

1 AN ACT relating to insurance.

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

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

4 (1) As used in this section:

5 (a) "Cost sharing" means the cost to an ~~individual~~ insured under a health plan
6 according to any coverage limit, copayment, coinsurance, deductible, or other
7 out-of-pocket expense requirements imposed by the plan, which may be
8 subject to annual limitations on cost sharing, including those imposed under
9 42 U.S.C. secs. 18022(c) and 300gg-6(b), in order for the insured ~~an~~
10 ~~individual~~ to receive a specific health care service covered by the plan;

11 (b) "Generic alternative" means a drug that is designated to be therapeutically
12 equivalent by the United States Food and Drug Administration's Approved
13 Drug Products with Therapeutic Equivalence Evaluations, except that a drug
14 shall not be considered a generic alternative until the drug is nationally
15 available;

16 (c) "Health plan":

17 1. Means a policy, contract, certificate, or agreement offered or issued by
18 an insurer to provide, deliver, arrange for, pay for, or reimburse any of
19 the cost of health care services; and

20 2. Includes a health benefit plan ~~as defined in KRS 304.17A-005~~;

21 (d) "Insured" means any individual who is enrolled in a health plan and on whose
22 behalf the insurer is obligated to pay for or provide health care services;

23 (e) "Insurer" includes:

24 1. An insurer offering a health plan providing coverage for pharmacy
25 benefits; or

26 2. Any other administrator of pharmacy benefits under a health plan;

27 (f) "Person" means a natural person, corporation, mutual company,

1 unincorporated association, partnership, joint venture, limited liability
2 company, trust, estate, foundation, nonprofit corporation, unincorporated
3 organization, government, or governmental subdivision or agency;

4 (g) "Pharmacy" includes:

- 5 1. A pharmacy, as defined in KRS Chapter 315;
- 6 2. A pharmacist, as defined in KRS Chapter 315; ~~and for~~
- 7 3. Any employee of a pharmacy or pharmacist; and

8 (h) "Pharmacy benefit manager" has the same meaning as in KRS 304.17A-161.

9 (2) To the extent permitted under federal law **and except as provided in subsection (4)**
10 **of this section**, an insurer issuing or renewing a health plan on or after January 1,
11 2022, or a pharmacy benefit manager, shall not:

12 (a) Require an insured purchasing a prescription drug to pay a cost-sharing
13 amount greater than the amount the insured would pay for the drug if he or
14 she were to purchase the drug without coverage;

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

20 **1.** In the case of a prescription drug for which there is a generic alternative,
21 unless the insured has obtained access to the brand prescription drug
22 through prior authorization, a step therapy protocol, or the insurer's
23 exceptions and appeals process; **or**

24 **2. To any fully insured health benefit plan or self-insured plan provided**
25 **to any employee under KRS 18A.225;**

26 (c) Prohibit a pharmacy from discussing any information under subsection (3) of
27 this section; or

- 1 (d) Impose a penalty on a pharmacy for complying with this section.
- 2 (3) A pharmacist shall have the right to provide an insured information regarding the
3 applicable limitations on his or her cost sharing~~[cost sharing]~~ pursuant to this
4 section for a prescription drug.
- 5 (4) **If the application of any requirement of subsection (2)(b) of this section would be**
6 **the sole cause of a health plan's failure to qualify as a Health Savings Account-**
7 **qualified High Deductible Health Plan under 26 U.S.C. sec. 223, as amended,**
8 **then the requirement shall not apply to that health plan until the minimum**
9 **deductible under 26 U.S.C. sec. 223, as amended, is satisfied**~~[Subsection (2)(b) of~~
10 ~~this section shall not apply to any fully insured health benefit plan or self insured~~
11 ~~plan provided to an employee under KRS 18A.225].~~

12 ➔Section 2. In implementing the requirements of this Act, the state shall only
13 regulate a pharmacy benefit manager or an insurer to the extent permissible under
14 applicable law.