Protection and Affordable Care Act of
2 2010, Pub. L. No. 111-148;~~;~~

3 (2) The Division of Health Benefit Exchange shall:

4 (a) Facilitate enrollment in health coverage and the purchase and sale of qualified
5 health plans in the individual market;

6 (b) Facilitate the ability of eligible individuals to receive premium tax credits and
7 cost-sharing reductions and enable eligible small businesses to receive tax
8 credits, in compliance with all applicable federal and state laws and
9 regulations;

10 (c) Oversee the consumer assistance programs of navigators, in-person assisters,
11 certified application counselors, and insurance agents as appropriate;

12 (d) At a minimum, carry out the functions and responsibilities required pursuant
13 to 42 U.S.C. sec. 18031 to implement and comply with federal regulations in
14 accordance with 42 U.S.C. sec. 18041; and

15 (e) Regularly consult with stakeholders in accordance with 45 C.F.R. sec.
16 155.130; and~~;~~

17 (3) The Office of Data Analytics:

18 (a) May enter into contracts and other agreements with appropriate entities,
19 including but not limited to federal, state, and local agencies, as permitted
20 under 45 C.F.R. sec. 155.110, to the extent necessary to carry out the duties
21 and responsibilities of the office, provided that the agreements incorporate
22 adequate protections with respect to the confidentiality of any information to
23 be shared;~~;~~

24 ~~(b)(4)~~ ~~{The office }~~Shall pursue all available federal funding for the further
25 development and operation of the Division of Health Benefit Exchange;~~;~~

26 ~~(c)(5)~~ ~~{The Office of Health Data and Analytics }~~Shall promulgate
27 administrative regulations in accordance with KRS Chapter 13A to implement

1 this section; and ~~[-]~~

2 ~~(d)(6)~~ ~~[-]~~ ~~The office~~ Shall not establish procedures and rules that conflict with or
3 prevent the application of the Patient Protection and Affordable Care Act of
4 2010, Pub. L. No. 111-148.

5 ➔Section 4. (1) For purposes of 45 C.F.R. sec. 156.115, the benefits required
6 under KRS 304.17A-263 are intended to be, and shall be considered, substantially equal
7 to the benefits required under the state's EHB-benchmark plan.

8 (2) For purposes of 45 C.F.R. sec. 155.170, the benefits required under KRS
9 304.17A-263 are intended to be, and shall be considered by the state as, a benefit required
10 by State action "for purposes of compliance with Federal requirements," and thus, the
11 state shall not consider or identify the benefits required under KRS 304.17A-263 as being
12 in addition to the essential health benefit required under federal law.

13 (3) The "Federal requirement" referred to in subsection (2) of this section is the
14 requirement to provide coverage for essential health benefits, which shall include items
15 and services covered within the category of laboratory services, as required under 42
16 U.S.C. sec. 18022(b)(1)(G), as amended.

17 (4) Notwithstanding KRS 194A.099, within 90 days of the effective date of this
18 Act, the Department of Insurance shall identify, in accordance with 45 C.F.R. sec.
19 155.170(a)(3), whether the application of any requirement of KRS 304.17A-263 to a
20 qualified health plan (QHP) is in addition to the essential health benefits required under
21 federal law.

22 (5) The commissioner of insurance and any other state official or state agency
23 shall:

24 (a) Comply with the requirements of this section; and

25 (b) Not take any action that is in violation of or conflict with this section.

26 ➔Section 5. Whereas there is an immediate, significant, and legitimate need to
27 assess, calculate, and limit the fiscal impacts of health insurance mandates, an emergency

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