

1 AN ACT relating to coverage of mental health wellness examinations.

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 (1) As used in this section:

6 (a) "Health plan" means any of the following that offer or provide coverage in
7 this state for mental health or substance use disorder benefits:

8 1. A fully-insured health insurance policy, certificate, contract, or plan;
9 2. A self-insured employer group health plan provided by the governing
10 board of a state postsecondary education institution under KRS
11 Chapter 164; and

12 3. A fully insured health benefit plan or self-insured plan issued or
13 renewed to public employees under KRS Chapter 18A;

14 (b) "Mental health professional" means any of the following persons engaged
15 in providing mental health services:

16 1. A physician or psychiatrist licensed to practice medicine or osteopathy
17 under KRS Chapter 311;

18 2. A medical officer of the government of the United States;
19 3. A licensed psychologist, licensed psychological practitioner, certified
20 psychologist, or licensed psychological associate, licensed under KRS
21 Chapter 319;

22 4. A certified nurse practitioner or clinical nurse specialist with a
23 psychiatric, primary care, or mental health population focus licensed
24 to engage in advanced practice nursing under KRS 314.042;

25 5. A licensed clinical social worker licensed under KRS 335.100 or a
26 certified social worker licensed under KRS 335.080;

27 6. A licensed marriage and family therapist licensed under KRS 335.330

or a marriage and family therapist associate holding a permit under KRS 335.332;

7. A licensed professional clinical counselor or licensed professional counselor associate, licensed under KRS 335.500 to 335.599;

8. A licensed professional art therapist licensed under KRS 309.133 or a licensed professional art therapist associate licensed under KRS 309.134;

9. A Kentucky licensed pastoral counselor licensed under KRS 335.600 to 335.699;

10. A licensed clinical alcohol and drug counselor, licensed clinical alcohol and drug counselor associate, or certified alcohol and drug counselor, licensed or certified under KRS 309.080 to 309.089; and

11. A physician assistant licensed under KRS 311.840 to 311.862; and

(c) "Mental health wellness examination" includes but is not limited to:

1. A behavioral health screening;

2. Education and consultation on healthy lifestyle changes;

3. Referrals to ongoing treatment, mental health services, and other supports; and

4. Age-appropriate screenings, observations, and when appropriate, relevant adult input through screenings, interviews, and questions, to understand a person's mental health history, personal history, and mental or cognitive state.

23 (2) To the extent permitted by federal law, all health plans shall provide coverage for
24 an annual standalone mental health wellness examination that is performed by a
25 mental health professional.

26 (3) Except as provided in subsection (4) of this section, the coverage required by this
27 section shall:

1 (a) Be no less extensive than the coverage provided for medical and surgical
2 benefits;

3 (b) Comply with the Mental Health Parity and Addiction Equity Act of 2008,
4 codified at 42 U.S.C. sec. 300gg-26, as amended; and

5 (c) Not be subject to copayments, coinsurance, deductibles, or any other cost-
6 sharing requirements.

7 (4) If the application of any requirement of this section would be the sole cause of a
8 health plan's failure to qualify as a Health Savings Account-qualified High
9 Deductible Health Plan under 26 U.S.C. sec. 223, as amended, then the
10 requirement shall not apply to that health plan until the minimum deductible
11 under 26 U.S.C. sec. 223, as amended, is satisfied.

12 (5) The commissioner shall promulgate administrative regulations in accordance
13 with KRS Chapter 13A that are necessary to enforce and effectuate this section.

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

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

17 (1) KRS 304.17A-129;
18 (2) KRS 304.17A-262;{ and}
19 (3) KRS 304.17A-591 to 304.17A-599; and

20 (4) Section 1 of this Act.

21 ➔ Section 3. KRS 164.2871 is amended to read as follows:

22 (1) The governing board of each state postsecondary educational institution is
23 authorized to purchase liability insurance for the protection of the individual
24 members of the governing board, faculty, and staff of such institutions from liability
25 for acts and omissions committed in the course and scope of the individual's
26 employment or service. Each institution may purchase the type and amount of
27 liability coverage deemed to best serve the interest of such institution.

- 1 (2) All retirement annuity allowances accrued or accruing to any employee of a state
2 postsecondary educational institution through a retirement program sponsored by
3 the state postsecondary educational institution are hereby exempt from any state,
4 county, or municipal tax, and shall not be subject to execution, attachment,
5 garnishment, or any other process whatsoever, nor shall any assignment thereof be
6 enforceable in any court. Except retirement benefits accrued or accruing to any
7 employee of a state postsecondary educational institution through a retirement
8 program sponsored by the state postsecondary educational institution on or after
9 January 1, 1998, shall be subject to the tax imposed by KRS 141.020, to the extent
10 provided in KRS 141.010 and 141.0215.
- 11 (3) Except as provided in KRS Chapter 44, the purchase of liability insurance for
12 members of governing boards, faculty and staff of institutions of higher education
13 in this state shall not be construed to be a waiver of sovereign immunity or any
14 other immunity or privilege.
- 15 (4) The governing board of each state postsecondary education institution is authorized
16 to provide a self-insured employer group health plan to its employees, which plan
17 shall:
 - 18 (a) Conform to the requirements of Subtitle 32 of KRS Chapter 304; and
 - 19 (b) Except as provided in subsection (5) of this section, be exempt from
20 conformity with Subtitle 17A of KRS Chapter 304.
- 21 (5) A self-insured employer group health plan provided by the governing board of a
22 state postsecondary education institution to its employees shall comply with:
 - 23 (a) KRS 304.17A-129;
 - 24 (b) KRS 304.17A-133;
 - 25 (c) KRS 304.17A-145;
 - 26 (d) KRS 304.17A-163 and 304.17A-1631;
 - 27 (e) KRS 304.17A-261;

1 (f) KRS 304.17A-262;

2 (g) KRS 304.17A-264;[~~and~~]

3 (h) KRS 304.17A-265; and

4 (i) **Section 1 of this Act.**

5 (6) (a) A self-insured employer group health plan provided by the governing board of

6 a state postsecondary education institution to its employees shall provide a

7 special enrollment period to pregnant women who are eligible for coverage in

8 accordance with the requirements set forth in KRS 304.17-182.

9 (b) The governing board of a state postsecondary education institution shall, at or

10 before the time an employee is initially offered the opportunity to enroll in the

11 plan or coverage, provide the employee a notice of the special enrollment

12 rights under this subsection.

➔ Section 4. KRS 18A.225 is amended to read as follows:

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

15 1. Any person, including an elected public official, who is regularly

16 employed by any department, office, board, agency, or branch of state

17 government; or by a public postsecondary educational institution; or by

18 any city, urban-county, charter county, county, or consolidated local

19 government, whose legislative body has opted to participate in the state-

20 sponsored health insurance program pursuant to KRS 79.080; and who

21 is either a contributing member to any one (1) of the retirement systems

22 administered by the state, including but not limited to the Kentucky

23 Retirement Systems, County Employees Retirement System, Kentucky

24 Teachers' Retirement System, the Legislators' Retirement Plan, or the

25 Judicial Retirement Plan; or is receiving a contractual contribution from

26 the state toward a retirement plan; or, in the case of a public

27 postsecondary education institution, is an individual participating in an

1 optional retirement plan authorized by KRS 161.567; or is eligible to
2 participate in a retirement plan established by an employer who ceases
3 participating in the Kentucky Employees Retirement System pursuant to
4 KRS 61.522 whose employees participated in the health insurance plans
5 administered by the Personnel Cabinet prior to the employer's effective
6 cessation date in the Kentucky Employees Retirement System;

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

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

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

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

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

25 (c) The term "insurer" for the purposes of this section means an insurer as defined
26 in KRS 304.17A-005; and

27 (d) The term "managed care plan" for the purposes of this section means a

1 managed care plan as defined in KRS 304.17A-500.

2 (2) (a) The secretary of the Finance and Administration Cabinet, upon the
3 recommendation of the secretary of the Personnel Cabinet, shall procure, in
4 compliance with the provisions of KRS 45A.080, 45A.085, and 45A.090,
5 from one (1) or more insurers authorized to do business in this state, a group
6 health benefit plan that may include but not be limited to health maintenance
7 organization (HMO), preferred provider organization (PPO), point of service
8 (POS), and exclusive provider organization (EPO) benefit plans
9 encompassing all or any class or classes of employees. With the exception of
10 employers governed by the provisions of KRS Chapters 16, 18A, and 151B,
11 all employers of any class of employees or former employees shall enter into
12 a contract with the Personnel Cabinet prior to including that group in the state
13 health insurance group. The contracts shall include but not be limited to
14 designating the entity responsible for filing any federal forms, adoption of
15 policies required for proper plan administration, acceptance of the contractual
16 provisions with health insurance carriers or third-party administrators, and
17 adoption of the payment and reimbursement methods necessary for efficient
18 administration of the health insurance program. Health insurance coverage
19 provided to state employees under this section shall, at a minimum, contain
20 the same benefits as provided under Kentucky Kare Standard as of January 1,
21 1994, and shall include a mail-order drug option as provided in subsection
22 (13) of this section. All employees and other persons for whom the health care
23 coverage is provided or made available shall annually be given an option to
24 elect health care coverage through a self-funded plan offered by the
25 Commonwealth or, if a self-funded plan is not available, from a list of
26 coverage options determined by the competitive bid process under the
27 provisions of KRS 45A.080, 45A.085, and 45A.090 and made available

1 during annual open enrollment.

- (b) The policy or policies shall be approved by the commissioner of insurance and may contain the provisions the commissioner of insurance approves, whether or not otherwise permitted by the insurance laws.
- (c) Any carrier bidding to offer health care coverage to employees shall agree to provide coverage to all members of the state group, including active employees and retirees and their eligible covered dependents and beneficiaries, within the county or counties specified in its bid. Except as provided in subsection (20) of this section, any carrier bidding to offer health care coverage to employees shall also agree to rate all employees as a single entity, except for those retirees whose former employers insure their active employees outside the state-sponsored health insurance program and as otherwise provided in KRS 61.702(2)(b)3.b. and 78.5536(2)(b)3.b.
- (d) Any carrier bidding to offer health care coverage to employees shall agree to provide enrollment, claims, and utilization data to the Commonwealth in a format specified by the Personnel Cabinet with the understanding that the data shall be owned by the Commonwealth; to provide data in an electronic form and within a time frame specified by the Personnel Cabinet; and to be subject to penalties for noncompliance with data reporting requirements as specified by the Personnel Cabinet. The Personnel Cabinet shall take strict precautions to protect the confidentiality of each individual employee; however, confidentiality assertions shall not relieve a carrier from the requirement of providing stipulated data to the Commonwealth.
- (e) The Personnel Cabinet shall develop the necessary techniques and capabilities for timely analysis of data received from carriers and, to the extent possible, provide in the request-for-proposal specifics relating to data requirements, electronic reporting, and penalties for noncompliance. The Commonwealth

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

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

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

21 (h) Each entity participating in the state-sponsored health insurance program shall
22 provide an amount at least equal to the state contribution rate for the employer
23 portion of the health insurance premium. For any participating entity that used
24 the state payroll system, the employer contribution amount shall be equal to
25 but not greater than the state contribution rate.

26 (3) The premiums may be paid by the policyholder:
27 (a) Wholly from funds contributed by the employee, by payroll deduction or

- 1 (7) Group rates under this section shall be made available to the disabled child of an
2 employee regardless of the child's age if the entire premium for the disabled child's
3 coverage is paid by the state employee. A child shall be considered disabled if he or
4 she has been determined to be eligible for federal Social Security disability benefits.
- 5 (8) The health care contract or contracts for employees shall be entered into for a
6 period of not less than one (1) year.
- 7 (9) The secretary shall appoint thirty-two (32) persons to an Advisory Committee of
8 State Health Insurance Subscribers to advise the secretary or the secretary's
9 designee regarding the state-sponsored health insurance program for employees.
10 The secretary shall appoint, from a list of names submitted by appointing
11 authorities, members representing school districts from each of the seven (7)
12 Supreme Court districts, members representing state government from each of the
13 seven (7) Supreme Court districts, two (2) members representing retirees under age
14 sixty-five (65), one (1) member representing local health departments, two (2)
15 members representing the Kentucky Teachers' Retirement System, and three (3)
16 members at large. The secretary shall also appoint two (2) members from a list of
17 five (5) names submitted by the Kentucky Education Association, two (2) members
18 from a list of five (5) names submitted by the largest state employee organization of
19 nonschool state employees, two (2) members from a list of five (5) names submitted
20 by the Kentucky Association of Counties, two (2) members from a list of five (5)
21 names submitted by the Kentucky League of Cities, and two (2) members from a
22 list of names consisting of five (5) names submitted by each state employee
23 organization that has two thousand (2,000) or more members on state payroll
24 deduction. The advisory committee shall be appointed in January of each year and
25 shall meet quarterly.
- 26 (10) Notwithstanding any other provision of law to the contrary, the policy or policies
27 provided to employees pursuant to this section shall not provide coverage for

1 obtaining or performing an abortion, nor shall any state funds be used for the
2 purpose of obtaining or performing an abortion on behalf of employees or their
3 dependents.

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

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

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

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

25 (c) The mail-order option shall not permit the dispensing of a controlled
26 substance classified in Schedule II.

27 (14) The policy or policies provided to state employees or their dependents pursuant to

1 this section shall provide coverage for obtaining a hearing aid and acquiring hearing
2 aid-related services for insured individuals under eighteen (18) years of age, subject
3 to a cap of one thousand four hundred dollars (\$1,400) every thirty-six (36) months
4 pursuant to KRS 304.17A-132.

5 (15) Any policy provided to state employees or their dependents pursuant to this section
6 shall provide coverage for the diagnosis and treatment of autism spectrum disorders
7 consistent with KRS 304.17A-142.

8 (16) Any policy provided to state employees or their dependents pursuant to this section
9 shall provide coverage for obtaining amino acid-based elemental formula pursuant
10 to KRS 304.17A-258.

11 (17) If a state employee's residence and place of employment are in the same county,
12 and if the hospital located within that county does not offer surgical services,
13 intensive care services, obstetrical services, level II neonatal services, diagnostic
14 cardiac catheterization services, and magnetic resonance imaging services, the
15 employee may select a plan available in a contiguous county that does provide
16 those services, and the state contribution for the plan shall be the amount available
17 in the county where the plan selected is located.

18 (18) If a state employee's residence and place of employment are each located in
19 counties in which the hospitals do not offer surgical services, intensive care
20 services, obstetrical services, level II neonatal services, diagnostic cardiac
21 catheterization services, and magnetic resonance imaging services, the employee
22 may select a plan available in a county contiguous to the county of residence that
23 does provide those services, and the state contribution for the plan shall be the
24 amount available in the county where the plan selected is located.

25 (19) The Personnel Cabinet is encouraged to study whether it is fair and reasonable and
26 in the best interests of the state group to allow any carrier bidding to offer health
27 care coverage under this section to submit bids that may vary county by county or

1 by larger geographic areas.

2 (20) Notwithstanding any other provision of this section, the bid for proposals for health
3 insurance coverage for calendar year 2004 shall include a bid scenario that reflects
4 the statewide rating structure provided in calendar year 2003 and a bid scenario that
5 allows for a regional rating structure that allows carriers to submit bids that may
6 vary by region for a given product offering as described in this subsection:

7 (a) The regional rating bid scenario shall not include a request for bid on a
8 statewide option;

9 (b) The Personnel Cabinet shall divide the state into geographical regions which
10 shall be the same as the partnership regions designated by the Department for
11 Medicaid Services for purposes of the Kentucky Health Care Partnership
12 Program established pursuant to 907 KAR 1:705;

13 (c) The request for proposal shall require a carrier's bid to include every county
14 within the region or regions for which the bid is submitted and include but not
15 be restricted to a preferred provider organization (PPO) option;

16 (d) If the Personnel Cabinet accepts a carrier's bid, the cabinet shall award the
17 carrier all of the counties included in its bid within the region. If the Personnel
18 Cabinet deems the bids submitted in accordance with this subsection to be in
19 the best interests of state employees in a region, the cabinet may award the
20 contract for that region to no more than two (2) carriers; and

21 (e) Nothing in this subsection shall prohibit the Personnel Cabinet from including
22 other requirements or criteria in the request for proposal.

23 (21) Any fully insured health benefit plan or self-insured plan issued or renewed on or
24 after July 12, 2006, to public employees pursuant to this section which provides
25 coverage for services rendered by a physician or osteopath duly licensed under KRS
26 Chapter 311 that are within the scope of practice of an optometrist duly licensed
27 under the provisions of KRS Chapter 320 shall provide the same payment of

1 coverage to optometrists as allowed for those services rendered by physicians or
2 osteopaths.

3 (22) Any fully insured health benefit plan or self-insured plan issued or renewed to
4 public employees pursuant to this section shall comply with:

5 (a) KRS 304.12-237;

6 (b) KRS 304.17A-270 and 304.17A-525;

7 (c) KRS 304.17A-600 to 304.17A-633;

8 (d) KRS 205.593;

9 (e) KRS 304.17A-700 to 304.17A-730;

10 (f) KRS 304.14-135;

11 (g) KRS 304.17A-580 and 304.17A-641;

12 (h) KRS 304.99-123;

13 (i) KRS 304.17A-138;

14 (j) KRS 304.17A-148;

15 (k) KRS 304.17A-163 and 304.17A-1631;

16 (l) KRS 304.17A-265;

17 (m) KRS 304.17A-261;

18 (n) KRS 304.17A-262;

19 (o) KRS 304.17A-145;

20 (p) KRS 304.17A-129;

21 (q) KRS 304.17A-133;

22 (r) KRS 304.17A-264;[and]

23 (s) **Section 1 of this Act; and**

24 (t) Administrative regulations promulgated pursuant to statutes listed in this
25 subsection.

26 (23) (a) Any fully insured health benefit plan or self-insured plan issued or renewed to
27 public employees pursuant to this section shall provide a special enrollment

1 period to pregnant women who are eligible for coverage in accordance with
2 the requirements set forth in KRS 304.17-182.

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

7 ➔Section 5. The purpose of Section 1 of this Act is to require health insurance
8 coverage for mental health wellness exams in an effort to promote greater utilization of
9 such exams and strengthen the mental health of the citizens of Kentucky.

10 ➔Section 6. This Act applies to health plans issued or renewed on or after the
11 effective date of this Act.

12 ➔Section 7. Section 1 of this Act may be cited as the Kentucky Mental Health
13 Wellness Act.

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