

1 AN ACT relating to professional dispensing fees for prescription drugs and
2 declaring an emergency.

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

4 ➔Section 1. KRS 304.17A-595 is amended to read as follows:

5 (1) As used in this section:

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

- 8 1. Is duplicative because the pharmacy or pharmacist has already been paid
9 for the services; or
- 10 2. Was erroneously paid because the services were not rendered in
11 accordance with the prescriber's order, in which case only the amount
12 paid for that portion of the prescription that was filled incorrectly or in
13 excess of the prescriber's order may be deemed an actual overpayment.
14 The amount denied, refunded, or recouped shall not include the
15 dispensing fee paid to the pharmacy if the correct medication was
16 dispensed to the patient;

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

- 18 1. Is open to the general public; and
- 19 2. Dispenses outpatient prescription drugs;

20 (c) "National average drug acquisition cost" means the national average drug
21 acquisition cost, or NADAC, for a prescription drug or other service that is:

- 22 1. Determined by a survey of retail pharmacies; and
- 23 2. Published by the federal Centers for Medicare and Medicaid Services;

24 (d) "National drug code number" means the unique national drug code number
25 that identifies a specific approved drug, its manufacturer, and its package
26 presentation;

27 (e) "Net amount" means the amount paid to the pharmacy or pharmacist by the

1 insurer, pharmacy benefit manager, or other administrator less any fees, price
2 concessions, and all other revenue passing from the pharmacy or pharmacist
3 to the insurer, pharmacy benefit manager, or other administrator; and

4 (f) "Wholesale acquisition cost" means the manufacturer's list price for the drug
5 to wholesalers or direct purchasers in the United States, not including prompt
6 pay or other discounts, rebates, or reductions in price, for the most recent
7 month for which the information is available, as reported in wholesale price
8 guides or other publications of drug pricing data.

9 (2) To the extent permitted under federal law, every contract between a pharmacy or
10 pharmacist and an insurer, a pharmacy benefit manager, or any other administrator
11 of pharmacy benefits for the provision of pharmacy or pharmacist services under a
12 health plan, either directly or through a pharmacy services administration
13 organization or group purchasing organization, shall:

14 (a) Outline the terms and conditions for the provision of pharmacy or pharmacist
15 services;

16 (b) Prohibit the insurer, pharmacy benefit manager, or other administrator from:

17 1. Reducing payment for pharmacy or pharmacist services, directly or
18 indirectly, under a reconciliation process to an effective rate of
19 reimbursement. This prohibition shall include, without limitation,
20 creating, imposing, or establishing direct or indirect remuneration fees,
21 generic effective rates, dispensing effective rates, brand effective rates,
22 any other effective rates, in-network fees, performance fees, point-of-
23 sale fees, retroactive fees, pre-adjudication fees, post-adjudication fees,
24 and any other mechanism that reduces, or aggregately reduces, payment
25 for pharmacy or pharmacist services;

26 2. Retroactively denying, reducing reimbursement for, or seeking any
27 refunds or recoupments for a claim for pharmacy or pharmacist services,

- 1 in whole or in part, from the pharmacy or pharmacist after returning a
2 paid claim response as part of the adjudication of the claim, including
3 claims for the cost of a medication or dispensed product and claims for
4 pharmacy or pharmacist services that are deemed ineligible for
5 coverage, unless one (1) or more of the following occurred:
- 6 a. The original claim was submitted fraudulently; or
 - 7 b. The pharmacy or pharmacist received an actual overpayment;
 - 8 3. Reimbursing the pharmacy or pharmacist for a prescription drug or other
9 service at a net amount that is lower than the amount the insurer,
10 pharmacy benefit manager, or other administrator reimburses itself or a
11 pharmacy affiliate for the same:
 - 12 a. Prescription drug by national drug code number; or
 - 13 b. Service;
 - 14 4. Collecting cost sharing from a pharmacy or pharmacist that was
15 provided to the pharmacy or pharmacist by an insured for the provision
16 of pharmacy or pharmacist services under the health plan; and
 - 17 5. Designating a prescription drug as a specialty drug unless the drug is a
18 limited distribution drug that:
 - 19 a. Requires special handling; and
 - 20 b. Is not commonly carried at retail pharmacies or oncology clinics
21 or practices; and
- 22 (c) Notwithstanding any other law, provide the following minimum
23 reimbursements to the pharmacy or pharmacist for each prescription drug or
24 other service provided by the pharmacy or pharmacist:
- 25 1. a. Except as provided in subdivision b. of this subparagraph,
26 reimbursement for the cost of the drug or other service at an
27 amount that is not less than:

- 1 i. The national average drug acquisition cost for the drug or
2 service at the time the drug or service is administered,
3 dispensed, or provided; or
- 4 ii. If the national average drug acquisition cost is not available
5 at the time a drug is administered or dispensed, the wholesale
6 acquisition cost for the drug at the time the drug is
7 administered or dispensed.
- 8 b. The minimum reimbursement for the cost of a drug or other
9 service required under this subparagraph shall not apply to a
10 pharmacy permitted under KRS Chapter 315 with a designated
11 pharmacy type of "retail chain" on file with the Kentucky Board of
12 Pharmacy, or a pharmacist practicing at such a pharmacy, until a
13 determination by the commissioner under subparagraph 2.a. of this
14 paragraph has taken effect.
- 15 c. For purposes of complying with this subparagraph, the insurer,
16 pharmacy benefit manager, or other administrator shall utilize the
17 most recently published monthly national average drug acquisition
18 cost as a point of reference for the ingredient drug product
19 component of a pharmacy's or pharmacist's reimbursement for
20 drugs appearing on the national average drug acquisition cost list;
21 and
- 22 2. a. Except as provided in subdivision b. of this subparagraph, for
23 health plan years beginning on or after January 1, 2027,
24 reimbursement for a professional dispensing fee that is not less
25 than the average cost to dispense a prescription drug in an
26 ambulatory pharmacy located in Kentucky, as determined by the
27 commissioner in an administrative regulation promulgated in

- 1 accordance with KRS Chapter 13A.
- 2 b. ~~[i.—]~~The minimum dispensing fee required under subdivision a.
- 3 of this subparagraph shall not apply to a mail-order pharmaceutical
- 4 distributor, including a mail-order pharmacy.
- 5 ~~[ii.— For health plan years beginning prior to January 1, 2027, and~~
- 6 ~~for any future health plan years for which a determination by~~
- 7 ~~the commissioner under subdivision a. of this subparagraph~~
- 8 ~~has not taken effect, the minimum dispensing fee for a~~
- 9 ~~pharmacy permitted under KRS Chapter 315 with a~~
- 10 ~~designated pharmacy type of "retail independent" on file~~
- 11 ~~with the Kentucky Board of Pharmacy, or a pharmacist~~
- 12 ~~practicing at such a pharmacy, shall be not less than ten~~
- 13 ~~dollars and sixty four cents (\$10.64).]~~
- 14 c. In acquiring data for, and making, the determination required
- 15 under subdivision a. of this subparagraph, the commissioner shall:
- 16 i. Promulgate an administrative regulation in accordance with
- 17 KRS Chapter 13A that establishes the data elements to be
- 18 collected by the Kentucky Board of Pharmacy under KRS
- 19 315.038;
- 20 ii. Conduct a study of the dispensing data submitted to the
- 21 commissioner by the Kentucky Board of Pharmacy in
- 22 accordance with KRS 315.038;
- 23 iii. Repeat the study every two (2) years to obtain updated
- 24 information;
- 25 iv. Adjust the determination every two (2) years as appropriate
- 26 based upon the results of each study; and
- 27 v. Comply with all requirements of KRS 315.038.

1 d. In carrying out his or her duties under this subparagraph, the
2 commissioner shall cooperate and consult with the Kentucky
3 Board of Pharmacy.

4 ➔Section 2. This Act applies to contracts entered on or after the effective date of
5 this Act.

6 ➔Section 3. Whereas there is a significant and legitimate need to stabilize the cost
7 of prescription drugs for retail pharmacy patients, an emergency is declared to exist, and
8 this Act takes effect upon its passage and approval by the Governor or upon its otherwise
9 becoming a law.