

1 AN ACT relating to prescription drugs.

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

3 ➔Section 1. KRS 304.17A-164 is amended to read as follows:

4 (1) As used in this section:

5 (a) **"Cash price"**:

6 **1. Means the price an insured would pay for a prescription drug to the**
7 **following:**

8 **a. A pharmacy;**

9 **b. A manufacturer; or**

10 **c. Any other person in connection with the lawful dispensing or**
11 **administration of a prescription drug;**

12 **if the insured were to purchase the drug without coverage under the**
13 **insured's health plan; and**

14 **2. Includes any price for a prescription drug that is lawfully available**
15 **directly to consumers via a card, program, device, website, or other**
16 **mechanism;**

17 **(b) "Cost sharing"** means the cost to an insured under a health plan, according to
18 any coverage limit, copayment, coinsurance, deductible, or other out-of-
19 pocket expense requirements imposed by the plan, ~~{which may be subject to~~
20 annual limitations on cost sharing, including those imposed under 42 U.S.C.
21 secs. 18022(c) and 300gg 6(b),} in order for the insured to receive a specific
22 health care **benefit**~~{service}~~ covered by the plan;

23 **[{b) "Generic alternative"** means a drug that is designated to be therapeutically
24 equivalent by the United States Food and Drug Administration's Approved
25 Drug Products with Therapeutic Equivalence Evaluations, except that a drug
26 shall not be considered a generic alternative until the drug is nationally
27 available;}

1 (c) "Health plan":

2 1. Means any health insurance[a] policy, contract, certificate, or

3 plan[agreement] offered or provided[issued] by an insurer under state

4 or federal law that provides coverage:[to provide, deliver, arrange for,

5 pay for, or reimburse any of the cost of health care services]

6 a. On an expense-incurred basis for prescription drugs dispensed
7 or administered in Kentucky;
8 b. By direct payment, reimbursement, or otherwise; and
9 c. On a fully insured or self-insured basis or any combination
10 thereof; and

11 2. Includes:

14 c. Student health insurance offered by a Kentucky-licensed insurer
15 under written contract with a university or college whose
16 students it proposes to insure; and

17 *d. A limited health service benefit plan as defined in KRS 304.17C-*
18 *010, which includes:*

23 e. Coverage that is advertised, marketed, or designed primarily as a
24 supplement to reimbursements under Medicare for any expenses
25 of a person eligible for Medicare; and

f. Medicare Advantage plans established under Medicare Part C;

1 behalf the insurer is obligated to pay for or provide health care [services];

2 (e) "Insurer" includes:

5 2. A limited health service organization as defined in KRS 304.38A-
6 010[Any other administrator of pharmacy benefits under a health plan];

7

3. Any other person offering or providing a health plan;

9 (f) “Person” means a natural person, corporation, mutual company,
10 unincorporated association, partnership, joint venture, limited liability
11 company, trust, estate, foundation, nonprofit corporation, unincorporated
12 organization, government, or governmental subdivision or agency;

13 (g) "Pharmacy" includes:

14 1. A pharmacy, as defined in KRS Chapter 315;

15 2. A pharmacist, as defined in KRS Chapter 315; and

17 **(g)(h)** "Pharmacy benefit manager" has the same meaning as in KRS 304.9-
18 **020**[304.17A-161].

19 (2) To the extent permitted under federal law and except as provided in subsection (4)
20 of this section, an insurer ~~issuing or renewing a health plan on or after January 1,~~
21 ~~2022~~, ~~or~~ a pharmacy benefit manager, or any other administrator of pharmacy
22 benefits:

24 1.[(a)] Require an insured purchasing a prescription drug covered under
25 the insured's health plan to pay cost sharing for the drug in an~~a cost~~
26 ~~sharing]~~ amount greater than the cash price~~amount the insured would~~
27 ~~pay for the drug if he or she were to purchase the drug without~~

~~coverage~~];

{(b) ~~Exclude any cost sharing amounts paid by an insured or on behalf of an insured by another person for a prescription drug, including any amount paid under paragraph (a) of this subsection, when calculating an insured's contribution to any applicable cost sharing requirement. The requirements of this paragraph shall not apply:~~

1. In the case of a prescription drug for which there is a generic alternative, unless the insured has obtained access to the brand prescription drug through prior authorization, a step therapy protocol, or the insurer's exceptions and appeals process; or
2. To any fully insured health benefit plan or self insured plan provided to any employee under KRS 18A.225;]

2. [e] Prohibit a pharmacy from discussing any information under subsection (3) of this section; or

3.[(d)] Impose a penalty on a pharmacy for complying with this section;
and

(b) Shall:

1. a. Count the amount paid by an insured, or on behalf of an insured, for a prescription drug covered under the insured's health plan towards the insured's contributions to any applicable cost sharing.

b. As used in this subparagraph, "amount paid" includes any cash price paid that does not exceed the negotiated price for the drug under the insured's health plan;

2. Provide and maintain clear, easily accessible, and written procedures for an insured, a pharmacy, a manufacturer, or any other person to submit proof to the insured's insurer of any cash price paid by the

insured or on behalf of the insured; and

3. Ensure that every contract entered with a pharmacy for the provision of pharmacy or pharmacist services under a health plan, either directly or through a pharmacy services administration organization or group purchasing organization, requires the parties to comply with this section.

7 (3) (a) A pharmacy[pharmacist] shall have the right to provide an insured
8 information regarding the requirements of[applicable limitations on his or her
9 cost sharing pursuant to] this section[for a prescription drug].

(b) For each cash price paid by an insured, or on behalf of an insured, to a pharmacy, the pharmacy shall submit proof of the payment to the insured's insurer in accordance with the written procedures established by the insurer under subsection (2)(b)2. of this section.

14 (4) (a) The requirements of subsection (2)(b)1. of this section shall not apply to a
15 fully insured health benefit plan or self-insured plan provided to an
16 employee under Section 5 of this Act unless the amount paid for a
17 prescription drug covered under the plan was paid:

1. By an insured; or

2. *On behalf of an insured by:*

a. A parent of the insured if the insured is a child;

b. The insured's spouse, guardian, or conservator;

c. A trustee that makes payments on behalf of the insured under a trust to which the insured is a beneficiary;

d. An executor or administrator of the insured's estate; or

e. An attorney-in-fact or other agent of the insured that makes payments on behalf of the insured using the insured's funds.

27 (b) If the application of any requirement of [subsection (2)(b) of] this section

1 would be the sole cause of a health plan's failure to qualify as a Health
2 Savings Account-qualified High Deductible Health Plan under 26 U.S.C. sec.
3 223, as amended, then the requirement shall not apply to that health plan until
4 the minimum deductible under 26 U.S.C. sec. 223, as amended, is satisfied.

5 (5) (a) *This section shall not be construed to limit coverage:*

6 1. *Provided under a health plan; or*

7 2. *Required under any other law.*

8 (b) *In the case of a conflict between this section and any other law, this section*
9 *shall control unless application of this section would result in a reduction of*
10 *coverage or benefits for any insured.*

11 ➔ Section 2. KRS 304.17C-125 is amended to read as follows:

12 The following shall apply to limited health service benefit plans, including any limited
13 health service contract, as defined in KRS 304.38A-010:

14 (1) KRS 304.17A-129;

15 (2) *Section 1 of this Act;*

16 (3) KRS 304.17A-262; and

17 (4){(3)} KRS 304.17A-591 to 304.17A-599.

18 ➔ Section 3. KRS 304.38A-115 is amended to read as follows:

19 Limited health service organizations shall comply with:

20 (1) *Section 1 of this Act;*

21 (2) KRS 304.17A-262;

22 (3){(2)} KRS 304.17A-265; and

23 (4){(3)} KRS 304.17A-591 to 304.17A-599.

24 ➔ Section 4. KRS 164.2871 is amended to read as follows:

25 (1) The governing board of each state postsecondary educational institution is
26 authorized to purchase liability insurance for the protection of the individual
27 members of the governing board, faculty, and staff of such institutions from liability

1 for acts and omissions committed in the course and scope of the individual's
2 employment or service. Each institution may purchase the type and amount of
3 liability coverage deemed to best serve the interest of such institution.

4 (2) All retirement annuity allowances accrued or accruing to any employee of a state
5 postsecondary educational institution through a retirement program sponsored by
6 the state postsecondary educational institution are hereby exempt from any state,
7 county, or municipal tax, and shall not be subject to execution, attachment,
8 garnishment, or any other process whatsoever, nor shall any assignment thereof be
9 enforceable in any court. Except retirement benefits accrued or accruing to any
10 employee of a state postsecondary educational institution through a retirement
11 program sponsored by the state postsecondary educational institution on or after
12 January 1, 1998, shall be subject to the tax imposed by KRS 141.020, to the extent
13 provided in KRS 141.010 and 141.0215.

14 (3) Except as provided in KRS Chapter 44, the purchase of liability insurance for
15 members of governing boards, faculty and staff of institutions of higher education
16 in this state shall not be construed to be a waiver of sovereign immunity or any
17 other immunity or privilege.

18 (4) The governing board of each state postsecondary education institution is authorized
19 to provide a self-insured employer group health plan to its employees, which plan
20 shall:

21 (a) Conform to the requirements of Subtitle 32 of KRS Chapter 304; and
22 (b) Except as provided in subsection (5) of this section, be exempt from
23 conformity with Subtitle 17A of KRS Chapter 304.

24 (5) A self-insured employer group health plan provided by the governing board of a
25 state postsecondary education institution to its employees shall comply with:
26 (a) KRS 304.17A-129;
27 (b) KRS 304.17A-133;

(c) KRS 304.17A-145;

(d) KRS 304.17A-163 and 304.17A-1631;

(e) **Section 1 of this Act;**

(f) KRS 304.17A-261;

(g) ~~(f)~~ KRS 304.17A-262;

(h) ~~(g)~~ KRS 304.17A-264; and

(i) ~~(h)~~ KRS 304.17A-265.

(6) (a) A self-insured employer group health plan provided by the governing board of a state postsecondary education institution to its employees shall provide a special enrollment period to pregnant women who are eligible for coverage in accordance with the requirements set forth in KRS 304.17-182.

(b) The governing board of a state postsecondary education institution shall, at or before the time an employee is initially offered the opportunity to enroll in the plan or coverage, provide the employee a notice of the special enrollment rights under this subsection.

➔ Section 5. KRS 18A.225 is amended to read as follows:

(1) (a) The term "employee" for purposes of this section means:

1. Any person, including an elected public official, who is regularly employed by any department, office, board, agency, or branch of state government; or by a public postsecondary educational institution; or by any city, urban-county, charter county, county, or consolidated local government, whose legislative body has opted to participate in the state-sponsored health insurance program pursuant to KRS 79.080; and who is either a contributing member to any one (1) of the retirement systems administered by the state, including but not limited to the Kentucky Retirement Systems, County Employees Retirement System, Kentucky Teachers' Retirement System, the Legislators' Retirement Plan, or the

10 2. Any certified or classified employee of a local board of education or a
11 public charter school as defined in KRS 160.1590;

12 3. Any elected member of a local board of education;

13 4. Any person who is a present or future recipient of a retirement
14 allowance from the Kentucky Retirement Systems, County Employees
15 Retirement System, Kentucky Teachers' Retirement System, the
16 Legislators' Retirement Plan, the Judicial Retirement Plan, or the
17 Kentucky Community and Technical College System's optional
18 retirement plan authorized by KRS 161.567, except that a person who is
19 receiving a retirement allowance and who is age sixty-five (65) or older
20 shall not be included, with the exception of persons covered under KRS
21 61.702(2)(b)3. and 78.5536(2)(b)3., unless he or she is actively
22 employed pursuant to subparagraph 1. of this paragraph; and

23 5. Any eligible dependents and beneficiaries of participating employees
24 and retirees who are entitled to participate in the state-sponsored health
25 insurance program;

26 (b) The term "health benefit plan" for the purposes of this section means a health
27 benefit plan as defined in KRS 304.17A-005;

1 Commonwealth or, if a self-funded plan is not available, from a list of
2 coverage options determined by the competitive bid process under the
3 provisions of KRS 45A.080, 45A.085, and 45A.090 and made available
4 during annual open enrollment.

5 (b) The policy or policies shall be approved by the commissioner of insurance
6 and may contain the provisions the commissioner of insurance approves,
7 whether or not otherwise permitted by the insurance laws.

8 (c) Any carrier bidding to offer health care coverage to employees shall agree to
9 provide coverage to all members of the state group, including active
10 employees and retirees and their eligible covered dependents and
11 beneficiaries, within the county or counties specified in its bid. Except as
12 provided in subsection (20) of this section, any carrier bidding to offer health
13 care coverage to employees shall also agree to rate all employees as a single
14 entity, except for those retirees whose former employers insure their active
15 employees outside the state-sponsored health insurance program and as
16 otherwise provided in KRS 61.702(2)(b)3.b. and 78.5536(2)(b)3.b.

17 (d) Any carrier bidding to offer health care coverage to employees shall agree to
18 provide enrollment, claims, and utilization data to the Commonwealth in a
19 format specified by the Personnel Cabinet with the understanding that the data
20 shall be owned by the Commonwealth; to provide data in an electronic form
21 and within a time frame specified by the Personnel Cabinet; and to be subject
22 to penalties for noncompliance with data reporting requirements as specified
23 by the Personnel Cabinet. The Personnel Cabinet shall take strict precautions
24 to protect the confidentiality of each individual employee; however,
25 confidentiality assertions shall not relieve a carrier from the requirement of
26 providing stipulated data to the Commonwealth.

27 (e) The Personnel Cabinet shall develop the necessary techniques and capabilities

1 for timely analysis of data received from carriers and, to the extent possible,
2 provide in the request-for-proposal specifics relating to data requirements,
3 electronic reporting, and penalties for noncompliance. The Commonwealth
4 shall own the enrollment, claims, and utilization data provided by each carrier
5 and shall develop methods to protect the confidentiality of the individual. The
6 Personnel Cabinet shall include in the October annual report submitted
7 pursuant to the provisions of KRS 18A.226 to the Governor, the General
8 Assembly, and the Chief Justice of the Supreme Court, an analysis of the
9 financial stability of the program, which shall include but not be limited to
10 loss ratios, methods of risk adjustment, measurements of carrier quality of
11 service, prescription coverage and cost management, and statutorily required
12 mandates. If state self-insurance was available as a carrier option, the report
13 also shall provide a detailed financial analysis of the self-insurance fund
14 including but not limited to loss ratios, reserves, and reinsurance agreements.

15 (f) If any agency participating in the state-sponsored employee health insurance
16 program for its active employees terminates participation and there is a state
17 appropriation for the employer's contribution for active employees' health
18 insurance coverage, then neither the agency nor the employees shall receive
19 the state-funded contribution after termination from the state-sponsored
20 employee health insurance program.

21 (g) Any funds in flexible spending accounts that remain after all reimbursements
22 have been processed shall be transferred to the credit of the state-sponsored
23 health insurance plan's appropriation account.

24 (h) Each entity participating in the state-sponsored health insurance program shall
25 provide an amount at least equal to the state contribution rate for the employer
26 portion of the health insurance premium. For any participating entity that used
27 the state payroll system, the employer contribution amount shall be equal to

1 but not greater than the state contribution rate.

2 (3) The premiums may be paid by the policyholder:

3 (a) Wholly from funds contributed by the employee, by payroll deduction or

4 otherwise;

5 (b) Wholly from funds contributed by any department, board, agency, public

6 postsecondary education institution, or branch of state, city, urban-county,

7 charter county, county, or consolidated local government; or

8 (c) Partly from each, except that any premium due for health care coverage or

9 dental coverage, if any, in excess of the premium amount contributed by any

10 department, board, agency, postsecondary education institution, or branch of

11 state, city, urban-county, charter county, county, or consolidated local

12 government for any other health care coverage shall be paid by the employee.

13 (4) If an employee moves his or her place of residence or employment out of the

14 service area of an insurer offering a managed health care plan, under which he or

15 she has elected coverage, into either the service area of another managed health care

16 plan or into an area of the Commonwealth not within a managed health care plan

17 service area, the employee shall be given an option, at the time of the move or

18 transfer, to change his or her coverage to another health benefit plan.

19 (5) No payment of premium by any department, board, agency, public postsecondary

20 educational institution, or branch of state, city, urban-county, charter county,

21 county, or consolidated local government shall constitute compensation to an

22 insured employee for the purposes of any statute fixing or limiting the

23 compensation of such an employee. Any premium or other expense incurred by any

24 department, board, agency, public postsecondary educational institution, or branch

25 of state, city, urban-county, charter county, county, or consolidated local

26 government shall be considered a proper cost of administration.

27 (6) The policy or policies may contain the provisions with respect to the class or classes

1 of employees covered, amounts of insurance or coverage for designated classes or
2 groups of employees, policy options, terms of eligibility, and continuation of
3 insurance or coverage after retirement.

4 (7) Group rates under this section shall be made available to the disabled child of an
5 employee regardless of the child's age if the entire premium for the disabled child's
6 coverage is paid by the state employee. A child shall be considered disabled if he or
7 she has been determined to be eligible for federal Social Security disability benefits.

8 (8) The health care contract or contracts for employees shall be entered into for a
9 period of not less than one (1) year.

10 (9) The secretary shall appoint thirty-two (32) persons to an Advisory Committee of
11 State Health Insurance Subscribers to advise the secretary or the secretary's
12 designee regarding the state-sponsored health insurance program for employees.
13 The secretary shall appoint, from a list of names submitted by appointing
14 authorities, members representing school districts from each of the seven (7)
15 Supreme Court districts, members representing state government from each of the
16 seven (7) Supreme Court districts, two (2) members representing retirees under age
17 sixty-five (65), one (1) member representing local health departments, two (2)
18 members representing the Kentucky Teachers' Retirement System, and three (3)
19 members at large. The secretary shall also appoint two (2) members from a list of
20 five (5) names submitted by the Kentucky Education Association, two (2) members
21 from a list of five (5) names submitted by the largest state employee organization of
22 nonschool state employees, two (2) members from a list of five (5) names submitted
23 by the Kentucky Association of Counties, two (2) members from a list of five (5)
24 names submitted by the Kentucky League of Cities, and two (2) members from a
25 list of names consisting of five (5) names submitted by each state employee
26 organization that has two thousand (2,000) or more members on state payroll
27 deduction. The advisory committee shall be appointed in January of each year and

1 shall meet quarterly.

2 (10) Notwithstanding any other provision of law to the contrary, the policy or policies
3 provided to employees pursuant to this section shall not provide coverage for
4 obtaining or performing an abortion, nor shall any state funds be used for the
5 purpose of obtaining or performing an abortion on behalf of employees or their
6 dependents.

7 (11) Interruption of an established treatment regime with maintenance drugs shall be
8 grounds for an insured to appeal a formulary change through the established appeal
9 procedures approved by the Department of Insurance, if the physician supervising
10 the treatment certifies that the change is not in the best interests of the patient.

11 (12) Any employee who is eligible for and elects to participate in the state health
12 insurance program as a retiree, or the spouse or beneficiary of a retiree, under any
13 one (1) of the state-sponsored retirement systems shall not be eligible to receive the
14 state health insurance contribution toward health care coverage as a result of any
15 other employment for which there is a public employer contribution. This does not
16 preclude a retiree and an active employee spouse from using both contributions to
17 the extent needed for purchase of one (1) state sponsored health insurance policy
18 for that plan year.

19 (13) (a) The policies of health insurance coverage procured under subsection (2) of
20 this section shall include a mail-order drug option for maintenance drugs for
21 state employees. Maintenance drugs may be dispensed by mail order in
22 accordance with Kentucky law.

23 (b) A health insurer shall not discriminate against any retail pharmacy located
24 within the geographic coverage area of the health benefit plan and that meets
25 the terms and conditions for participation established by the insurer, including
26 price, dispensing fee, and copay requirements of a mail-order option. The
27 retail pharmacy shall not be required to dispense by mail.

- 1 (19) The Personnel Cabinet is encouraged to study whether it is fair and reasonable and
2 in the best interests of the state group to allow any carrier bidding to offer health
3 care coverage under this section to submit bids that may vary county by county or
4 by larger geographic areas.
- 5 (20) Notwithstanding any other provision of this section, the bid for proposals for health
6 insurance coverage for calendar year 2004 shall include a bid scenario that reflects
7 the statewide rating structure provided in calendar year 2003 and a bid scenario that
8 allows for a regional rating structure that allows carriers to submit bids that may
9 vary by region for a given product offering as described in this subsection:
 - 10 (a) The regional rating bid scenario shall not include a request for bid on a
11 statewide option;
 - 12 (b) The Personnel Cabinet shall divide the state into geographical regions which
13 shall be the same as the partnership regions designated by the Department for
14 Medicaid Services for purposes of the Kentucky Health Care Partnership
15 Program established pursuant to 907 KAR 1:705;
 - 16 (c) The request for proposal shall require a carrier's bid to include every county
17 within the region or regions for which the bid is submitted and include but not
18 be restricted to a preferred provider organization (PPO) option;
 - 19 (d) If the Personnel Cabinet accepts a carrier's bid, the cabinet shall award the
20 carrier all of the counties included in its bid within the region. If the Personnel
21 Cabinet deems the bids submitted in accordance with this subsection to be in
22 the best interests of state employees in a region, the cabinet may award the
23 contract for that region to no more than two (2) carriers; and
 - 24 (e) Nothing in this subsection shall prohibit the Personnel Cabinet from including
25 other requirements or criteria in the request for proposal.
- 26 (21) Any fully insured health benefit plan or self-insured plan issued or renewed on or
27 after July 12, 2006, to public employees pursuant to this section which provides

1 coverage for services rendered by a physician or osteopath duly licensed under KRS
2 Chapter 311 that are within the scope of practice of an optometrist duly licensed
3 under the provisions of KRS Chapter 320 shall provide the same payment of
4 coverage to optometrists as allowed for those services rendered by physicians or
5 osteopaths.

6 (22) Any fully insured health benefit plan or self-insured plan issued or renewed to
7 public employees pursuant to this section shall comply with:
8 (a) KRS 304.12-237;
9 (b) KRS 304.17A-270 and 304.17A-525;
10 (c) KRS 304.17A-600 to 304.17A-633;
11 (d) KRS 205.593;
12 (e) KRS 304.17A-700 to 304.17A-730;
13 (f) KRS 304.14-135;
14 (g) KRS 304.17A-580 and 304.17A-641;
15 (h) KRS 304.99-123;
16 (i) KRS 304.17A-138;
17 (j) KRS 304.17A-148;
18 (k) KRS 304.17A-163 and 304.17A-1631;
19 (l) **Section 1 of this Act;**
20 (m) KRS 304.17A-265;
21 (n) KRS 304.17A-261;
22 (o) KRS 304.17A-262;
23 (p) KRS 304.17A-145;
24 (q) KRS 304.17A-129;
25 (r) KRS 304.17A-133;
26 (s) KRS 304.17A-264; and
27 (t) Administrative regulations promulgated pursuant to statutes listed in this

1 subsection.

2 (23) (a) Any fully insured health benefit plan or self-insured plan issued or renewed to
3 public employees pursuant to this section shall provide a special enrollment
4 period to pregnant women who are eligible for coverage in accordance with
5 the requirements set forth in KRS 304.17-182.

6 (b) The Department of Employee Insurance shall, at or before the time a public
7 employee is initially offered the opportunity to enroll in the plan or coverage,
8 provide the employee a notice of the special enrollment rights under this
9 subsection.

10 ➔ SECTION 6. A NEW SECTION OF KRS CHAPTER 315 IS CREATED TO
11 READ AS FOLLOWS:

12 A pharmacy shall comply with subsection (3)(b) of Section 1 of this Act.

13 ➔ Section 7. Sections 1 to 5 of this Act apply to health plans issued or renewed on
14 or after January 1, 2027.

15 ➔ Section 8. This Act takes effect on January 1, 2027.