

1 AN ACT relating to blood donation.

2 WHEREAS, the right to bodily autonomy and informed consent is a fundamental
3 principle of a free society, enshrined in the United States Constitution and protected by
4 federal law; and

5 WHEREAS, the choice of medical treatments, including the selection of blood
6 donors for transfusions, is an intimate and personal decision integral to individual dignity,
7 self-determination, and health; and

8 WHEREAS, the physician-patient relationship is sacrosanct and must be free from
9 interference by third parties; and

10 WHEREAS, existing federal regulations, including those of the United States Food
11 and Drug Administration, are designed to ensure the safety and integrity of directed blood
12 donations;

13 NOW, THEREFORE,

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

15 ➔Section 1. KRS 214.450 is amended to read as follows:

16 As used in KRS ~~214.450~~~~[214.452]~~ to 214.466, unless the context otherwise requires:

17 (1) **"Autologous donation" means a process by which an individual donates his or**
18 **her own blood for his or her own transfusion;**

19 **(2)** "Blood" means any blood, blood product, blood component, or blood derivative,
20 including plasma;~~;~~

21 **(3)** ~~(a)~~~~(2)~~ "Blood establishment" means a place of business under one (1)
22 management at one (1) general physical location which engages in the
23 collection, preparation, processing, labeling, packaging, and dispensing of
24 blood to any health care facility, health service, or health care provider and
25 which is licensed by the United States Food and Drug Administration.

26 **(b)** "Blood establishment" does not include autologous ~~blood~~ donation
27 programs permitted under KRS 214.456;~~;~~

1 ~~(4)~~⁽³⁾ "Blood-borne communicable disease" means any of those diseases which are
 2 specifically so defined and set forth in administrative regulation promulgated by the
 3 United States Food and Drug Administration;[-]

4 ~~(5)~~⁽⁴⁾ **"Directed donation" means a process by which an individual selects a**
 5 **specific donor or organization to provide blood for his or her own transfusion;**

6 **(6) "Donor" means either a paid or volunteer donor of blood;**

7 ~~(7)~~ "Health facility" means any health facility **as defined in**~~[-set forth under-]~~ KRS
 8 216B.015, which provides for the transfusion of blood into a living human body;[-]

9 ~~(8)~~⁽⁵⁾ "Health care provider" means any person licensed or certified under the laws
 10 of the Commonwealth as a dentist, physician, osteopath, registered nurse, practical
 11 nurse, paramedic, emergency medical technician, or physician assistant;[-]

12 ~~(9)~~⁽⁶⁾ "Health service" means any health service as **defined in**~~[-set forth under-]~~ KRS
 13 216B.015, ~~[-and-]~~ which provides for the transfusion of blood into a living human
 14 body;[-]

15 ~~(10)~~⁽⁷⁾ **"Informed consent" means the right of a person to be fully informed about**
 16 **and to consent to or refuse medical treatments, including the selection of blood**
 17 **donors;**

18 ~~(11)~~ "Transfuse" means to transfer blood from one (1) person to another; ~~and~~[-]

19 ~~(8)~~ ~~"Donor" means either a paid or volunteer donor of blood.~~

20 ~~(12)~~⁽⁹⁾ "Untested blood" means blood that has not been tested or blood for which test
 21 results have not yet been returned.

22 ➔SECTION 2. A NEW SECTION OF KRS 214.450 TO 214.466 IS CREATED
 23 TO READ AS FOLLOWS:

24 **(1) An individual shall have the right to select a willing blood donor for his or her**
 25 **own blood transfusion, provided the donation complies with the minimum**
 26 **standard set by the United States Food and Drug Administration.**

27 **(2) Blood establishments, health facilities, health services, and health care providers**

1 shall not:

2 (a) Deny, obstruct, or impose undue burdens on an individual's right to a
3 directed or autologous donation, when ordered by a licensed health care
4 provider;

5 (b) Refuse directed donations based on a donor's or recipient's vaccination
6 status, medical history, religious beliefs, or other personal choices or
7 characteristics, provided minimum United States Food and Drug
8 Administration safety standards are met;

9 (c) Impose fees for a donation or transfusion using an autologous donation or
10 directed donation of blood that exceed twenty percent (20%) of the charge
11 for a regular unit of blood;

12 (d) Misrepresent the availability, safety, or legality of directed or autologous
13 donations to discourage a licensed physician from ordering a directed or
14 autologous donation at the request of their patient; or

15 (e) Penalize or sanction physicians who facilitate directed or autologous
16 donations for their willingness to prescribe directed or autologous
17 donations.

18 (3) Blood establishments shall:

19 (a) Publicly disclose the establishment's directed donation policies to ensure
20 transparency; and

21 (b) Provide standardized, concise consent forms and procedures for directed
22 donations, not to exceed the complexity of forms used by the establishment
23 for general blood donations.

24 (4) Blood establishments and health care facilities shall provide clear, accessible
25 information to patients about the patient's right to a directed or autologous
26 donation and the process for requesting a directed or autologous donation.

27 (5) A professional organization, health care facility, or other entity shall not

1 misrepresent the availability, safety, or legality of directed or autologous
2 donations to discourage a licensed physician from ordering a directed or
3 autologous donation at the request of their patient.

4 (6) A physician who facilitates a directed or autologous donation at the request of his
5 or her patient shall not experience disciplinary actions, loss of license, or other
6 professional repercussions by the Kentucky Board of Medical Licensure as a
7 result of the physician's willingness to prescribe the directed or autologous
8 donation.

9 (7) A blood establishment or health facility that violates this section shall be subject
10 to fines not exceeding two hundred fifty thousand dollars (\$250,000) per violation
11 as determined by the Cabinet for Health and Family Services.

12 (8) A health facility or health care provider:

13 (a) May transfuse blood that is not from a directed or autologous donation only
14 in an emergency situation in which the attending physician determines the
15 patient is in imminent danger of death or serious physical injury and the
16 directed or autologous donation is not readily available; and

17 (b) Shall not be subject to civil or criminal liability for the transfusion of blood
18 that is not from a directed or autologous donation in an emergency
19 situation, provided the attending health facility or health care provider has
20 obtained prior consent for the transfusion from the patient or, if the
21 patient's condition renders the patient incapable of giving consent, consent
22 from the patient's next of kin or legal guardian, if available.

23 (9) The Cabinet for Health and Family Services shall:

24 (a) Establish a reporting mechanism for individuals and physicians to report
25 obstructions, denials, or impositions of undue burdens to directed
26 donations;

27 (b) Investigate reports of obstructions, denials, or impositions of undue burdens

- 1 *to directed or autologous donations;*
 2 *(c) Complete investigations within sixty (60) days of a report; and*
 3 *(d) Promulgate administrative regulations in accordance with KRS Chapter*
 4 *13A to implement and enforce the provisions of this section.*
 5 *(10) An individual may bring a civil action against entities for injunctive relief and*
 6 *damages for violations of the individual's rights to directed and autologous*
 7 *donations.*

8 ➔Section 3. KRS 214.452 is amended to read as follows:

9 The following policies shall apply to blood establishments and to donors of blood:

- 10 (1) All blood establishments within the Commonwealth shall be licensed by the United
 11 States Food and Drug Administration and remain in compliance with all applicable
 12 federal regulations. The Cabinet for Health and Family Services shall, under
 13 administrative regulations promulgated pursuant to KRS Chapter 13A, establish
 14 fees necessary to cover the cost of and adhere to a schedule for regular inspection,
 15 by the Office of the Inspector General of the Cabinet for Health and Family
 16 Services, of all blood establishments within the Commonwealth to ascertain
 17 whether each blood establishment is licensed and in compliance with KRS 214.450
 18 to 214.466~~[214.464]~~ and ~~[KRS]~~ 214.468. The Office of the Inspector General shall
 19 commence its inspection program of blood establishments no later than September
 20 1, 1994.
- 21 (2) All blood establishments shall test blood for the human immunodeficiency virus
 22 and for any known causative agent for any blood-borne communicable disease,
 23 using tests approved and required, for purposes of blood donation, by the United
 24 States Food and Drug Administration.
- 25 (3) It shall be the duty of the administrator of any blood establishment which collects
 26 blood for the purpose of distributing to another health service, health facility, or
 27 health-care provider the blood for transfusion to:

- 1 (a) Secure donor consent and a signed written risk factor history and donor
2 consent form for each potential paid or volunteer donor for the purpose of
3 determining if the potential donor is at high risk for infection with the human
4 immunodeficiency virus, or has tested confirmatory positive for infection with
5 the human immunodeficiency virus; or has acquired immune deficiency
6 syndrome; or has tested confirmatory positive for infection with any causative
7 agent for acquired immune deficiency syndrome recognized by the United
8 States Centers for Disease Control; or has a blood-borne communicable
9 disease;
- 10 (b) Provide a means for a potential donor to self-elect not to donate blood;
- 11 (c) Refuse donation or sale of blood by persons at high risk for infection with the
12 human immunodeficiency virus, or who have been medically diagnosed as
13 having acquired immune deficiency syndrome, or who have tested
14 confirmatory positive for infection with the human immunodeficiency virus,
15 or who have a blood-borne communicable disease;
- 16 (d) Post a sign in the blood establishment which is visible to all potential donors
17 and which states: "Persons with acquired immune deficiency syndrome
18 (AIDS), or who have tested confirmatory positive for infection with the
19 human immunodeficiency virus (HIV), or who have a blood-borne
20 communicable disease or who have one (1) or more risk factors for the human
21 immunodeficiency virus as determined by the United States Centers for
22 Disease Control, are prohibited by law from donating or selling blood.
23 Persons violating the law are guilty of a Class D felony. ASK STAFF OF
24 THIS BLOOD ESTABLISHMENT."
- 25 (4) The provisions of this section shall not be construed to impose requirements which
26 are in conflict with donor eligibility requirements set out in United States Food and
27 Drug Administration or American Association of Blood Banks standards.

1 ➔Section 4. KRS 214.456 is amended to read as follows:

2 The following policies shall apply to autologous and directed blood donations:

- 3 (1) Any otherwise qualified donor who wishes to direct a donation of blood to that
4 person or to another particular individual may do so. The surcharge for any
5 autologous or directed donation of blood shall not exceed twenty percent (20%) of
6 the charge for a regular unit of blood.
- 7 (2) If the donation is to another particular individual, the requirements of KRS 214.454
8 shall be met if the recipient and the recipient's attending physician have requested
9 the donation.
- 10 (3) Blood collected as a directed donation may be used for someone other than, or in
11 addition to, the designated recipient if the donor's blood is not compatible with that
12 of the designated recipient or if any part of the donation is not needed by the
13 designated recipient.
- 14 (4) Each blood establishment shall advise prospective donors of the opportunity for
15 autologous and directed donations and of the provisions of this section and of KRS
16 214.450~~[214.452]~~ to 214.466.
- 17 (5) Autologous blood donation programs shall be exempt from KRS 214.454.

18 ➔Section 5. KRS 214.990 is amended to read as follows:

- 19 (1) Every head of a family who willfully fails or refuses and every physician who fails
20 or refuses to comply with KRS 214.010 shall be guilty of a violation for each day
21 he neglects or refuses to report. Repeated failure to report is sufficient cause for the
22 revocation of a physician's certificate to practice medicine in this state.
- 23 (2) Any person who willfully violates any administrative regulation promulgated under
24 KRS Chapter 13A by the Cabinet for Health and Family Services under KRS
25 214.020 shall be guilty of a Class B misdemeanor.
- 26 (3) Any physician or other person legally permitted to engage in attendance upon a
27 pregnant woman during pregnancy or at delivery who fails to exercise due diligence

1 in complying with KRS 214.160 and 214.170 shall be guilty of a violation.

2 (4) Any person who violates any of the provisions of KRS 214.280 to 214.310 shall be
3 guilty of a Class A misdemeanor.

4 (5) Any person who violates any provision of KRS 214.034 or KRS 158.035 shall be
5 guilty of a Class B misdemeanor.

6 (6) Any person who violates any provision of KRS 214.420 shall be guilty of a
7 violation. Each violation shall constitute a separate offense.

8 (7) Any person who knowingly violates any provision of KRS 214.450~~[214.452]~~ to
9 214.466 shall be guilty of a Class D felony. Each violation shall constitute a
10 separate offense.

11 ➔SECTION 6. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304
12 IS CREATED TO READ AS FOLLOWS:

13 *(1) All health benefit plans shall provide coverage for any directed or autologous*
14 *blood transfusion.*

15 *(2) Except as provided in subsection (3) of this section, the coverage required by this*
16 *section shall not be subject to copayments, coinsurance, deductibles, or any other*
17 *cost-sharing requirements.*

18 *(3) If the application of any requirement of this section would be the sole cause of a*
19 *health benefit plan's failure to qualify as a Health Savings Account-qualified*
20 *High Deductible Health Plan under 26 U.S.C. sec. 223, as amended, then the*
21 *requirement shall not apply to that health benefit plan until the minimum*
22 *deductible under 26 U.S.C. sec. 223, as amended, is satisfied.*

23 ➔Section 7. KRS 205.522 is amended to read as follows:

24 (1) With respect to the administration and provision of Medicaid benefits pursuant to
25 this chapter, the Department for Medicaid Services, any managed care organization
26 contracted to provide Medicaid benefits pursuant to this chapter, and the state's
27 medical assistance program shall be subject to, and comply with, the following, as

1 applicable:

- 2 (a) KRS 304.17A-129;
- 3 (b) KRS 304.17A-145;
- 4 (c) KRS 304.17A-163;
- 5 (d) KRS 304.17A-1631;
- 6 (e) KRS 304.17A-167;
- 7 (f) KRS 304.17A-235;
- 8 (g) KRS 304.17A-257;
- 9 (h) KRS 304.17A-259;
- 10 (i) KRS 304.17A-263;
- 11 (j) KRS 304.17A-264;
- 12 (k) KRS 304.17A-515;
- 13 (l) KRS 304.17A-580;
- 14 (m) KRS 304.17A-600, 304.17A-603, and 304.17A-607;~~and~~
- 15 (n) KRS 304.17A-740 to 304.17A-743; **and**
- 16 **(o) Section 6 of this Act.**

17 (2) A managed care organization contracted to provide Medicaid benefits pursuant to
18 this chapter shall comply with the reporting requirements of KRS 304.17A-732.

19 ➔Section 8. KRS 205.6485 is amended to read as follows:

20 (1) As used in this section, "KCHIP" means the Kentucky Children's Health Insurance
21 Program.

22 (2) The Cabinet for Health and Family Services shall:

- 23 (a) Prepare a state child health plan, known as KCHIP, meeting the requirements
24 of Title XXI of the Federal Social Security Act, for submission to the
25 Secretary of the United States Department of Health and Human Services
26 within such time as will permit the state to receive the maximum amounts of
27 federal matching funds available under Title XXI; and

- 1 (b) By administrative regulation promulgated in accordance with KRS Chapter
2 13A, establish the following:
- 3 1. The eligibility criteria for children covered by KCHIP, which shall
4 include a provision that no person eligible for services under Title XIX
5 of the Social Security Act, 42 U.S.C. secs. 1396 to 1396v, as amended,
6 shall be eligible for services under KCHIP, except to the extent that
7 Title XIX coverage is expanded by KRS 205.6481 to 205.6495 and KRS
8 304.17A-340;
- 9 2. The schedule of benefits to be covered by KCHIP, which shall:
- 10 a. Be at least equivalent to one (1) of the following:
- 11 i. The standard Blue Cross/Blue Shield preferred provider
12 option under the Federal Employees Health Benefit Plan
13 established by 5 U.S.C. sec. 8903(1);
- 14 ii. A mid-range health benefit coverage plan that is offered and
15 generally available to state employees; or
- 16 iii. Health insurance coverage offered by a health maintenance
17 organization that has the largest insured commercial, non-
18 Medicaid enrollment of covered lives in the state; and
- 19 b. Comply with subsection (6) of this section;
- 20 3. The premium contribution per family for health insurance coverage
21 available under KCHIP, which shall be based:
- 22 a. On a six (6) month period; and
- 23 b. Upon a sliding scale relating to family income not to exceed:
- 24 i. Ten dollars (\$10), to be paid by a family with income
25 between one hundred percent (100%) to one hundred thirty-
26 three percent (133%) of the federal poverty level;
- 27 ii. Twenty dollars (\$20), to be paid by a family with income

1 between one hundred thirty-four percent (134%) to one
2 hundred forty-nine percent (149%) of the federal poverty
3 level; and

4 iii. One hundred twenty dollars (\$120), to be paid by a family
5 with income between one hundred fifty percent (150%) to
6 two hundred percent (200%) of the federal poverty level, and
7 which may be made on a partial payment plan of twenty
8 dollars (\$20) per month or sixty dollars (\$60) per quarter;

9 4. There shall be no copayments for services provided under KCHIP; and

10 5. a. The criteria for health services providers and insurers wishing to
11 contract with the Commonwealth to provide coverage under
12 KCHIP.

13 b. The cabinet shall provide, in any contracting process for coverage
14 of preventive services, the opportunity for a public health
15 department to bid on preventive health services to eligible children
16 within the public health department's service area. A public health
17 department shall not be disqualified from bidding because the
18 department does not currently offer all the services required by
19 this section. The criteria shall be set forth in administrative
20 regulations under KRS Chapter 13A and shall maximize
21 competition among the providers and insurers. The Finance and
22 Administration Cabinet shall provide oversight over contracting
23 policies and procedures to assure that the number of applicants for
24 contracts is maximized.

25 (3) Within twelve (12) months of federal approval of the state's Title XXI child health
26 plan, the Cabinet for Health and Family Services shall assure that a KCHIP
27 program is available to all eligible children in all regions of the state. If necessary,

1 in order to meet this assurance, the cabinet shall institute its own program.

2 (4) KCHIP recipients shall have direct access without a referral from any gatekeeper
3 primary care provider to dentists for covered primary dental services and to
4 optometrists and ophthalmologists for covered primary eye and vision services.

5 (5) KCHIP shall comply with KRS 304.17A-163 and 304.17A-1631.

6 (6) The schedule of benefits required under subsection (2)(b)2. of this section shall
7 include:

8 (a) Preventive services;

9 (b) Vision services, including glasses;

10 (c) Dental services, including sealants, extractions, and fillings; and

11 (d) The coverage required under:

12 1. KRS 304.17A-129; ~~and~~

13 2. **KRS** 304.17A-145; and

14 3. **Section 6 of this Act.**

15 ➔Section 9. KRS 164.2871 is amended to read as follows:

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

22 (2) All retirement annuity allowances accrued or accruing to any employee of a state
23 postsecondary educational institution through a retirement program sponsored by
24 the state postsecondary educational institution are hereby exempt from any state,
25 county, or municipal tax, and shall not be subject to execution, attachment,
26 garnishment, or any other process whatsoever, nor shall any assignment thereof be
27 enforceable in any court. Except retirement benefits accrued or accruing to any

1 employee of a state postsecondary educational institution through a retirement
2 program sponsored by the state postsecondary educational institution on or after
3 January 1, 1998, shall be subject to the tax imposed by KRS 141.020, to the extent
4 provided in KRS 141.010 and 141.0215.

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

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

12 (a) Conform to the requirements of Subtitle 32 of KRS Chapter 304; and

13 (b) Except as provided in subsection (5) of this section, be exempt from
14 conformity with Subtitle 17A of KRS Chapter 304.

15 (5) A self-insured employer group health plan provided by the governing board of a
16 state postsecondary education institution to its employees shall comply with:

17 (a) KRS 304.17A-129;

18 (b) KRS 304.17A-133;

19 (c) KRS 304.17A-145;

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

21 (e) KRS 304.17A-261;

22 (f) KRS 304.17A-262;

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

24 (h) KRS 304.17A-265; **and**

25 **(i) Section 6 of this Act.**

26 (6) (a) A self-insured employer group health plan provided by the governing board of
27 a state postsecondary education institution to its employees shall provide a

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

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

7 ➔Section 10. KRS 18A.225 is amended to read as follows:

- 8 (1) (a) The term "employee" for purposes of this section means:
- 9 1. Any person, including an elected public official, who is regularly
10 employed by any department, office, board, agency, or branch of state
11 government; or by a public postsecondary educational institution; or by
12 any city, urban-county, charter county, county, or consolidated local
13 government, whose legislative body has opted to participate in the state-
14 sponsored health insurance program pursuant to KRS 79.080; and who
15 is either a contributing member to any one (1) of the retirement systems
16 administered by the state, including but not limited to the Kentucky
17 Retirement Systems, County Employees Retirement System, Kentucky
18 Teachers' Retirement System, the Legislators' Retirement Plan, or the
19 Judicial Retirement Plan; or is receiving a contractual contribution from
20 the state toward a retirement plan; or, in the case of a public
21 postsecondary education institution, is an individual participating in an
22 optional retirement plan authorized by KRS 161.567; or is eligible to
23 participate in a retirement plan established by an employer who ceases
24 participating in the Kentucky Employees Retirement System pursuant to
25 KRS 61.522 whose employees participated in the health insurance plans
26 administered by the Personnel Cabinet prior to the employer's effective
27 cessation date in the Kentucky Employees Retirement System;

- 1 2. Any certified or classified employee of a local board of education or a
2 public charter school as defined in KRS 160.1590;
- 3 3. Any elected member of a local board of education;
- 4 4. Any person who is a present or future recipient of a retirement
5 allowance from the Kentucky Retirement Systems, County Employees
6 Retirement System, Kentucky Teachers' Retirement System, the
7 Legislators' Retirement Plan, the Judicial Retirement Plan, or the
8 Kentucky Community and Technical College System's optional
9 retirement plan authorized by KRS 161.567, except that a person who is
10 receiving a retirement allowance and who is age sixty-five (65) or older
11 shall not be included, with the exception of persons covered under KRS
12 61.702(2)(b)3. and 78.5536(2)(b)3., unless he or she is actively
13 employed pursuant to subparagraph 1. of this paragraph; and
- 14 5. Any eligible dependents and beneficiaries of participating employees
15 and retirees who are entitled to participate in the state-sponsored health
16 insurance program;
- 17 (b) The term "health benefit plan" for the purposes of this section means a health
18 benefit plan as defined in KRS 304.17A-005;
- 19 (c) The term "insurer" for the purposes of this section means an insurer as defined
20 in KRS 304.17A-005; and
- 21 (d) The term "managed care plan" for the purposes of this section means a
22 managed care plan as defined in KRS 304.17A-500.
- 23 (2) (a) The secretary of the Finance and Administration Cabinet, upon the
24 recommendation of the secretary of the Personnel Cabinet, shall procure, in
25 compliance with the provisions of KRS 45A.080, 45A.085, and 45A.090,
26 from one (1) or more insurers authorized to do business in this state, a group
27 health benefit plan that may include but not be limited to health maintenance

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

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

26 (c) Any carrier bidding to offer health care coverage to employees shall agree to
27 provide coverage to all members of the state group, including active

1 employees and retirees and their eligible covered dependents and
2 beneficiaries, within the county or counties specified in its bid. Except as
3 provided in subsection (20) of this section, any carrier bidding to offer health
4 care coverage to employees shall also agree to rate all employees as a single
5 entity, except for those retirees whose former employers insure their active
6 employees outside the state-sponsored health insurance program and as
7 otherwise provided in KRS 61.702(2)(b)3.b. and 78.5536(2)(b)3.b.

8 (d) Any carrier bidding to offer health care coverage to employees shall agree to
9 provide enrollment, claims, and utilization data to the Commonwealth in a
10 format specified by the Personnel Cabinet with the understanding that the data
11 shall be owned by the Commonwealth; to provide data in an electronic form
12 and within a time frame specified by the Personnel Cabinet; and to be subject
13 to penalties for noncompliance with data reporting requirements as specified
14 by the Personnel Cabinet. The Personnel Cabinet shall take strict precautions
15 to protect the confidentiality of each individual employee; however,
16 confidentiality assertions shall not relieve a carrier from the requirement of
17 providing stipulated data to the Commonwealth.

18 (e) The Personnel Cabinet shall develop the necessary techniques and capabilities
19 for timely analysis of data received from carriers and, to the extent possible,
20 provide in the request-for-proposal specifics relating to data requirements,
21 electronic reporting, and penalties for noncompliance. The Commonwealth
22 shall own the enrollment, claims, and utilization data provided by each carrier
23 and shall develop methods to protect the confidentiality of the individual. The
24 Personnel Cabinet shall include in the October annual report submitted
25 pursuant to the provisions of KRS 18A.226 to the Governor, the General
26 Assembly, and the Chief Justice of the Supreme Court, an analysis of the
27 financial stability of the program, which shall include but not be limited to

1 loss ratios, methods of risk adjustment, measurements of carrier quality of
2 service, prescription coverage and cost management, and statutorily required
3 mandates. If state self-insurance was available as a carrier option, the report
4 also shall provide a detailed financial analysis of the self-insurance fund
5 including but not limited to loss ratios, reserves, and reinsurance agreements.

6 (f) If any agency participating in the state-sponsored employee health insurance
7 program for its active employees terminates participation and there is a state
8 appropriation for the employer's contribution for active employees' health
9 insurance coverage, then neither the agency nor the employees shall receive
10 the state-funded contribution after termination from the state-sponsored
11 employee health insurance program.

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

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

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

21 (a) Wholly from funds contributed by the employee, by payroll deduction or
22 otherwise;

23 (b) Wholly from funds contributed by any department, board, agency, public
24 postsecondary education institution, or branch of state, city, urban-county,
25 charter county, county, or consolidated local government; or

26 (c) Partly from each, except that any premium due for health care coverage or
27 dental coverage, if any, in excess of the premium amount contributed by any

1 department, board, agency, postsecondary education institution, or branch of
2 state, city, urban-county, charter county, county, or consolidated local
3 government for any other health care coverage shall be paid by the employee.

4 (4) If an employee moves his or her place of residence or employment out of the
5 service area of an insurer offering a managed health care plan, under which he or
6 she has elected coverage, into either the service area of another managed health care
7 plan or into an area of the Commonwealth not within a managed health care plan
8 service area, the employee shall be given an option, at the time of the move or
9 transfer, to change his or her coverage to another health benefit plan.

10 (5) No payment of premium by any department, board, agency, public postsecondary
11 educational institution, or branch of state, city, urban-county, charter county,
12 county, or consolidated local government shall constitute compensation to an
13 insured employee for the purposes of any statute fixing or limiting the
14 compensation of such an employee. Any premium or other expense incurred by any
15 department, board, agency, public postsecondary educational institution, or branch
16 of state, city, urban-county, charter county, county, or consolidated local
17 government shall be considered a proper cost of administration.

18 (6) The policy or policies may contain the provisions with respect to the class or classes
19 of employees covered, amounts of insurance or coverage for designated classes or
20 groups of employees, policy options, terms of eligibility, and continuation of
21 insurance or coverage after retirement.

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

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

- 1 (9) The secretary shall appoint thirty-two (32) persons to an Advisory Committee of
2 State Health Insurance Subscribers to advise the secretary or the secretary's
3 designee regarding the state-sponsored health insurance program for employees.
4 The secretary shall appoint, from a list of names submitted by appointing
5 authorities, members representing school districts from each of the seven (7)
6 Supreme Court districts, members representing state government from each of the
7 seven (7) Supreme Court districts, two (2) members representing retirees under age
8 sixty-five (65), one (1) member representing local health departments, two (2)
9 members representing the Kentucky Teachers' Retirement System, and three (3)
10 members at large. The secretary shall also appoint two (2) members from a list of
11 five (5) names submitted by the Kentucky Education Association, two (2) members
12 from a list of five (5) names submitted by the largest state employee organization of
13 nonschool state employees, two (2) members from a list of five (5) names submitted
14 by the Kentucky Association of Counties, two (2) members from a list of five (5)
15 names submitted by the Kentucky League of Cities, and two (2) members from a
16 list of names consisting of five (5) names submitted by each state employee
17 organization that has two thousand (2,000) or more members on state payroll
18 deduction. The advisory committee shall be appointed in January of each year and
19 shall meet quarterly.
- 20 (10) Notwithstanding any other provision of law to the contrary, the policy or policies
21 provided to employees pursuant to this section shall not provide coverage for
22 obtaining or performing an abortion, nor shall any state funds be used for the
23 purpose of obtaining or performing an abortion on behalf of employees or their
24 dependents.
- 25 (11) Interruption of an established treatment regime with maintenance drugs shall be
26 grounds for an insured to appeal a formulary change through the established appeal
27 procedures approved by the Department of Insurance, if the physician supervising

1 the treatment certifies that the change is not in the best interests of the patient.

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

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

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

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

21 (14) The policy or policies provided to state employees or their dependents pursuant to
22 this section shall provide coverage for obtaining a hearing aid and acquiring hearing
23 aid-related services for insured individuals under eighteen (18) years of age, subject
24 to a cap of one thousand four hundred dollars (\$1,400) every thirty-six (36) months
25 pursuant to KRS 304.17A-132.

26 (15) Any policy provided to state employees or their dependents pursuant to this section
27 shall provide coverage for the diagnosis and treatment of autism spectrum disorders

- 1 consistent with KRS 304.17A-142.
- 2 (16) Any policy provided to state employees or their dependents pursuant to this section
3 shall provide coverage for obtaining amino acid-based elemental formula pursuant
4 to KRS 304.17A-258.
- 5 (17) If a state employee's residence and place of employment are in the same county,
6 and if the hospital located within that county does not offer surgical services,
7 intensive care services, obstetrical services, level II neonatal services, diagnostic
8 cardiac catheterization services, and magnetic resonance imaging services, the
9 employee may select a plan available in a contiguous county that does provide
10 those services, and the state contribution for the plan shall be the amount available
11 in the county where the plan selected is located.
- 12 (18) If a state employee's residence and place of employment are each located in
13 counties in which the hospitals do not offer surgical services, intensive care
14 services, obstetrical services, level II neonatal services, diagnostic cardiac
15 catheterization services, and magnetic resonance imaging services, the employee
16 may select a plan available in a county contiguous to the county of residence that
17 does provide those services, and the state contribution for the plan shall be the
18 amount available in the county where the plan selected is located.
- 19 (19) The Personnel Cabinet is encouraged to study whether it is fair and reasonable and
20 in the best interests of the state group to allow any carrier bidding to offer health
21 care coverage under this section to submit bids that may vary county by county or
22 by larger geographic areas.
- 23 (20) Notwithstanding any other provision of this section, the bid for proposals for health
24 insurance coverage for calendar year 2004 shall include a bid scenario that reflects
25 the statewide rating structure provided in calendar year 2003 and a bid scenario that
26 allows for a regional rating structure that allows carriers to submit bids that may
27 vary by region for a given product offering as described in this subsection:

- 1 (a) The regional rating bid scenario shall not include a request for bid on a
2 statewide option;
- 3 (b) The Personnel Cabinet shall divide the state into geographical regions which
4 shall be the same as the partnership regions designated by the Department for
5 Medicaid Services for purposes of the Kentucky Health Care Partnership
6 Program established pursuant to 907 KAR 1:705;
- 7 (c) The request for proposal shall require a carrier's bid to include every county
8 within the region or regions for which the bid is submitted and include but not
9 be restricted to a preferred provider organization (PPO) option;
- 10 (d) If the Personnel Cabinet accepts a carrier's bid, the cabinet shall award the
11 carrier all of the counties included in its bid within the region. If the Personnel
12 Cabinet deems the bids submitted in accordance with this subsection to be in
13 the best interests of state employees in a region, the cabinet may award the
14 contract for that region to no more than two (2) carriers; and
- 15 (e) Nothing in this subsection shall prohibit the Personnel Cabinet from including
16 other requirements or criteria in the request for proposal.
- 17 (21) Any fully insured health benefit plan or self-insured plan issued or renewed on or
18 after July 12, 2006, to public employees pursuant to this section which provides
19 coverage for services rendered by a physician or osteopath duly licensed under KRS
20 Chapter 311 that are within the scope of practice of an optometrist duly licensed
21 under the provisions of KRS Chapter 320 shall provide the same payment of
22 coverage to optometrists as allowed for those services rendered by physicians or
23 osteopaths.
- 24 (22) Any fully insured health benefit plan or self-insured plan issued or renewed to
25 public employees pursuant to this section shall comply with:
- 26 (a) KRS 304.12-237;
- 27 (b) KRS 304.17A-270 and 304.17A-525;

- 1 (c) KRS 304.17A-600 to 304.17A-633;
- 2 (d) KRS 205.593;
- 3 (e) KRS 304.17A-700 to 304.17A-730;
- 4 (f) KRS 304.14-135;
- 5 (g) KRS 304.17A-580 and 304.17A-641;
- 6 (h) KRS 304.99-123;
- 7 (i) KRS 304.17A-138;
- 8 (j) KRS 304.17A-148;
- 9 (k) KRS 304.17A-163 and 304.17A-1631;
- 10 (l) KRS 304.17A-265;
- 11 (m) KRS 304.17A-261;
- 12 (n) KRS 304.17A-262;
- 13 (o) KRS 304.17A-145;
- 14 (p) KRS 304.17A-129;
- 15 (q) KRS 304.17A-133;
- 16 (r) KRS 304.17A-264;~~[and]~~
- 17 (s) **Section 6 of this Act; and**
- 18 **(t)** Administrative regulations promulgated pursuant to statutes listed in this
- 19 subsection.
- 20 (23) (a) Any fully insured health benefit plan or self-insured plan issued or renewed to
- 21 public employees pursuant to this section shall provide a special enrollment
- 22 period to pregnant women who are eligible for coverage in accordance with
- 23 the requirements set forth in KRS 304.17-182.
- 24 (b) The Department of Employee Insurance shall, at or before the time a public
- 25 employee is initially offered the opportunity to enroll in the plan or coverage,
- 26 provide the employee a notice of the special enrollment rights under this
- 27 subsection.

1 ➔Section 11. Sections 2 and 6 of this Act may be cited as the Medical Autonomy
2 and Directed Donation Act.

3 ➔Section 12. Sections 6, 9, and 10 of this Act apply to health benefit plans issued
4 or renewed on or after January 1, 2027.

5 ➔Section 13. Notwithstanding KRS 194A.099:

6 (1) Within 90 days of the effective date of this section, the Department of
7 Insurance shall identify, in accordance with 45 C.F.R. sec. 155.170(a)(3), whether the
8 application of any requirement of Section 6 of this Act to a qualified health plan (QHP) is
9 in addition to the essential health benefits required under federal law;

10 (2) If it is determined that the application of any requirement of Section 3 of this
11 Act to a QHP is in addition to the essential health benefits required under federal law,
12 then the department shall, within 180 days of the effective date of this section, apply for a
13 waiver under 42 U.S.C. sec. 18052, as amended, or any other applicable federal law of all
14 or any of the cost defrayal requirements under 42 U.S.C. sec. 18031(d)(3) and 45 C.F.R.
15 sec. 155.170, as amended; and

16 (3) The application required under subsection (2) of this section:

17 (a) Shall comply with the requirements of federal law for obtaining a waiver; and

18 (b) May propose changes to the state's EHB-benchmark plan, as defined in 45
19 C.F.R. sec. 156.20, that are not in conflict with existing state law.

20 ➔Section 14. If the Cabinet for Health and Family Services or the Department for
21 Medicaid Services determines that a state plan amendment, waiver, or any other form of
22 authorization or approval from any federal agency to implement Section 7 and 8 of this
23 Act is necessary to prevent the loss of federal funds or to comply with federal law, the
24 cabinet or department:

25 (1) Shall, within 90 days after the effective date of this section, request the
26 necessary federal authorization or approval to implement Sections 7 and 8 of this Act;
27 and

1 (2) May only delay implementation of the provisions of Sections 7 and 8 of this
2 Act for which federal authorization or approval was deemed necessary until the federal
3 authorization or approval is granted.

4 ➔Section 15. Sections 7, 8, and 14 of this Act shall constitute the specific
5 authorization required under KRS 205.5372(1).

6 ➔Section 16. Sections 6 to 12 of this Act take effect January 1, 2027.