

1 AN ACT relating to patient access to pharmacy benefits.

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

3 ➔SECTION 1. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304  
4 IS CREATED TO READ AS FOLLOWS:

5 *As used in Sections 1 to 5 of this Act:*

6 *(1) "Cost sharing" means the cost to an insured under a health plan according to*  
7 *any coverage limit, copayment, coinsurance, deductible, or other out-of-pocket*  
8 *expense requirements imposed by the plan;*

9 *(2) "Health plan":*

10 *(a) Except as provided in paragraph (c) of this subsection, means any policy,*  
11 *certificate, contract, or plan that offers or provides coverage in this state for*  
12 *pharmacy or pharmacist services, whether the coverage is by direct*  
13 *payment, reimbursement, or otherwise;*

14 *(b) Includes a health benefit plan; and*

15 *(c) Does not include:*

16 *1. A policy, certificate, contract, or plan that:*

17 *a. Offers or provides services under KRS Chapter 205; or*

18 *b. Is established by the Teachers' Retirement System pursuant to*  
19 *KRS 161.675 solely for the purpose of providing coverage to*  
20 *Medicare-eligible annuitants and dependents of annuitants;*

21 *2. A self-insured health plan provided by a hospital or health system to*  
22 *its employees and dependents of employees if the hospital or health*  
23 *system owns a pharmacy;*

24 *3. A prescription drug plan established under Medicare Part D; or*

25 *4. Student health insurance offered by a Kentucky-licensed insurer*  
26 *under written contract with a university or college whose students it*  
27 *proposes to insure;*

1 (3) "Insured" means any individual covered under a health plan;

2 (4) "Insurer":

3 (a) Means any of the following persons that offer or issue a health plan:

4 1. An insurance company;

5 2. A health maintenance organization;

6 3. A limited health service organization;

7 4. A self-insurer, including a governmental plan, church plan, or  
8 multiple employer welfare arrangement;

9 5. A provider-sponsored integrated health delivery network;

10 6. A self-insured employer-organized association;

11 7. A nonprofit hospital, medical-surgical, dental, and health service  
12 corporation; or

13 8. Any other third-party payor that is:

14 a. Authorized to transact health insurance business in this state; or

15 b. Not exempt by federal law from regulation under the insurance  
16 laws of this state; and

17 (b) Includes any person that has contracted with a state or federal agency to  
18 provide coverage in this state under a health plan;

19 (5) "Pharmacy" has the same meaning as in KRS 315.010;

20 (6) (a) "Pharmacy affiliate" means a pharmacy, including a specialty pharmacy,  
21 that owns or controls, is owned or controlled by, or is under common  
22 ownership or common control with an insurer, pharmacy benefit manager,  
23 or other administrator of pharmacy benefits.

24 (b) As used in this subsection:

25 1. "Common control" includes sharing common management or  
26 managers and having common members on boards of directors; and

27 2. "Control" may be direct or indirect through one (1) or more

1 intermediaries;

2 (7) "Pharmacy benefit manager" has the same meaning as in KRS 304.9-020; and

3 (8) "Pharmacy or pharmacist services":

4 (a) Means any health care procedures, treatments within the scope of practice  
5 of a pharmacist, or services provided by a pharmacy or pharmacist; and

6 (b) Includes the sale and provision of the following by a pharmacy or  
7 pharmacist:

8 1. Prescription drugs as defined in KRS 315.010; and

9 2. Home medical equipment as defined in KRS 309.402.

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

12 To the extent permitted under federal law:

13 (1) (a) An insurer, a pharmacy benefit manager, or any other administrator of  
14 pharmacy benefits that utilizes a network to provide pharmacy or  
15 pharmacist services under a health plan shall ensure that the network is  
16 reasonably adequate and accessible with respect to the provision of  
17 pharmacy or pharmacist services.

18 (b) A reasonably adequate and accessible network, with respect to the provision  
19 of pharmacy or pharmacist services, shall, at a minimum:

20 1. Offer an adequate number of accessible pharmacies that are not mail-  
21 order pharmacies; and

22 2. Provide convenient access to pharmacies that are not mail-order  
23 pharmacies within a reasonable distance from the insured's residence,  
24 but in no event shall the distance be more than thirty (30) minutes or  
25 thirty (30) miles from each insured's residence, to the extent that  
26 pharmacy or pharmacist services are available; and

27 (2) (a) An insurer, a pharmacy benefit manager, and any other administrator of

1 pharmacy benefits conducting business in this state shall file with the  
 2 commissioner an annual report, in the manner and form prescribed by the  
 3 commissioner, describing the networks of the insurer, pharmacy benefit  
 4 manager, or other administrator that are utilized for the provision of  
 5 pharmacy or pharmacist services under a health plan.

6 (b) The commissioner shall review each network to ensure that the network  
 7 complies with this section.

8 (c) All information and data acquired by the department under this subsection  
 9 that is generally recognized as confidential or proprietary shall not be  
 10 subject to disclosure under KRS 61.870 to 61.884, except the department  
 11 may publicly disclose aggregated information not descriptive of any readily  
 12 identifiable person or entity.

13 ➔SECTION 3. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304  
 14 IS CREATED TO READ AS FOLLOWS:

15 (1) As used in this section:

16 (a) "Actual overpayment" means the portion of any amount paid for pharmacy  
 17 or pharmacist services that:

18 1. Is duplicative because the pharmacy or pharmacist has already been  
 19 paid for the services; or

20 2. Was erroneously paid because the services were not rendered in  
 21 accordance with the prescriber's order, in which case only the amount  
 22 paid for that portion of the prescription that was filled incorrectly or in  
 23 excess of the prescriber's order may be deemed an actual  
 24 overpayment. The amount denied, refunded, or recouped shall not  
 25 include the dispensing fee paid to the pharmacy if the correct  
 26 medication was dispensed to the patient;

27 (b) "Ambulatory pharmacy" means a pharmacy that:

- 1           1. Is open to the general public; and
- 2           2. Dispenses outpatient prescription drugs;
- 3           (c) "National drug code number" means the unique national drug code  
4           number that identifies a specific approved drug, its manufacturer, and its  
5           package presentation;
- 6           (d) "Net amount" means the amount paid to the pharmacy or pharmacist by  
7           the insurer, pharmacy benefit manager, or other administrator less any fees,  
8           price concessions, and all other revenue passing from the pharmacy or  
9           pharmacist to the insurer, pharmacy benefit manager, or other  
10           administrator; and
- 11           (e) "Wholesale acquisition cost" means the manufacturer's list price for the  
12           drug to wholesalers or direct purchasers in the United States, not including  
13           prompt pay or other discounts, rebates, or reductions in price, for the most  
14           recent month for which the information is available, as reported in  
15           wholesale price guides or other publications of drug pricing data.
- 16           (2) To the extent permitted under federal law, every contract between a pharmacy or  
17           pharmacist and an insurer, a pharmacy benefit manager, or any other  
18           administrator of pharmacy benefits for the provision of pharmacy or pharmacist  
19           services under a health plan, either directly or through a pharmacy services  
20           administration organization or group purchasing organization, shall:
- 21           (a) Outline the terms and conditions for the provision of pharmacy or  
22           pharmacist services;
- 23           (b) Prohibit the insurer, pharmacy benefit manager, or other administrator  
24           from:
- 25           1. Reducing payment for pharmacy or pharmacist services, directly or  
26           indirectly, under a reconciliation process to an effective rate of  
27           reimbursement. This prohibition shall include, without limitation,

- 1                   creating, imposing, or establishing direct or indirect remuneration  
2                   fees, generic effective rates, dispensing effective rates, brand effective  
3                   rates, any other effective rates, in-network fees, performance fees,  
4                   point-of-sale fees, retroactive fees, pre-adjudication fees, post-  
5                   adjudication fees, and any other mechanism that reduces, or  
6                   aggregately reduces, payment for pharmacy or pharmacist services;
- 7                   2. Retroactively denying, reducing reimbursement for, or seeking any  
8                   refunds or recoupments for a claim for pharmacy or pharmacist  
9                   services, in whole or in part, from the pharmacy or pharmacist after  
10                   returning a paid claim response as part of the adjudication of the  
11                   claim, including claims for the cost of a medication or dispensed  
12                   product and claims for pharmacy or pharmacist services that are  
13                   deemed ineligible for coverage, unless one (1) or more of the following  
14                   occurred:
- 15                   a. The original claim was submitted fraudulently; or  
16                   b. The pharmacy or pharmacist received an actual overpayment;
- 17                   3. Reimbursing the pharmacy or pharmacist for a prescription drug or  
18                   other service at a net amount that is lower than the amount the  
19                   insurer, pharmacy benefit manager, or other administrator reimburses  
20                   itself or a pharmacy affiliate for the same:
- 21                   a. Prescription drug by national drug code number; or  
22                   b. Service;
- 23                   4. Collecting cost sharing from a pharmacy or pharmacist that was  
24                   provided to the pharmacy or pharmacist by an insured for the  
25                   provision of pharmacy or pharmacist services under the health plan;  
26                   and
- 27                   5. Designating a prescription drug as a specialty drug unless the drug is

- 1                   *a limited distribution drug that:*
- 2                   *a. Requires special handling; and*
- 3                   *b. Is not commonly carried at retail pharmacies or oncology clinics*
- 4                                   *or practices; and*
- 5                   *(c) Notwithstanding any other law, provide the following minimum*
- 6                                   *reimbursements to the pharmacy or pharmacist for each prescription drug*
- 7                                   *or other service provided by the pharmacy or pharmacist:*
- 8                   *1. a. Reimbursement for the cost of the drug or other service at an*
- 9                                   *amount that is not less than:*
- 10                                   *i. The national average drug acquisition cost for the drug or*
- 11   *service at the time the drug or service is administered,*
- 12   *dispensed, or provided; or*
- 13                                   *ii. If the national average drug acquisition cost is not*
- 14   *available at the time a drug is administered or dispensed,*
- 15   *the wholesale acquisition cost for the drug at the time the*
- 16   *drug is administered or dispensed.*
- 17                   *b. For purposes of complying with this subparagraph, the insurer,*
- 18                                   *pharmacy benefit manager, or other administrator shall utilize*
- 19                                   *the most recently published monthly national average drug*
- 20                                   *acquisition cost as a point of reference for the ingredient drug*
- 21                                   *product component of a pharmacy's or pharmacist's*
- 22                                   *reimbursement for drugs appearing on the national average*
- 23                                   *drug acquisition cost list; and*
- 24                   *2. a. Except as provided in subdivision b. of this subparagraph, for*
- 25                                   *health plan years beginning on or after January 1, 2027,*
- 26                                   *reimbursement for a professional dispensing fee that is not less*
- 27                                   *than the average cost to dispense a prescription drug in an*

1 ambulatory pharmacy located in Kentucky, as determined by the  
2 commissioner in an administrative regulation promulgated in  
3 accordance with KRS Chapter 13A.

4 b. For health plan years beginning prior to January 1, 2027, and  
5 for any future health plan years for which a determination under  
6 subdivision a. of this subparagraph has not taken effect, the  
7 minimum dispensing fee for a pharmacy permitted under KRS  
8 Chapter 315 with a designated pharmacy type of "retail  
9 independent" on file with the Kentucky Board of Pharmacy, or a  
10 pharmacist practicing at such a pharmacy, shall be not less than  
11 ten dollars and sixty-four cents (\$10.64).

12 c. In acquiring data for, and making, the determination required  
13 under subdivision a. of this subparagraph, the commissioner  
14 shall:

15 i. Promulgate an administrative regulation in accordance  
16 with KRS Chapter 13A that establishes the data elements to  
17 be collected by the Kentucky Board of Pharmacy under  
18 Section 16 of this Act;

19 ii. Conduct a study of the dispensing data submitted to the  
20 commissioner by the Kentucky Board of Pharmacy in  
21 accordance with Section 16 of this Act;

22 iii. Repeat the study every two (2) years to obtain updated  
23 information;

24 iv. Adjust the determination every two (2) years as appropriate  
25 based upon the results of each study; and

26 v. Comply with all requirements of Section 16 of this Act.

27 d. In carrying out his or her duties under this subparagraph, the



1 commissioner shall cooperate and consult with the Kentucky  
2 Board of Pharmacy.

3 ➔SECTION 4. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304  
4 IS CREATED TO READ AS FOLLOWS:

5 To the extent permitted under federal law:

6 (1) With respect to the provision of pharmacy or pharmacist services under a health  
7 plan, an insurer, a pharmacy benefit manager, or any other administrator of  
8 pharmacy benefits:

9 (a) Shall not:

10 1. a. Require or incentivize an insured to use a mail-order  
11 pharmaceutical distributor, including a mail-order pharmacy.

12 b. Conduct prohibited under this subparagraph includes but is not  
13 limited to imposing any cost-sharing requirement, fee, drug  
14 supply limitation, or other condition relating to pharmacy or  
15 pharmacist services received from a retail pharmacy that is  
16 greater, or more restrictive, than what would otherwise be  
17 imposed if the insured used a mail-order pharmaceutical  
18 distributor, including a mail-order pharmacy;

19 2. Prohibit a pharmacy or pharmacist from, or impose a penalty on a  
20 pharmacy or pharmacist for, the following:

21 a. Selling a lower cost alternative to an insured, if one is available;  
22 or

23 b. Providing information to an insured under subsection (2) of this  
24 section;

25 3. Discriminate against any pharmacy or pharmacist that is:

26 a. Located within the geographic coverage area of the health plan;  
27 and

- 1                    *b. Willing to agree to, or accept, reasonable terms and conditions*  
2                    *established for participation in the insurer's, pharmacy benefit*  
3                    *manager's, other administrator's, or health plan's network;*
- 4                    *4. Impose limits, including quantity limits or refill frequency limits, on*  
5                    *an insured's access to medication from a pharmacy that are more*  
6                    *restrictive than those existing for a pharmacy affiliate;*
- 7                    *5. a. Require or incentivize an insured to receive pharmacy or*  
8                    *pharmacist services from a pharmacy affiliate.*
- 9                    *b. Conduct prohibited under this subparagraph includes but is not*  
10                    *limited to:*
- 11                    *i. Requiring or incentivizing an insured to obtain a specialty*  
12                    *drug from a pharmacy affiliate;*
- 13                    *ii. Charging less cost sharing to insureds that use pharmacy*  
14                    *affiliates than what is charged to insureds that use*  
15                    *nonaffiliated pharmacies; and*
- 16                    *iii. Providing any incentives for insureds that use pharmacy*  
17                    *affiliates that are not provided for insureds that use*  
18                    *nonaffiliated pharmacies.*
- 19                    *c. This subparagraph shall not be construed to prohibit:*
- 20                    *i. Communications to insureds regarding networks and*  
21                    *prices if the communication is accurate and includes*  
22                    *information about all eligible nonaffiliated pharmacies; or*
- 23                    *ii. Requiring an insured to utilize a network that may include*  
24                    *pharmacy affiliates in order to receive coverage under the*  
25                    *plan, or providing financial incentives for utilizing that*  
26                    *network, if the insurer, pharmacy benefit manager, or*  
27                    *other administrator complies with this section and Section*

- 1 2 of this Act; or
- 2 6. a. Interfere with an insured's right to choose the insured's network
- 3 pharmacy of choice.
- 4 b. For purposes of this subparagraph, interfering includes
- 5 inducing, steering, offering financial or other incentives, and
- 6 imposing a penalty, including but not limited to:
- 7 i. Promoting one (1) participating pharmacy over another;
- 8 ii. Offering a monetary advantage;
- 9 iii. Charging higher cost sharing; and
- 10 iv. Reducing an insured's allowable reimbursement for
- 11 pharmacy or pharmacist services; and

12 (b) Shall:

- 13 1. Provide equal access and incentives to all pharmacies within the
- 14 insurer's, pharmacy benefit manager's, other administrator's, or
- 15 health plan's network; and
- 16 2. Offer all pharmacies located in the health plan's geographic coverage
- 17 area eligibility to participate in the insurer's, pharmacy benefit
- 18 manager's, other administrator's, or health plan's network under
- 19 identical reimbursement terms for the provision of pharmacy or
- 20 pharmacist services; and
- 21 (2) A pharmacist shall have the right to provide an insured information regarding
- 22 lower cost alternatives to assist the insured in making informed decisions.

23 ➔SECTION 5. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304

24 IS CREATED TO READ AS FOLLOWS:

25 (1) Any insured, pharmacy, or pharmacist impacted by an alleged violation of

26 Section 2, 3, or 4 of this Act may file a complaint with the commissioner.

27 (2) The commissioner shall:

- 1        (a) Review and investigate all complaints filed under this section;  
 2        (b) Issue, in writing, a determination to the insured, pharmacy, or pharmacist  
 3                as to whether a violation occurred;  
 4        (c) For alleged violations of subsection (2)(b)5. of Section 3 of this Act, consult  
 5                with the Kentucky Board of Pharmacy in making the determination of  
 6                whether a violation occurred; and  
 7        (d) Otherwise comply with KRS 304.2-160 and 304.2-165.  
 8        (3) An insurer, a pharmacy benefit manager, or any other administrator of pharmacy  
 9                benefits shall comply with KRS 304.2-165 and otherwise respond to, and comply  
 10                with, any requests made by the commissioner under this section.

11        ➔SECTION 6. A NEW SECTION OF SUBTITLE 99 OF KRS CHAPTER 304  
 12 IS CREATED TO READ AS FOLLOWS:

13        In addition to any other remedies, penalties, or damages available under common law  
 14        or statute, the commissioner may order reimbursement to any person who has incurred  
 15        a monetary loss as a result of a violation of Section 2, 3, 4, or 5 of this Act.

16        ➔Section 7. KRS 304.9-053 is amended to read as follows:

- 17        (1) (a) In order to conduct business in this state, a pharmacy benefit manager shall  
 18                first obtain a license from the commissioner. The license shall be in lieu of an  
 19                administrator's license as required by KRS 304.9-052.  
 20        (b) A licensed pharmacy benefit manager performing utilization review, as  
 21                defined in KRS 304.17A-600, shall be registered as a private review agent in  
 22                accordance with KRS 304.17A-607.  
 23        (2) (a) A person seeking a pharmacy benefit manager ~~seeking a~~ license shall apply  
 24                to the commissioner in writing on a form provided by the department.  
 25        (b) The application ~~form~~ shall include:~~state~~  
 26                1. The name, address, official position, and professional qualifications of  
 27                each individual responsible for the conduct of affairs of the pharmacy

1 benefit manager, including all members of the board of directors, board  
 2 of trustees, executive committee, other governing board or committee,  
 3 the principal officers in the case of a corporation, the partners or  
 4 members in the case of a partnership or association, and any other  
 5 person who exercises control or influence over the affairs of the  
 6 pharmacy benefit manager; ~~and~~ and

7 **2.** The name and address of the applicant's agent for service of process in  
 8 this state.

9 (3) Each application for a license, and subsequent renewal for a license, shall be  
 10 accompanied by:

11 **(a)** A nonrefundable fee of one thousand dollars (\$1,000); ~~and~~

12 **(b)** Evidence of financial responsibility in an amount of one million dollars  
 13 (\$1,000,000); **and**

14 **(c) Any methodologies utilized, or to be utilized, by the pharmacy benefit**  
 15 **manager in connection with reimbursement, which shall:**

16 **1. Comply with subsection (2)(c) of Section 3 of this Act; and**

17 **2. Be used in determining all appeals under KRS 304.17A-162.**

18 (4) **(a)** ~~[Any person acting as a pharmacy benefit manager on July 15, 2016, and who~~  
 19 ~~is required to obtain a license under subsection (1) of this section, shall obtain~~  
 20 ~~a license from the commissioner not later than January 1, 2017, in order to~~  
 21 ~~continue to do business in this state. If the license fee required in subsection~~  
 22 ~~(3) of this section is submitted after January 1, 2017, a penalty fee of five~~  
 23 ~~hundred dollars (\$500) shall be paid.~~

24 ~~(5)~~ All licenses issued under this section shall be renewed annually in accordance with  
 25 KRS 304.9-260.

26 **(b)** If the renewal fee required ~~by~~ **in** subsection (3) of this section is paid after the  
 27 renewal date, a penalty fee of five hundred dollars (\$500) shall be paid.

1 → Section 8. KRS 304.9-054 is amended to read as follows:

2 (1) (a) Upon receipt of a completed application, ~~[evidence of financial responsibility,~~  
3 ~~and]~~ fee, **and other documentation and information required under Section**  
4 **7 of this Act,** the commissioner shall make a review of each applicant **for a**  
5 **pharmacy benefit manager license.** ~~[and]~~

6 (b) **The commissioner** shall issue a license if:

7 1. The applicant is qualified in accordance with this section and KRS  
8 304.9-053; **and**

9 2. **The commissioner determines, after reasonable investigation, that the**  
10 **applicant, upon licensure, is likely to be in compliance with Sections 1**  
11 **to 5 of this Act.**

12 ~~(c)~~ ~~(2)~~ The commissioner may require **and obtain** additional information or  
13 submissions from applicants ~~[and may obtain any documents or information],~~  
14 **as** reasonably necessary to **comply with this section and** verify the  
15 information contained in the application.

16 ~~(2)~~ ~~(3)~~ (a) The commissioner may suspend, revoke, or refuse to issue or renew any  
17 **pharmacy benefit manager** license in accordance with KRS 304.9-440,  
18 **except that a license shall not be renewed if the licensee is not in**  
19 **compliance with Sections 1 to 5 of this Act.**

20 ~~(b)~~ ~~(4)~~ The commissioner may make determinations on the length of  
21 suspension for **a license** ~~[an applicant],~~ not to exceed twenty-four (24) months.

22 (c) ~~[However, the licensee may have the alternative, subject to the approval of the~~  
23 ~~commissioner, to pay ]~~ In lieu of **servicing** part or all of the days of any  
24 suspension period **determined under paragraph (b) of this subsection, the**  
25 **commissioner may permit a licensee to pay** a sum of one thousand dollars  
26 (\$1,000) per day not to exceed two hundred fifty thousand dollars (\$250,000).

27 ~~(d)~~ ~~(5)~~ If **a pharmacy benefit manager license is denied or revoked** ~~[the~~

1 commissioner's denial or revocation is sustained after a hearing in accordance  
 2 with KRS Chapter 13B], the previous[an] applicant or licensee may make a  
 3 new application not earlier than one (1) full year after the date on which the[a]  
 4 denial or revocation became final[was sustained].

5 ~~(3)~~[(6)] [The department shall promulgate administrative regulations in accordance  
 6 with KRS Chapter 13A to implement and enforce the provisions of this section and  
 7 KRS 205.647, 304.9-053, 304.9-055, and 304.17A-162.]The commissioner shall  
 8 promulgate administrative regulations in accordance with KRS Chapter 13A  
 9 that[shall] specify the contents and format of:

10 (a) The application submitted under subsection (2) of Section 7 of this  
 11 Act:[form] and

12 (b) Any other form, disclosure, or report required or permitted under this section  
 13 or Section 2 or 7 of this Act.

14 ~~(4)~~[(7)] (a) The department may impose a fee upon pharmacy benefit managers, in  
 15 addition to a license fee, to cover the costs of implementation and  
 16 enforcement of KRS 205.647 and any provision of this chapter applicable to  
 17 pharmacy benefit managers, including but not limited to this section and  
 18 KRS [~~205.647,~~]304.9-053, 304.9-055, and 304.17A-162.

19 (b) The fees permitted under paragraph (a) of this subsection shall include[-  
 20 including] fees to cover the cost of:

21 ~~1.~~[(a)] Salaries and benefits paid to the personnel of the department  
 22 engaged in the enforcement;

23 ~~2.~~[(b)] Reasonable technology costs related to the enforcement process.  
 24 Technology costs shall include the actual cost of software and hardware  
 25 utilized in the enforcement process and the cost of training personnel in  
 26 the proper use of the software or hardware; and

27 ~~3.~~[(c)] Reasonable education and training costs incurred by the state to

1 maintain the proficiency and competence of the enforcing personnel.

2 ➔Section 9. KRS 304.9-055 is amended to read as follows:

3 **(1)** Pharmacy benefit managers shall be subject to this subtitle and to the provisions of  
4 Subtitles 1, 2, 3, 4, 12, 14, 17, 17A, 17C, 18, 25, 32, 38, 47, and 99 of KRS Chapter  
5 304 to the extent applicable and not in conflict with the expressed provisions of this  
6 subtitle.

7 **(2)** **The commissioner shall promulgate any administrative regulations in accordance**  
8 **with KRS Chapter 13A that are necessary to implement, enforce, or aid in the**  
9 **effectuation of any provision of this chapter applicable to pharmacy benefit**  
10 **managers, including but not limited to administrative regulations that establish:**

11 **(a) Prohibited practices, including market conduct practices, of pharmacy**  
12 **benefit managers;**

13 **(b) Data reporting requirements; and**

14 **(c) Specifications for the sharing of information with pharmacy affiliates.**

15 ➔Section 10. KRS 304.14-120 is amended to read as follows:

16 (1) **(a) Except as otherwise provided in this section, a** ~~[No]~~ basic insurance policy or  
17 annuity contract form, or application form where written application is  
18 required and is to be made a part of the policy or contract, or printed rider or  
19 indorsement form or form of renewal certificate, shall **not** be delivered, or  
20 issued for delivery in this state, unless the form has been filed with and  
21 approved by the commissioner.

22 **(b)** This **subsection** ~~[provision]~~ shall not apply to:

23 **1.** Any rates filed under Subtitle 17A of this chapter; ~~[;]~~

24 **2.** Surety bonds; ~~[; or to]~~

25 **3.** Specially rated inland marine risks; ~~[;] or [to]~~

26 **4.** Policies, riders, indorsements, or forms of unique character;

27 **a.** Designed for and used with relation to insurance upon a particular



1 subject~~;~~ or

2 **b.** Which relate to the manner or distribution of benefits or to the  
3 reservation of rights and benefits under life or health insurance  
4 policies and are used at the request of the individual policyholder,  
5 contract holder, or certificate holder.

6 **(c)** As to group insurance policies issued and delivered to an association outside  
7 this state but covering persons resident in this state, all or substantially all of  
8 the premiums for which are payable by the insured members, the group  
9 certificates to be delivered or issued for delivery in this state shall be filed  
10 with and approved by the commissioner.

11 **(d)(a)** **1.** As to forms for use in property, marine (other than wet marine and  
12 transportation insurance), casualty, and surety insurance coverages  
13 (other than accident and health), the filing required by this subsection  
14 may be made by advisory organizations or form providers on behalf of  
15 their members and subscribers~~;~~ ~~but this provision~~

16 **2.** **This paragraph** shall not be **construed**~~deemed~~ to prohibit any~~such~~  
17 member or subscriber **of an advisory organization or form provider**  
18 from filing any~~such~~ forms on its own behalf.

19 **(e)(b)** Every advisory organization and form provider shall file with the  
20 commissioner for approval every property and casualty policy form and  
21 endorsement before distribution to members, subscribers, customers, or  
22 others.

23 **(f)(e)** Every property and casualty insurer shall file with the commissioner  
24 notice of adoption before use of any approved form filed by an advisory  
25 organization or form provider or filed by the insurer pursuant to paragraph  
26 **(d)(a)** of this subsection.

27 (2) **(a)** Every~~such~~ filing **required under this section** shall be made not less than

- 1 sixty (60) days in advance of any ~~[such]~~ delivery **of the form in this state.**
- 2 **(b)** At the expiration of ~~[such]~~ sixty (60) days, the form so filed shall be deemed  
3 approved unless prior thereto it has been affirmatively approved or  
4 disapproved by order of the commissioner.
- 5 **(c)** Approval of any **filing** ~~[such form]~~ by the commissioner **under this section**  
6 shall constitute a waiver of any unexpired portion of **the** ~~[such]~~ waiting period  
7 **established under this subsection.**
- 8 **(d)** The commissioner may extend **the waiting period established under**  
9 **paragraph (a) of this subsection** by not more than a thirty (30) day period,  
10 within which **time** he or she may ~~[se]~~ affirmatively approve or disapprove any  
11 **filing** ~~[such form]~~, by giving notice to the insurer of **the** ~~[such]~~ extension before  
12 expiration of the initial sixty (60) day period.
- 13 **(e)** At the expiration of any ~~[such]~~ period ~~[as se]~~ extended **under paragraph (d)**  
14 **of this subsection,** and in the absence of **a** ~~[such]~~ prior affirmative approval or  
15 disapproval, **the filing** ~~[any such form]~~ shall be deemed approved.
- 16 **(f)** The commissioner may at any time, after notice and for cause shown,  
17 withdraw ~~[any such]~~ approval **of any filing.**
- 18 (3) **(a)** Any order of the commissioner disapproving any **filing,** ~~[such form]~~ or any  
19 notice of the commissioner withdrawing a previous approval, shall state the  
20 grounds therefor and the particulars thereof in such detail as reasonably to  
21 inform the insurer ~~[thereof]~~.
- 22 **(b)** Any ~~[such]~~ withdrawal of a previously approved **filing** ~~[form]~~ shall be  
23 effective ~~[at expiration of such period,]~~ not less than thirty (30) days after the  
24 **insurer receives** ~~[giving of the]~~ notice of **the** withdrawal, as the commissioner  
25 shall in such notice prescribe.
- 26 (4) **Except as provided in subsection (6) of this section,** the commissioner may, by  
27 order, exempt from the requirements of this section, for so long as he or she deems

1       proper, any insurance document or form or type thereof, as specified in the  
2       commissioner's~~[such]~~ order, to which, in his or her opinion:~~[-,]~~

3       (a) This section may not practicably be applied:~~[-,]~~ or

4       (b) The filing and approval of~~[- which]~~ are~~[-, in his or her opinion,]~~ not desirable or  
5       necessary for the protection of the public.

6       (5) Appeals from orders of the commissioner disapproving any filing~~[such form]~~ or  
7       withdrawing a previous approval shall be taken as provided in Subtitle 2 of this  
8       chapter.

9       (6) **The commissioner shall:**

10       (a) **Review every filing relating to a health plan, as defined in Section 1 of this**  
11       **Act, for compliance with Sections 1 to 5 of this Act; and**

12       (b) **Not approve any filing referenced in paragraph (a) of this subsection that**  
13       **does not comply with Sections 1 to 5 of this Act.**

14       (7) **As used in**~~[For the purposes of]~~ this section, unless the context requires otherwise:

15       (a) "Advisory organization" has the same meaning as~~[provided]~~ in KRS 304.13-  
16       011; and

17       (b) "Form provider" has the same meaning as~~[provided]~~ in KRS 304.13-011.

18       ➔Section 11. KRS 304.17A-712 is amended to read as follows:

19       (1) **Except as provided in subsection (2) of this section,** if an insurer determines that  
20       payment was made for services rendered to an individual who was not eligible for  
21       coverage or that payment was made for services not covered by a covered person's  
22       health benefit plan, the insurer shall give written notice to the provider and:

23       ~~(a)(1)~~     Request a refund from the provider; or

24       ~~(b)(2)~~     Make a recoupment of the overpayment from the provider in accordance  
25       with KRS 304.17A-714.

26       (2) **An insurer, a pharmacy benefit manager, or any other administrator of pharmacy**  
27       **benefits shall not request a refund or make a recoupment in violation of Section 3**

1 of this Act.

2 ➔Section 12. KRS 304.17C-125 (Effective January 1, 2025) is amended to read  
3 as follows:

4 The following~~[KRS 304.17A-262]~~ shall apply to limited health service benefit plans,  
5 including any limited health service contract, as defined in KRS 304.38A-010:

6 (1) KRS 304.17A-262; and

7 (2) Sections 1 to 5 of this Act.

8 ➔Section 13. KRS 304.38A-115 (Effective January 1, 2025) is amended to read  
9 as follows:

10 Limited health service organizations shall comply with:

11 (1) KRS 304.17A-262;

12 (2) KRS 304.17A-265; and

13 (3) Sections 1 to 5 of this Act.

14 ➔SECTION 14. A NEW SECTION OF KRS CHAPTER 18A IS CREATED TO  
15 READ AS FOLLOWS:

16 (1) Any fully insured health benefit plan, self-insured plan, or other health plan, as  
17 defined in Section 1 of this Act, offered, issued, or renewed to public employees  
18 under KRS 18A.225 or 18A.2254 shall comply with Sections 1 to 5 of this Act,  
19 including any state cabinet, agency, or official that contracts with a third-party  
20 administrator to administer any self-insured plan offered, issued, or renewed to  
21 public employees under KRS 18A.225 or 18A.2254.

22 (2) The plan or plans referred to in subsection (1) of this section shall be filed with  
23 the commissioner of the Department of Insurance, and the commissioner shall  
24 review the plan or plans in accordance with subsection (6) of Section 10 of this  
25 Act.

26 ➔Section 15. KRS 367.828 is amended to read as follows:

27 (1) As used in this section, "health discount plan" means any card, program, device, or

1 mechanism that is not insurance that purports to offer discounts or access to  
2 discounts from a health care provider without recourse to the health discount plan.

3 (2) No person shall sell, market, promote, advertise, or otherwise distribute a health  
4 discount plan unless:

5 (a) The health discount plan clearly states in bold and prominent type on all cards  
6 or other purchasing devices, promotional materials, and advertising that the  
7 discounts are not insurance;

8 (b) The discounts are specifically authorized by an individual and separate  
9 contract with each health care provider listed in conjunction with the health  
10 discount plan;~~and~~

11 (c) The discounts or the range of discounts advertised or offered by the plan are  
12 clearly and conspicuously disclosed to the consumer; **and**

13 **(d) For health discount plans that purport to offer discounts or access to**  
14 **discounts on prescription drugs:**

15 **1. The plan does not utilize the same identifying information used by an**  
16 **insurer under a health insurance policy, certificate, plan, or contract,**  
17 **including but not limited to policy numbers, group numbers, or**  
18 **member identifications; and**

19 **2. The person or plan does not seek, or contract for, the payment of any**  
20 **refunds, recoupments, or fees from a pharmacy or pharmacist.**

21 (3) The provisions of subsection (2) of this section do not apply to the following:

22 (a) A customer discount or membership card issued by a retailer for use in its  
23 own facility; or

24 (b) Any card, program, device, or mechanism that:

25 **1.** Is not insurance;~~and which~~

26 **2.** Is administered by a health insurer authorized to transact the business of  
27 insurance in this state; **and**

1            3. Does not purport to offer discounts or access to discounts on  
 2            prescription drugs.

3        (4) (a) A violation of this section shall be deemed an unfair, false, misleading, or  
 4            deceptive act or practice in the conduct of trade or commerce in violation of  
 5            KRS 367.170.

6            (b) All of the remedies, powers, and duties delegated to the Attorney General by  
 7            KRS 367.190 to 367.300 and penalties pertaining to acts and practices  
 8            declared unlawful under KRS 367.170 shall be applied to acts and practices in  
 9            violation of this section.

10        ➔SECTION 16. A NEW SECTION OF KRS CHAPTER 315 IS CREATED TO  
 11        READ AS FOLLOWS:

12        (1) As used in this section:

13            (a) "Ambulatory pharmacy" has the same meaning as in Section 3 of this Act;  
 14            and

15            (b) "Commissioner" means the commissioner of the Department of Insurance.

16        (2) An ambulatory pharmacy located in Kentucky and permitted under this chapter  
 17        shall, by March 1, 2026, and by March 1 every other year thereafter, provide data  
 18        to the board, in accordance with the requirements of Section 3 of this Act and  
 19        subsection (3) of this section, relating to the pharmacy's dispensing costs for the  
 20        previous calendar year.

21        (3) The board shall promulgate an administrative regulation in accordance with KRS  
 22        Chapter 13A to implement and effectuate subsection (2) of this section, which  
 23        shall include:

24            (a) Incorporating the data elements to be collected from each pharmacy, as  
 25            determined by the commissioner under subsection (2)(c)2.c.i. of Section 3 of  
 26            this Act; and

27            (b) Establishing the reporting format, and the manner, of the data submission.

1 (4) The data collected by the board under this section shall, within thirty (30) days of  
 2 receipt, be shared with the commissioner for the purposes set forth in subsection  
 3 (2)(c)2. of Section 3 of this Act.

4 (5) In carrying out its duties under this section, the board shall cooperate and  
 5 consult with the commissioner.

6 (6) All information and data acquired by the board or the commissioner under this  
 7 section or Section 3 of this Act shall:

8 (a) Be deemed, and protected as, confidential and proprietary; and

9 (b) Not be subject to disclosure under KRS 61.870 to 61.884.

10 (7) The board or the commissioner may retain or contract with one (1) or more third-  
 11 party vendors or contractors to collect or process the data required under this  
 12 section, or provide any other expertise, service, or function necessary to carry out  
 13 the board's or commissioner's duties under this section or Section 3 of this Act, if  
 14 the vendor or contractor:

15 (a) Agrees in a written or electronic record to maintain the confidential and  
 16 proprietary status of the data and all information relating to the data; and

17 (b) Is not owned by or affiliated with a pharmacy benefit manager, as defined  
 18 in KRS 304.9-020.

19 ➔Section 17. KRS 315.191 is amended to read as follows:

20 (1) The board is authorized to:

21 (a) Promulgate administrative regulations pursuant to KRS Chapter 13A  
 22 necessary to regulate and control all matters set forth in this chapter relating to  
 23 pharmacists, pharmacist interns, pharmacy technicians, pharmacies, wholesale  
 24 distributors, and manufacturers, to the extent that regulation and control of  
 25 same have not been delegated to some other agency of the Commonwealth,  
 26 but administrative regulations relating to drugs shall be limited to the  
 27 regulation and control of drugs sold pursuant to a prescription drug order.

- 1           However, *except as provided in Section 16 of this Act*, nothing contained in  
2           this chapter shall be construed as authorizing the board to promulgate any  
3           administrative regulations relating to prices or fees or to advertising or the  
4           promotion of the sales or use of commodities or services;
- 5           (b) Issue subpoenas, schedule and conduct hearings, or appoint hearing officers to  
6           schedule and conduct hearings on behalf of the board on any matter under the  
7           jurisdiction of the board;
- 8           (c) Prescribe the time, place, method, manner, scope, and subjects of  
9           examinations, with at least two (2) examinations to be held annually;
- 10          (d) Issue and renew all licenses, certificates, and permits for all pharmacists,  
11          pharmacist interns, pharmacies, pharmacy technicians, wholesale distributors,  
12          and manufacturers engaged in the manufacture, distribution, or dispensation  
13          of drugs;
- 14          (e) Investigate all complaints or violations of the state pharmacy laws and the  
15          administrative regulations promulgated by the board, and bring all these cases  
16          to the notice of the proper law enforcement authorities;
- 17          (f) Promulgate administrative regulations, pursuant to KRS Chapter 13A, that are  
18          necessary and to control the storage, retrieval, dispensing, refilling, and  
19          transfer of prescription drug orders within and between pharmacists and  
20          pharmacies licensed or issued a permit by it;
- 21          (g) Perform all other functions necessary to carry out the provisions of law and  
22          the administrative regulations promulgated by the board relating to  
23          pharmacists, pharmacist interns, pharmacy technicians, pharmacies, wholesale  
24          distributors, and manufacturers;
- 25          (h) Establish or approve programs for training, qualifications, and registration of  
26          pharmacist interns;
- 27          (i) Assess reasonable fees, in addition to the fees specifically provided for in this



1 chapter and consistent with KRS 61.870 to 61.884, for services rendered to  
2 perform its duties and responsibilities, including, but not limited to, the  
3 following:

- 4 1. Issuance of duplicate certificates;
- 5 2. Mailing lists or reports of data maintained by the board;
- 6 3. Copies of documents; or
- 7 4. Notices of meetings;

8 (j) Seize any drug or device found by the board to constitute an imminent danger  
9 to public health and welfare;

10 (k) 1. Establish an advisory council to advise the board on statutes,  
11 administrative regulations, and other matters within the discretion of the  
12 board pertinent to the practice of pharmacy and regulation of  
13 pharmacists, pharmacist interns, pharmacy technicians, pharmacies,  
14 drug distribution, and drug manufacturing. The council shall provide  
15 recommendations for updating policies and procedures, including  
16 administrative regulations relating to the practice of pharmacy.

17 2. The council shall consist of nine (9) pharmacists broadly representative  
18 of the profession of pharmacy. For purposes of this subparagraph,  
19 "broadly representative" means the following:

- 20 a. Two (2) pharmacists appointed by the Kentucky Pharmacists  
21 Association;
- 22 b. Two (2) pharmacists appointed by the Kentucky Independent  
23 Pharmacy Alliance;
- 24 c. One (1) pharmacist who practices or specializes primarily in a mail  
25 order pharmacy appointed by the Kentucky Pharmacists  
26 Association;
- 27 d. One (1) pharmacist who practices or specializes primarily in a

- 1 long-term care pharmacy appointed by Kentucky Association of  
2 Health Care Facilities;
- 3 e. One (1) pharmacist who practices or specializes primarily in a  
4 veterinary pharmacy appointed by the Kentucky Pharmacists  
5 Association;
- 6 f. One (1) pharmacist who practices or specializes primarily in a  
7 hospital pharmacy appointed by the Kentucky Society of Health-  
8 System Pharmacists; and
- 9 g. One (1) pharmacist who practices in a specialized pharmacy that  
10 solely or mostly provides medication to persons living with serious  
11 health conditions requiring complex therapies, appointed by the  
12 Kentucky Pharmacists Association.
- 13 3. Each pharmacist member shall be licensed by the board, a resident of  
14 Kentucky, and employed for at least two (2) consecutive years in the  
15 practice area he or she represents.
- 16 4. Members shall serve terms of up to four (4) years and may serve two (2)  
17 consecutive terms, but shall not serve on the council for more than two  
18 (2) consecutive terms. Members may continue to serve until their  
19 successors are appointed.
- 20 5. Members shall be confirmed by roll call vote of the board at a meeting  
21 conducted in accordance with the Open Meetings Act, KRS 61.805 to  
22 61.850; and
- 23 (1) Promulgate administrative regulations establishing the qualifications that  
24 pharmacy technicians are required to attain prior to engaging in pharmacy  
25 practice activities outside the immediate supervision of a pharmacist.
- 26 (2) The board shall have other authority as may be necessary to enforce pharmacy laws  
27 and administrative regulations of the board including, but not limited to:

- 1 (a) Joining or participating in professional organizations and associations  
2 organized exclusively to promote improvement of the standards of practice of  
3 pharmacy for the protection of public health and welfare or facilitate the  
4 activities of the board; and
- 5 (b) Receiving and expending funds, in addition to its biennial appropriation,  
6 received from parties other than the state, if:
- 7 1. The funds are awarded for the pursuit of a specific objective which the  
8 board is authorized to enforce through this chapter, or which the board is  
9 qualified to pursue by reason of its jurisdiction or professional expertise;
  - 10 2. The funds are expended for the objective for which they were awarded;
  - 11 3. The activities connected with or occasioned by the expenditure of the  
12 funds do not interfere with the performance of the board's  
13 responsibilities and do not conflict with the exercise of its statutory  
14 powers;
  - 15 4. The funds are kept in a separate account and not commingled with funds  
16 received from the state; and
  - 17 5. Periodic accountings of the funds are maintained at the board office for  
18 inspection or review.
- 19 (3) In addition to the sanctions provided in KRS 315.121, the board or its hearing  
20 officer may direct any licensee, permit holder, or certificate holder found guilty of a  
21 charge involving pharmacy or drug laws, rules, or administrative regulations of the  
22 state, any other state, or federal government, to pay to the board a sum not to  
23 exceed the reasonable costs of investigation and prosecution of the case, not to  
24 exceed twenty-five thousand dollars (\$25,000).
- 25 (4) In an action for recovery of costs, proof of the board's order shall be conclusive  
26 proof of the validity of the order of payment and any terms for payment.
- 27 ➔Section 18. The following KRS section is repealed:

1 304.38A-120 Compliance with KRS 304.17A-265.

2 ➔Section 19. Sections 2, 3, and 4 of this Act apply to contracts issued, delivered,  
3 entered, renewed, extended, or amended on or after January 1, 2025.

4 ➔Section 20. If any provision of this Act, or this Act's application to any person  
5 or circumstance, is held invalid, the invalidity shall not affect other provisions or  
6 applications of the Act, which shall be given effect without the invalid provision or  
7 application, and to this end the provisions and applications of this Act are severable.

8 ➔Section 21. (1) Except as provided in subsection (2) of this section, on or  
9 before January 1, 2025, the commissioner of the Department of Insurance shall  
10 promulgate any emergency and ordinary administrative regulations necessary to  
11 implement the provisions of this Act, including but not limited to the administrative  
12 regulation required under subsection (2)(c)2.c.i. of Section 3 of this Act.

13 (2) On or before June 1, 2026, the commissioner of insurance shall promulgate  
14 any emergency and ordinary administrative regulations required under subsection  
15 (2)(c)2.a. of Section 3 of this Act.

16 ➔Section 22. On or before January 1, 2025, the Kentucky Board of Pharmacy  
17 shall promulgate any emergency and ordinary administrative regulations required under  
18 Section 16 of this Act.

19 ➔Section 23. Sections 1 to 15, 18, and 19 of this Act take effect January 1, 2025.