

1 AN ACT relating to coverage for prostheses and orthoses.

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, "health benefit plan" has the same meaning as in KRS
6 304.17A-005, except for purposes of this section, the term includes:

7 (a) Short-term limited-duration coverage; and
8 (b) Student health insurance offered by a Kentucky-licensed insurer under
9 written contract with a university or college whose students it proposes to
10 insure.

11 (2) All health benefit plans shall provide coverage for prostheses and orthoses.

12 (3) The coverage required under this section shall:

13 (a) At a minimum, be equivalent to the coverage of, and payment for,
14 prostheses and orthoses provided for the aged and disabled under the
15 following, as amended:

16 1. 42 U.S.C. sec. 1395k;
17 2. 42 U.S.C. sec. 1395l;
18 3. 42 U.S.C. sec. 1395m;
19 4. 42 C.F.R. sec. 410.100;
20 5. 42 C.F.R. sec. 414.202;
21 6. 42 C.F.R. sec. 414.210; and
22 7. 42 C.F.R. sec. 414.228;

23 (b) To the extent not covered under paragraph (a) of this subsection, include:

24 1. Coverage for any one (1) or more prostheses and orthoses prescribed
25 by an insured's health care provider and determined by a licensed
26 prosthetist or orthotist to be the most appropriate model or models that
27 adequately meet the medical needs of the insured for purposes of each

of the following:

- a. Completing activities of daily living;
 - b. Completing essential job-related activities;
 - c. Performing physical activities, including but not limited to running, biking, swimming, and strength training;
 - d. Maximizing the insured's whole-body health, including lower and upper limb function; or
 - e. Showering and bathing;

2. Coverage for the number of prostheses and orthoses that are prescribed and determined under subparagraph 1. of this paragraph;

3. Coverage for a prosthesis or orthosis prescribed for an insured with limb loss, absence, or impairment that otherwise would be covered for a nondisabled person seeking medical or surgical intervention to restore or maintain the ability to perform the same physical activity;

4. For any prosthesis or orthosis covered under this section, coverage
for:

- a. All materials and components necessary to use the prosthesis or orthosis;*

b. Instruction to the insured on using the prosthesis or orthosis;
and

c. The repair of the prosthesis or orthosis or any of its parts; and

5. a. Subject to subdivision b. of this subparagraph, coverage for the replacement of a prosthesis or orthosis, or any of its parts, covered under this section without regard to continuous use or useful lifetime restrictions, if the ordering health care professional determines that a replacement or part is necessary because of any of the following:

- i. A change in the physiological condition of the patient;*
 - ii. An irreparable change in the condition of the prosthesis or orthosis or any of its parts; or*
 - iii. The cost to repair the device or part would be more than sixty percent (60%) of the cost of a replacement device or of the part being replaced.*
 - b. If a prosthesis or orthosis that is less than three (3) years old is being replaced, the insurer offering or providing the health benefit plan may require confirmation of the need for a replacement from the ordering health care professional;*
 - (c) Not be subject to cost-sharing requirements that are applicable only with respect to the coverage required under this section;*
 - (d) May be subject to cost-sharing requirements if the requirements are not more restrictive than the cost-sharing requirements for inpatient physician and surgical services; and*
 - (e) Be considered habitative or rehabilitative services and devices for purposes of any federal requirements to provide coverage for essential health benefits.*
- (4) (a) With respect to the coverage required under this section, a utilization review decision rendered by an insurer or its private review agent shall:*
- 1. Be made in a nondiscriminatory manner; and*
 - 2. Not deny coverage solely on the basis of the insured's actual or perceived disability.*
- (b) An insurer or its private review agent shall provide a description of the insured's rights under paragraph (a) of this subsection in:*
- 1. The health benefit plan's evidence of coverage; and*
 - 2. Any denial letter relating to the coverage required under this section.*

1 (5) If an insurer or its private review agent denies the coverage required under this
2 section based on medical necessity, the insurer or agent shall provide a denial
3 letter to the insured and the provider that:

- 4 (a) Is in writing;
5 (b) Explains why the claim does not meet medical necessity standards; and
6 (c) Complies with any other applicable state and federal laws.

7 (6) (a) An insurer or its administrator that utilizes a network to provide prostheses
8 or orthoses under a health benefit plan shall ensure that the network is
9 reasonably adequate and accessible with respect to the provision of
10 prostheses and orthoses required to be covered under this section.

11 (b) A reasonably adequate network, with respect to the provision of prostheses
12 and orthoses that are required to be covered under this section, shall at a
13 minimum offer access to two (2) distinct licensed prosthetists and orthotists
14 in this state.

15 (c) If the provision of prostheses and orthoses required to be covered under this
16 section is not available from an in-network prosthetist or orthotist, the
17 insurer or its administrator shall:

- 18 1. Provide a process to refer insureds to an out-of-network prosthetist or
19 orthotist;
- 20 2. Reimburse an out-of-network prosthetist or orthotist at a mutually
21 agreed upon rate less the insured's cost sharing; and
- 22 3. Calculate the insured's cost sharing on an in-network basis.

23 (7) (a) By June 1 of each year, each insurer that offers or provides a health benefit
24 plan shall submit a report to the commissioner detailing the insurer's
25 experience with providing the coverage required under this section.

26 (b) The report required under paragraph (a) of this subsection shall:
27 1. Be in a form prescribed by the commissioner in an administrative

regulation promulgated in accordance with KRS Chapter 13A; and

2. With respect to the coverage required under this section, include the following for the preceding plan year:

a. The number of claims received; and

b. The number of claims paid.

(c) By October 1 of each year, the commissioner shall submit a report to the Legislative Research Commission, for referral to the Interim Joint Committee on Banking and Insurance, that provides the aggregated data of the reports submitted under paragraph (b) of this subsection by plan year.

10 ➔ Section 2. KRS 164.2871 is amended to read as follows:

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

17 (2) All retirement annuity allowances accrued or accruing to any employee of a state
18 postsecondary educational institution through a retirement program sponsored by
19 the state postsecondary educational institution are hereby exempt from any state,
20 county, or municipal tax, and shall not be subject to execution, attachment,
21 garnishment, or any other process whatsoever, nor shall any assignment thereof be
22 enforceable in any court. Except retirement benefits accrued or accruing to any
23 employee of a state postsecondary educational institution through a retirement
24 program sponsored by the state postsecondary educational institution on or after
25 January 1, 1998, shall be subject to the tax imposed by KRS 141.020, to the extent
26 provided in KRS 141.010 and 141.0215.

27 (3) Except as provided in KRS Chapter 44, the purchase of liability insurance for

- 1 members of governing boards, faculty and staff of institutions of higher education
2 in this state shall not be construed to be a waiver of sovereign immunity or any
3 other immunity or privilege.
- 4 (4) The governing board of each state postsecondary education institution is authorized
5 to provide a self-insured employer group health plan to its employees, which plan
6 shall:
- 7 (a) Conform to the requirements of Subtitle 32 of KRS Chapter 304; and
8 (b) Except as provided in subsection (5) of this section, be exempt from
9 conformity with Subtitle 17A of KRS Chapter 304.
- 10 (5) A self-insured employer group health plan provided by the governing board of a
11 state postsecondary education institution to its employees shall comply with:
- 12 (a) KRS 304.17A-129;
13 (b) KRS 304.17A-133;
14 (c) KRS 304.17A-145;
15 (d) KRS 304.17A-163 and 304.17A-1631;
16 (e) KRS 304.17A-261;
17 (f) KRS 304.17A-262;
18 (g) KRS 304.17A-264; ~~and~~
19 (h) KRS 304.17A-265; **and**
20 (i) **Section 1 of this Act.**
- 21 (6) (a) A self-insured employer group health plan provided by the governing board of
22 a state postsecondary education institution to its employees shall provide a
23 special enrollment period to pregnant women who are eligible for coverage in
24 accordance with the requirements set forth in KRS 304.17-182.
25 (b) The governing board of a state postsecondary education institution shall, at or
26 before the time an employee is initially offered the opportunity to enroll in the
27 plan or coverage, provide the employee a notice of the special enrollment

1 rights under this subsection.

2 ➔Section 3. KRS 18A.225 is amended to read as follows:

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

- 4 1. Any person, including an elected public official, who is regularly
5 employed by any department, office, board, agency, or branch of state
6 government; or by a public postsecondary educational institution; or by
7 any city, urban-county, charter county, county, or consolidated local
8 government, whose legislative body has opted to participate in the state-
9 sponsored health insurance program pursuant to KRS 79.080; and who
10 is either a contributing member to any one (1) of the retirement systems
11 administered by the state, including but not limited to the Kentucky
12 Retirement Systems, County Employees Retirement System, Kentucky
13 Teachers' Retirement System, the Legislators' Retirement Plan, or the
14 Judicial Retirement Plan; or is receiving a contractual contribution from
15 the state toward a retirement plan; or, in the case of a public
16 postsecondary education institution, is an individual participating in an
17 optional retirement plan authorized by KRS 161.567; or is eligible to
18 participate in a retirement plan established by an employer who ceases
19 participating in the Kentucky Employees Retirement System pursuant to
20 KRS 61.522 whose employees participated in the health insurance plans
21 administered by the Personnel Cabinet prior to the employer's effective
22 cessation date in the Kentucky Employees Retirement System;
23 2. Any certified or classified employee of a local board of education or a
24 public charter school as defined in KRS 160.1590;
25 3. Any elected member of a local board of education;
26 4. Any person who is a present or future recipient of a retirement
27 allowance from the Kentucky Retirement Systems, County Employees

Retirement System, Kentucky Teachers' Retirement System, the Legislators' Retirement Plan, the Judicial Retirement Plan, or the Kentucky Community and Technical College System's optional retirement plan authorized by KRS 161.567, except that a person who is receiving a retirement allowance and who is age sixty-five (65) or older shall not be included, with the exception of persons covered under KRS 61.702(2)(b)3. and 78.5536(2)(b)3., unless he or she is actively employed pursuant to subparagraph 1. of this paragraph; and

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

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

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

16 (d) The term "managed care plan" for the purposes of this section means a
17 managed care plan as defined in KRS 304.17A-500.

18 (2) (a) The secretary of the Finance and Administration Cabinet, upon the
19 recommendation of the secretary of the Personnel Cabinet, shall procure, in
20 compliance with the provisions of KRS 45A.080, 45A.085, and 45A.090,
21 from one (1) or more insurers authorized to do business in this state, a group
22 health benefit plan that may include but not be limited to health maintenance
23 organization (HMO), preferred provider organization (PPO), point of service
24 (POS), and exclusive provider organization (EPO) benefit plans
25 encompassing all or any class or classes of employees. With the exception of
26 employers governed by the provisions of KRS Chapters 16, 18A, and 151B,
27 all employers of any class of employees or former employees shall enter into

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

- 18 (b) The policy or policies shall be approved by the commissioner of insurance
19 and may contain the provisions the commissioner of insurance approves,
20 whether or not otherwise permitted by the insurance laws.
- 21 (c) Any carrier bidding to offer health care coverage to employees shall agree to
22 provide coverage to all members of the state group, including active
23 employees and retirees and their eligible covered dependents and
24 beneficiaries, within the county or counties specified in its bid. Except as
25 provided in subsection (20) of this section, any carrier bidding to offer health
26 care coverage to employees shall also agree to rate all employees as a single
27 entity, except for those retirees whose former employers insure their active

1 employees outside the state-sponsored health insurance program and as
2 otherwise provided in KRS 61.702(2)(b)3.b. and 78.5536(2)(b)3.b.

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

13 (e) The Personnel Cabinet shall develop the necessary techniques and capabilities
14 for timely analysis of data received from carriers and, to the extent possible,
15 provide in the request-for-proposal specifics relating to data requirements,
16 electronic reporting, and penalties for noncompliance. The Commonwealth
17 shall own the enrollment, claims, and utilization data provided by each carrier
18 and shall develop methods to protect the confidentiality of the individual. The
19 Personnel Cabinet shall include in the October annual report submitted
20 pursuant to the provisions of KRS 18A.226 to the Governor, the General
21 Assembly, and the Chief Justice of the Supreme Court, an analysis of the
22 financial stability of the program, which shall include but not be limited to
23 loss ratios, methods of risk adjustment, measurements of carrier quality of
24 service, prescription coverage and cost management, and statutorily required
25 mandates. If state self-insurance was available as a carrier option, the report
26 also shall provide a detailed financial analysis of the self-insurance fund
27 including but not limited to loss ratios, reserves, and reinsurance agreements.

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

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

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

15 (3) The premiums may be paid by the policyholder:
16 (a) Wholly from funds contributed by the employee, by payroll deduction or
17 otherwise;
18 (b) Wholly from funds contributed by any department, board, agency, public
19 postsecondary education institution, or branch of state, city, urban-county,
20 charter county, county, or consolidated local government; or
21 (c) Partly from each, except that any premium due for health care coverage or
22 dental coverage, if any, in excess of the premium amount contributed by any
23 department, board, agency, postsecondary education institution, or branch of
24 state, city, urban-county, charter county, county, or consolidated local
25 government for any other health care coverage shall be paid by the employee.

26 (4) If an employee moves his or her place of residence or employment out of the
27 service area of an insurer offering a managed health care plan, under which he or

- 1 she has elected coverage, into either the service area of another managed health care
2 plan or into an area of the Commonwealth not within a managed health care plan
3 service area, the employee shall be given an option, at the time of the move or
4 transfer, to change his or her coverage to another health benefit plan.
- 5 (5) No payment of premium by any department, board, agency, public postsecondary
6 educational institution, or branch of state, city, urban-county, charter county,
7 county, or consolidated local government shall constitute compensation to an
8 insured employee for the purposes of any statute fixing or limiting the
9 compensation of such an employee. Any premium or other expense incurred by any
10 department, board, agency, public postsecondary educational institution, or branch
11 of state, city, urban-county, charter county, county, or consolidated local
12 government shall be considered a proper cost of administration.
- 13 (6) The policy or policies may contain the provisions with respect to the class or classes
14 of employees covered, amounts of insurance or coverage for designated classes or
15 groups of employees, policy options, terms of eligibility, and continuation of
16 insurance or coverage after retirement.
- 17 (7) Group rates under this section shall be made available to the disabled child of an
18 employee regardless of the child's age if the entire premium for the disabled child's
19 coverage is paid by the state employee. A child shall be considered disabled if he or
20 she has been determined to be eligible for federal Social Security disability benefits.
- 21 (8) The health care contract or contracts for employees shall be entered into for a
22 period of not less than one (1) year.
- 23 (9) The secretary shall appoint thirty-two (32) persons to an Advisory Committee of
24 State Health Insurance Subscribers to advise the secretary or the secretary's
25 designee regarding the state-sponsored health insurance program for employees.
26 The secretary shall appoint, from a list of names submitted by appointing
27 authorities, members representing school districts from each of the seven (7)

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

1 other employment for which there is a public employer contribution. This does not
2 preclude a retiree and an active employee spouse from using both contributions to
3 the extent needed for purchase of one (1) state sponsored health insurance policy
4 for that plan year.

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

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

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

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

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

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

27 (17) If a state employee's residence and place of employment are in the same county,

1 and if the hospital located within that county does not offer surgical services,
2 intensive care services, obstetrical services, level II neonatal services, diagnostic
3 cardiac catheterization services, and magnetic resonance imaging services, the
4 employee may select a plan available in a contiguous county that does provide
5 those services, and the state contribution for the plan shall be the amount available
6 in the county where the plan selected is located.

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

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

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

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

25 (b) The Personnel Cabinet shall divide the state into geographical regions which
26 shall be the same as the partnership regions designated by the Department for
27 Medicaid Services for purposes of the Kentucky Health Care Partnership

- 1 (h) KRS 304.99-123;
 - 2 (i) KRS 304.17A-138;
 - 3 (j) KRS 304.17A-148;
 - 4 (k) KRS 304.17A-163 and 304.17A-1631;
 - 5 (l) KRS 304.17A-265;
 - 6 (m) KRS 304.17A-261;
 - 7 (n) KRS 304.17A-262;
 - 8 (o) KRS 304.17A-145;
 - 9 (p) KRS 304.17A-129;
 - 10 (q) KRS 304.17A-133;
 - 11 (r) KRS 304.17A-264; ~~and~~
 - 12 (s) **Section 1 of this Act; and**
 - 13 (t) Administrative regulations promulgated pursuant to statutes listed in this
 - 14 subsection.
 - 15 (23) (a) Any fully insured health benefit plan or self-insured plan issued or renewed to
 - 16 public employees pursuant to this section shall provide a special enrollment
 - 17 period to pregnant women who are eligible for coverage in accordance with
 - 18 the requirements set forth in KRS 304.17-182.
 - 19 (b) The Department of Employee Insurance shall, at or before the time a public
 - 20 employee is initially offered the opportunity to enroll in the plan or coverage,
 - 21 provide the employee a notice of the special enrollment rights under this
 - 22 subsection.
 - 23 ➔ Section 4. This Act applies to health benefit plans issued or renewed on or after
 - 24 January 1, 2027.
 - 25 ➔ Section 5. This Act takes effect January 1, 2027.