

1 AN ACT relating to pharmacy benefits.

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

3 ➔Section 1. KRS 304.17A-165 is amended to read as follows:

4 (1) (a) Any health benefit plan that provides benefits for prescription drugs shall
 5 include an exceptions policy or an override policy that provides coverage for
 6 the refill of a covered drug dispensed prior to the expiration of the insured's
 7 supply of the drug. The insurer shall provide notice in existing written or
 8 electronic communications to pharmacies doing business with the insurer, the
 9 pharmacy benefit manager if applicable, and to the insured regarding the
 10 exceptions policy or override policy. This subsection shall not apply to
 11 controlled substances as classified by KRS Chapter 218A.

12 ~~(b)(2)~~ Nothing in this subsection~~[section]~~ shall prohibit an insurer from
 13 limiting payment to no more than three (3) refills of a covered drug in a ninety
 14 (90) day period.

15 ~~(c)(3)~~ Any individual or group health benefit plan that provides benefits for
 16 prescription drugs shall provide a program for synchronization of medications
 17 when it is agreed among the insured, a provider, and a pharmacist that
 18 synchronization of multiple prescriptions for the treatment of a chronic illness
 19 is in the best interest of the patient for the management or treatment of a
 20 chronic illness provided that the medications:

21 1.(a) Are covered by the individual or group health benefit plan:

22 2.(b) Are used for treatment and management of chronic conditions that
 23 are subject to refills;

24 3.(c) Are not a Schedule II controlled substance or a Schedule III
 25 controlled substance containing hydrocodone;

26 4.(d) Meet all prior authorization criteria specific to the medications at
 27 the time of the synchronization request;

1 ~~5.[(e)]~~ Are of a formulation that can be effectively split over required
 2 short fill periods to achieve synchronization; and

3 ~~6.[(f)]~~ Do not have quantity limits or dose optimization criteria or
 4 requirements that would be violated in fulfilling synchronization.

5 ~~(d)[(4)]~~ To permit synchronization, an individual or group health benefit plan
 6 shall apply a prorated daily cost-sharing rate to any medication dispensed by a
 7 network pharmacy pursuant to this subsection~~[section]~~.

8 ~~(e)[(5)]~~ Any dispensing fee shall not be prorated and shall be based on an
 9 individual prescription filled or refilled.

10 (2) (a) Any health benefit plan issued or renewed on or after the effective date of
 11 this Act that provides prescription drug coverage administered by the
 12 insurer or through a pharmacy benefit manager shall not:

13 1. Require an insured to use a mail-order pharmacy instead of a retail
 14 pharmacy to fill any prescriptions; and

15 2. Prohibit or discriminate against any contracted retail pharmacy from
 16 fulfilling any prescription for an insured for drugs covered under the
 17 plan if the pharmacy agrees to the financial terms and conditions for
 18 participation established by the insurer, including price, dispensing
 19 fee, and cost-sharing requirements. The retail pharmacy shall not be
 20 required to dispense by mail.

21 (b) Any health benefit plan that provides coverage on or after the effective date
 22 of this Act shall not use a different cost-sharing amount between mail-order
 23 pharmacy filled prescriptions and retail pharmacy filled prescriptions as a
 24 means to coerce, induce, direct, compel, or entice an insured to fill
 25 prescriptions from a mail-order pharmacy or retail pharmacy in which it
 26 has a financial interest. Nothing in this paragraph shall prevent an insurer
 27 from offering a different cost-sharing amount based on filling multiple

1 months of a prescription at a given time, so long as the cost-sharing is the
2 same whether the prescription is filled by a mail-order pharmacy or retail
3 pharmacy.

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

- 5 (1) (a) The term "employee" for purposes of this section means:
- 6 1. Any person, including an elected public official, who is regularly
7 employed by any department, office, board, agency, or branch of state
8 government; or by a public postsecondary educational institution; or by
9 any city, urban-county, charter county, county, or consolidated local
10 government, whose legislative body has opted to participate in the state-
11 sponsored health insurance program pursuant to KRS 79.080; and who
12 is either a contributing member to any one (1) of the retirement systems
13 administered by the state, including but not limited to the Kentucky
14 Retirement Systems, Kentucky Teachers' Retirement System, the
15 Legislators' Retirement Plan, or the Judicial Retirement Plan; or is
16 receiving a contractual contribution from the state toward a retirement
17 plan; or, in the case of a public postsecondary education institution, is an
18 individual participating in an optional retirement plan authorized by
19 KRS 161.567;
 - 20 2. Any certified or classified employee of a local board of education;
 - 21 3. Any elected member of a local board of education;
 - 22 4. Any person who is a present or future recipient of a retirement
23 allowance from the Kentucky Retirement Systems, Kentucky Teachers'
24 Retirement System, the Legislators' Retirement Plan, the Judicial
25 Retirement Plan, or the Kentucky Community and Technical College
26 System's optional retirement plan authorized by KRS 161.567, except
27 that a person who is receiving a retirement allowance and who is age

- 1 sixty-five (65) or older shall not be included, with the exception of
2 persons covered under KRS 61.702(4)(c), unless he or she is actively
3 employed pursuant to subparagraph 1. of this paragraph; and
- 4 5. Any eligible dependents and beneficiaries of participating employees
5 and retirees who are entitled to participate in the state-sponsored health
6 insurance program;
- 7 (b) The term "health benefit plan" for the purposes of this section means a health
8 benefit plan as defined in KRS 304.17A-005;
- 9 (c) The term "insurer" for the purposes of this section means an insurer as defined
10 in KRS 304.17A-005; and
- 11 (d) The term "managed care plan" for the purposes of this section means a
12 managed care plan as defined in KRS 304.17A-500.
- 13 (2) (a) The secretary of the Finance and Administration Cabinet, upon the
14 recommendation of the secretary of the Personnel Cabinet, shall procure, in
15 compliance with ~~the provisions of~~ KRS 45A.080, 45A.085, and 45A.090,
16 from one (1) or more insurers authorized to do business in this state, a group
17 health benefit plan that may include but not be limited to health maintenance
18 organization (HMO), preferred provider organization (PPO), point of service
19 (POS), and exclusive provider organization (EPO) benefit plans encompassing
20 all or any class or classes of employees. With the exception of employers
21 governed by ~~the provisions of~~ KRS Chapters 16, 18A, and 151B, all
22 employers of any class of employees or former employees shall enter into a
23 contract with the Personnel Cabinet prior to including that group in the state
24 health insurance group. The contracts shall include but not be limited to
25 designating the entity responsible for filing any federal forms, adoption of
26 policies required for proper plan administration, acceptance of the contractual
27 provisions with health insurance carriers or third-party administrators, and

1 adoption of the payment and reimbursement methods necessary for efficient
2 administration of the health insurance program. Health insurance coverage
3 provided to state employees under this section shall, at a minimum, contain
4 the same benefits as provided under Kentucky Kare Standard as of January 1,
5 1994, and shall include a mail-order drug option as provided in subsection
6 (13) of this section. All employees and other persons for whom the health care
7 coverage is provided or made available shall annually be given an option to
8 elect health care coverage through a self-funded plan offered by the
9 Commonwealth or, if a self-funded plan is not available, from a list of
10 coverage options determined by the competitive bid process under ~~the~~
11 ~~provisions of~~ KRS 45A.080, 45A.085, and 45A.090 and made available
12 during annual open enrollment.

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

16 (c) Any carrier bidding to offer health care coverage to employees shall agree to
17 provide coverage to all members of the state group, including active
18 employees and retirees and their eligible covered dependents and
19 beneficiaries, within the county or counties specified in its bid. Except as
20 provided in subsection (20) of this section, any carrier bidding to offer health
21 care coverage to employees shall also agree to rate all employees as a single
22 entity, except for those retirees whose former employers insure their active
23 employees outside the state-sponsored health insurance program.

24 (d) Any carrier bidding to offer health care coverage to employees shall agree to
25 provide enrollment, claims, and utilization data to the Commonwealth in a
26 format specified by the Personnel Cabinet with the understanding that the data
27 shall be owned by the Commonwealth; to provide data in an electronic form

1 and within a time frame specified by the Personnel Cabinet; and to be subject
2 to penalties for noncompliance with data reporting requirements as specified
3 by the Personnel Cabinet. The Personnel Cabinet shall take strict precautions
4 to protect the confidentiality of each individual employee; however,
5 confidentiality assertions shall not relieve a carrier from the requirement of
6 providing stipulated data to the Commonwealth.

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

23 (f) If any agency participating in the state-sponsored employee health insurance
24 program for its active employees terminates participation and there is a state
25 appropriation for the employer's contribution for active employees' health
26 insurance coverage, then neither the agency nor the employees shall receive
27 the state-funded contribution after termination from the state-sponsored

- 1 employee health insurance program.
- 2 (g) Any funds in flexible spending accounts that remain after all reimbursements
3 have been processed shall be transferred to the credit of the state-sponsored
4 health insurance plan's appropriation account.
- 5 (h) Each entity participating in the state-sponsored health insurance program shall
6 provide an amount at least equal to the state contribution rate for the employer
7 portion of the health insurance premium. For any participating entity that used
8 the state payroll system, the employer contribution amount shall be equal to
9 but not greater than the state contribution rate.
- 10 (3) The premiums may be paid by the policyholder:
- 11 (a) Wholly from funds contributed by the employee, by payroll deduction or
12 otherwise;
- 13 (b) Wholly from funds contributed by any department, board, agency, public
14 postsecondary education institution, or branch of state, city, urban-county,
15 charter county, county, or consolidated local government; or
- 16 (c) Partly from each, except that any premium due for health care coverage or
17 dental coverage, if any, in excess of the premium amount contributed by any
18 department, board, agency, postsecondary education institution, or branch of
19 state, city, urban-county, charter county, county, or consolidated local
20 government for any other health care coverage shall be paid by the employee.
- 21 (4) If an employee moves his place of residence or employment out of the service area
22 of an insurer offering a managed health care plan, under which he has elected
23 coverage, into either the service area of another managed health care plan or into an
24 area of the Commonwealth not within a managed health care plan service area, the
25 employee shall be given an option, at the time of the move or transfer, to change his
26 or her coverage to another health benefit plan.
- 27 (5) No payment of premium by any department, board, agency, public postsecondary

1 educational institution, or branch of state, city, urban-county, charter county,
2 county, or consolidated local government shall constitute compensation to an
3 insured employee for the purposes of any statute fixing or limiting the
4 compensation of such an employee. Any premium or other expense incurred by any
5 department, board, agency, public postsecondary educational institution, or branch
6 of state, city, urban-county, charter county, county, or consolidated local
7 government shall be considered a proper cost of administration.

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

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

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

18 (9) The secretary shall appoint thirty-two (32) persons to an Advisory Committee of
19 State Health Insurance Subscribers to advise the secretary or his designee regarding
20 the state-sponsored health insurance program for employees. The secretary shall
21 appoint, from a list of names submitted by appointing authorities, members
22 representing school districts from each of the seven (7) Supreme Court districts,
23 members representing state government from each of the seven (7) Supreme Court
24 districts, two (2) members representing retirees under age sixty-five (65), one (1)
25 member representing local health departments, two (2) members representing the
26 Kentucky Teachers' Retirement System, and three (3) members at large. The
27 secretary shall also appoint two (2) members from a list of five (5) names submitted

1 by the Kentucky Education Association, two (2) members from a list of five (5)
2 names submitted by the largest state employee organization of nonschool state
3 employees, two (2) members from a list of five (5) names submitted by the
4 Kentucky Association of Counties, two (2) members from a list of five (5) names
5 submitted by the Kentucky League of Cities, and two (2) members from a list of
6 names consisting of five (5) names submitted by each state employee organization
7 that has two thousand (2,000) or more members on state payroll deduction. The
8 advisory committee shall be appointed in January of each year and shall meet
9 quarterly.

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

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

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

27 (13) (a) The policies of health insurance coverage procured under subsection (2) of

1 this section shall include a mail-order drug option for maintenance drugs for
2 state employees. Maintenance drugs may be dispensed by mail order in
3 accordance with Kentucky law.

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

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

11 *(d) A health insurer or pharmacy benefit manager shall not require an insured*
12 *to use a mail-order pharmacy instead of a retail pharmacy.*

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

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

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

24 (17) If a state employee's residence and place of employment are in the same county, and
25 if the hospital located within that county does not offer surgical services, intensive
26 care services, obstetrical services, level II neonatal services, diagnostic cardiac
27 catheterization services, and magnetic resonance imaging services, the employee

1 may select a plan available in a contiguous county that does provide those services,
2 and the state contribution for the plan shall be the amount available in the county
3 where the plan selected is located.

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

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

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

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

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

26 (c) The request for proposal shall require a carrier's bid to include every county
27 within the region or regions for which the bid is submitted and include but not

1 be restricted to a preferred provider organization (PPO) option;

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

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

9 (21) Any fully insured health benefit plan or self-insured plan issued or renewed on or
10 after July 12, 2006, to public employees pursuant to this section which provides
11 coverage for services rendered by a physician or osteopath duly licensed under KRS
12 Chapter 311 that are within the scope of practice of an optometrist duly licensed
13 under ~~the provisions of~~ KRS Chapter 320 shall provide the same payment of
14 coverage to optometrists as allowed for those services rendered by physicians or
15 osteopaths.

16 (22) Any fully insured health benefit plan or self-insured plan issued or renewed on or
17 after the effective date of this Act~~July 12, 2006~~, to public employees pursuant to
18 this section shall comply with subsection (2) of Section 1 of this Act~~the provisions~~
19 ~~of~~ KRS 304.17A-270, and 304.17A-525.

20 (23) Any full insured health benefit plan or self-insured~~self-insured~~ plan issued or
21 renewed on or after July 12, 2006, to public employees shall comply with KRS
22 304.17A-600 to 304.17A-633 pertaining to utilization review, KRS 205.593 and
23 304.17A-700 to 304.17A-730 pertaining to payment of claims, KRS 304.14-135
24 pertaining to uniform health insurance claim forms, KRS 304.17A-580 and
25 304.17A-641 pertaining to emergency medical care, KRS 304.99-123, and any
26 administrative regulations promulgated thereunder.

27 ➔Section 3. KRS 205.522 is amended to read as follows:

1 A managed care organization that provides Medicaid benefits pursuant to this chapter
2 shall comply with ~~the provisions of~~ KRS 304.17A-235, ~~and~~ 304.17A-740 to 304.17A-
3 743, **and subsection (2) of Section 1 of this Act.**

4 ➔Section 4. This Act takes effect January 1, 2018.