

1 AN ACT relating to coverage for prescription drugs.

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) **"Biosimilar"** means any biological product that is:

1. Licensed under 42 U.S.C. sec. 262(k); and

2. Listed in the FDA's Database of Licensed Biological Products, also referred to as the Purple Book, as biosimilar to or interchangeable with a reference biological product;

11 **(b) "Brand drug" means:**

12 1. A drug for which an application has been approved under 21 U.S.C.
13 sec. 355(c); or

14 2. A biological product, other than a biosimilar, that is licensed under 42
15 U.S.C. sec. 262(a);

16 (c) "FDA" means the United States Food and Drug Administration;

17 (d) "Formulary" means a list of prescription drugs that:

1. Is developed by:

2. Represents a health plan's prescription drugs approved for use;

22 (e) "Generic drug" means a drug:

25 2. Which is listed in the FDA's Approved Drug Products with
26 Therapeutic Equivalence Evaluations, also referred to as the Orange
27 Book, as therapeutically equivalent to a reference listed drug, even if

the manufacturer of the drug applies a trade name to the drug;

(f) "Health plan":

1. Means any policy, certificate, contract, or plan that offers or provides coverage in this state for prescription drugs:

g. By direct payment, reimbursement, or otherwise; and

b. On a fully insured or self-insured basis or any combination thereof; and

2. Includes a health benefit plan:

(g) "Reference listed drug" means the listed drug identified by the FDA as the drug product upon which an applicant relies in seeking approval of its application submitted under 21 U.S.C. sec. 355(j);

(h) "Reference product" means a single biological product:

1. That is licensed by the FDA under 42 U.S.C. sec. 262(a);

2. Against which a proposed biosimilar or interchangeable product is compared; and

3. That is listed as a reference product in the FDA's Database of Licensed Biological Products, also referred to as the Purple Book; and

(i) "Wholesale acquisition cost" has the same meaning as in 42 U.S.C. sec. 12305(a)(5)(B).

20 (2) (a) If a generic drug is marketed pursuant to its FDA approval and has a
21 wholesale acquisition cost that is less than the wholesale acquisition cost of
22 the reference listed drug on the generic drug's initial date of marketing, a
23 health plan that provides coverage for the generic drug's reference listed
24 drug at the time of the generic drug's marketing date shall:

1. Immediately make the generic drug available on any formulary used by the health plan with more favorable cost-sharing requirements, including actual out-of-pocket costs, than the cost-sharing

requirements for the reference listed drug; and

2. Not impose:

a. Any prior authorization, step therapy, or any other limitation on coverage of the generic drug; or

b. Any restriction on a pharmacist or pharmacy through which an insured may obtain the generic drug that makes it more difficult for the insured to obtain coverage or access to the generic drug than the reference listed drug.

(b) Paragraph (a) of this subsection shall apply as long as the wholesale acquisition cost of the generic drug is lower than the wholesale acquisition cost of the reference listed drug.

12 (3) (a) If a biosimilar is marketed pursuant to its FDA license and has a wholesale
13 acquisition cost that is less than the wholesale acquisition cost of the
14 biosimilar's reference product on the initial date of marketing, a health plan
15 that provides coverage for the biosimilar's reference product at the time of
16 the biosimilar's marketing date shall:

1. Immediately make at least one (1) biosimilar available on any formulary used by the health plan with more favorable cost-sharing requirements, including actual out-of-pocket costs, than the cost-sharing requirements for the reference product; and

2. Not impose:

a. Any prior authorization, step therapy, or any other limitation on coverage of the biosimilar placed on the formulary under this paragraph; or

b. Any restriction on a pharmacist or pharmacy through which an insured may obtain a biosimilar placed on the formulary under this paragraph that makes it more difficult for the insured to

obtain coverage or access to the biosimilar than the reference product.

(b) Paragraph (a) of this subsection shall apply as long as the wholesale acquisition cost of the biosimilar is lower than the wholesale acquisition cost of the reference product.

(4) This section shall not:

(a) *Require a health plan to:*

1. Continue providing coverage for a brand drug after a generic drug or biosimilar is:

a. Approved or licensed, as applicable; and

b. Marketed; or

2. Provide coverage for a brand drug, generic drug, or biosimilar if a pharmacy and therapeutics committee or other clinical and pharmacy experts that develop the plan's formulary determine that the drug or biosimilar is no longer medically appropriate or cost effective; or

(b) Interfere with a pharmacist's or pharmacy's compliance with KRS Chapter

315.

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

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

21 (1) KBS 304 17A-129:

22 (2) KBS 304.17A-262: Land

23 (3) KBS 304.17A-591 to 304.17A-599; and

24 (1) Section 1 of this Act

► Section 3 KRS 164.2871 is amended to read as follows:

26 (1) The governing board of each state postsecondary educational institution is
27 authorized to purchase liability insurance for the protection of the individual

1 members of the governing board, faculty, and staff of such institutions from liability
2 for acts and omissions committed in the course and scope of the individual's
3 employment or service. Each institution may purchase the type and amount of
4 liability coverage deemed to best serve the interest of such institution.

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

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

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

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

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

1 (b) KRS 304.17A-133;

2 (c) KRS 304.17A-145;

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

4 (e) KRS 304.17A-261;

5 (f) KRS 304.17A-262;

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

7 (h) KRS 304.17A-265; and

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

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

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

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

18 (1) (a) The term "employee" for purposes of this section means:
19 1. Any person, including an elected public official, who is regularly
20 employed by any department, office, board, agency, or branch of state
21 government; or by a public postsecondary educational institution; or by
22 any city, urban-county, charter county, county, or consolidated local
23 government, whose legislative body has opted to participate in the state-
24 sponsored health insurance program pursuant to KRS 79.080; and who
25 is either a contributing member to any one (1) of the retirement systems
26 administered by the state, including but not limited to the Kentucky
27 Retirement Systems, County Employees Retirement System, Kentucky

1 Teachers' Retirement System, the Legislators' Retirement Plan, or the
2 Judicial Retirement Plan; or is receiving a contractual contribution from
3 the state toward a retirement plan; or, in the case of a public
4 postsecondary education institution, is an individual participating in an
5 optional retirement plan authorized by KRS 161.567; or is eligible to
6 participate in a retirement plan established by an employer who ceases
7 participating in the Kentucky Employees Retirement System pursuant to
8 KRS 61.522 whose employees participated in the health insurance plans
9 administered by the Personnel Cabinet prior to the employer's effective
10 cessation date in the Kentucky Employees Retirement System;

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

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

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

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

27 (b) The term "health benefit plan" for the purposes of this section means a health

1 benefit plan as defined in KRS 304.17A-005;

2 (c) The term "insurer" for the purposes of this section means an insurer as defined

3 in KRS 304.17A-005; and

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

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

6 (2) (a) The secretary of the Finance and Administration Cabinet, upon the

7 recommendation of the secretary of the Personnel Cabinet, shall procure, in

8 compliance with the provisions of KRS 45A.080, 45A.085, and 45A.090,

9 from one (1) or more insurers authorized to do business in this state, a group

10 health benefit plan that may include but not be limited to health maintenance

11 organization (HMO), preferred provider organization (PPO), point of service

12 (POS), and exclusive provider organization (EPO) benefit plans

13 encompassing all or any class or classes of employees. With the exception of

14 employers governed by the provisions of KRS Chapters 16, 18A, and 151B,

15 all employers of any class of employees or former employees shall enter into

16 a contract with the Personnel Cabinet prior to including that group in the state

17 health insurance group. The contracts shall include but not be limited to

18 designating the entity responsible for filing any federal forms, adoption of

19 policies required for proper plan administration, acceptance of the contractual

20 provisions with health insurance carriers or third-party administrators, and

21 adoption of the payment and reimbursement methods necessary for efficient

22 administration of the health insurance program. Health insurance coverage

23 provided to state employees under this section shall, at a minimum, contain

24 the same benefits as provided under Kentucky Kare Standard as of January 1,

25 1994, and shall include a mail-order drug option as provided in subsection

26 (13) of this section. All employees and other persons for whom the health care

27 coverage is provided or made available shall annually be given an option to

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

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

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

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

- 1 (e) The Personnel Cabinet shall develop the necessary techniques and capabilities
2 for timely analysis of data received from carriers and, to the extent possible,
3 provide in the request-for-proposal specifics relating to data requirements,
4 electronic reporting, and penalties for noncompliance. The Commonwealth
5 shall own the enrollment, claims, and utilization data provided by each carrier
6 and shall develop methods to protect the confidentiality of the individual. The
7 Personnel Cabinet shall include in the October annual report submitted
8 pursuant to the provisions of KRS 18A.226 to the Governor, the General
9 Assembly, and the Chief Justice of the Supreme Court, an analysis of the
10 financial stability of the program, which shall include but not be limited to
11 loss ratios, methods of risk adjustment, measurements of carrier quality of
12 service, prescription coverage and cost management, and statutorily required
13 mandates. If state self-insurance was available as a carrier option, the report
14 also shall provide a detailed financial analysis of the self-insurance fund
15 including but not limited to loss ratios, reserves, and reinsurance agreements.
- 16 (f) If any agency participating in the state-sponsored employee health insurance
17 program for its active employees terminates participation and there is a state
18 appropriation for the employer's contribution for active employees' health
19 insurance coverage, then neither the agency nor the employees shall receive
20 the state-funded contribution after termination from the state-sponsored
21 employee health insurance program.
- 22 (g) Any funds in flexible spending accounts that remain after all reimbursements
23 have been processed shall be transferred to the credit of the state-sponsored
24 health insurance plan's appropriation account.
- 25 (h) Each entity participating in the state-sponsored health insurance program shall
26 provide an amount at least equal to the state contribution rate for the employer
27 portion of the health insurance premium. For any participating entity that used

the state payroll system, the employer contribution amount shall be equal to
but not greater than the state contribution rate.

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

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

5 otherwise;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 government shall be considered a proper cost of administration.

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

1 deduction. The advisory committee shall be appointed in January of each year and
2 shall meet quarterly.

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

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

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

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

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

1 retail pharmacy shall not be required to dispense by mail.

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

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

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

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

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

1 amount available in the county where the plan selected is located.

2 (19) The Personnel Cabinet is encouraged to study whether it is fair and reasonable and
3 in the best interests of the state group to allow any carrier bidding to offer health
4 care coverage under this section to submit bids that may vary county by county or
5 by larger geographic areas.

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

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

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

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

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

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

27 (21) Any fully insured health benefit plan or self-insured plan issued or renewed on or

1 after July 12, 2006, to public employees pursuant to this section which provides
2 coverage for services rendered by a physician or osteopath duly licensed under KRS
3 Chapter 311 that are within the scope of practice of an optometrist duly licensed
4 under the provisions of KRS Chapter 320 shall provide the same payment of
5 coverage to optometrists as allowed for those services rendered by physicians or
6 osteopaths.

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

9 (a) KRS 304.12-237;

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

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

12 (d) KRS 205.593;

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

14 (f) KRS 304.14-135;

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

16 (h) KRS 304.99-123;

17 (i) KRS 304.17A-138;

18 (j) KRS 304.17A-148;

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

20 (l) KRS 304.17A-265;

21 (m) KRS 304.17A-261;

22 (n) KRS 304.17A-262;

23 (o) KRS 304.17A-145;

24 (p) KRS 304.17A-129;

25 (q) KRS 304.17A-133;

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

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

1 (t) Administrative regulations promulgated pursuant to statutes listed in this
2 subsection.

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

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

11 ➔Section 5. This Act applies to health plans issued or renewed on or after
12 January 1, 2027.

13 ➔Section 6. This Act takes effect January 1, 2027.