

1 AN ACT relating to health insurance.

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

3 ➔Section 1. KRS 304.17A-580 is amended to read as follows:

4 (1) An insurer offering health benefit plans shall educate its insureds about the
5 availability, location, and appropriate use of emergency and other medical services,
6 cost-sharing provisions for emergency services, and the availability of care outside
7 an emergency department.

8 (2) ***(a)*** An insurer offering health benefit plans shall cover emergency medical
9 conditions and shall pay for emergency department screening and stabilization
10 services both in-network and out-of-network without prior authorization for
11 conditions that reasonably appear to a prudent layperson to constitute an
12 emergency medical condition based on the patient's presenting symptoms and
13 condition.

14 ***(b)*** An insurer shall be prohibited from denying the emergency room services and
15 altering the level of coverage or cost-sharing requirements ***pursuant to a***
16 ***concurrent or retrospective review, as defined in KRS 304.17A-600,*** for any
17 condition or conditions that ***reasonably appear to a prudent layperson to***
18 constitute an emergency medical condition as defined in KRS 304.17A-500.
19 ***Under no circumstances may an insurer base a final determination of a***
20 ***concurrent or retrospective review on the final diagnosis of the insured.***

21 (3) Emergency department personnel shall contact a patient's primary care provider or
22 insurer, as appropriate, as quickly as possible to discuss follow-up and
23 poststabilization care and promote continuity of care.

24 (4) Nothing in this section shall apply to accident-only, specified disease, hospital
25 indemnity, Medicare supplement, long-term care, disability income, or other
26 limited-benefit health insurance policies.

27 ***(5) Where a covered person with an emergency medical condition has been***

1 stabilized, as required by the Consolidated Omnibus Budget Reconciliation Act of
 2 1985 (COBRA), 42 U.S.C. secs. 300bb-1 et seq., in the emergency department of a
 3 nonparticipating hospital, and an insurer under its health benefit plan requires
 4 prior authorization for poststabilization treatment, approval or denial under the
 5 preauthorization requirement shall be provided in a timely manner appropriate to
 6 conditions of the patient and delivery of the services, but in no case to exceed two
 7 (2) hours from the time the request is made and all relevant information is
 8 provided. The insurer's failure to make a determination within the two (2) hour
 9 time frame shall constitute an authorization for the hospital to provide the
 10 medical service for which prior authorization was sought.

11 (6) The nonparticipating hospital providing emergency room services,
 12 poststabilization treatment, or both shall be paid at a rate negotiated between the
 13 nonparticipating hospital and the insurer. Nothing in this section is to be
 14 construed as requiring the payment of one hundred percent (100%) of the billed
 15 charges.

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

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

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

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

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

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

- 1 (c) Any carrier bidding to offer health care coverage to employees shall agree to
2 provide coverage to all members of the state group, including active
3 employees and retirees and their eligible covered dependents and
4 beneficiaries, within the county or counties specified in its bid. Except as
5 provided in subsection (20) of this section, any carrier bidding to offer health
6 care coverage to employees shall also agree to rate all employees as a single
7 entity, except for those retirees whose former employers insure their active
8 employees outside the state-sponsored health insurance program.
- 9 (d) Any carrier bidding to offer health care coverage to employees shall agree to
10 provide enrollment, claims, and utilization data to the Commonwealth in a
11 format specified by the Personnel Cabinet with the understanding that the data
12 shall be owned by the Commonwealth; to provide data in an electronic form
13 and within a time frame specified by the Personnel Cabinet; and to be subject
14 to penalties for noncompliance with data reporting requirements as specified
15 by the Personnel Cabinet. The Personnel Cabinet shall take strict precautions
16 to protect the confidentiality of each individual employee; however,
17 confidentiality assertions shall not relieve a carrier from the requirement of
18 providing stipulated data to the Commonwealth.
- 19 (e) The Personnel Cabinet shall develop the necessary techniques and capabilities
20 for timely analysis of data received from carriers and, to the extent possible,
21 provide in the request-for-proposal specifics relating to data requirements,
22 electronic reporting, and penalties for noncompliance. The Commonwealth
23 shall own the enrollment, claims, and utilization data provided by each carrier
24 and shall develop methods to protect the confidentiality of the individual. The
25 Personnel Cabinet shall include in the October annual report submitted
26 pursuant to the provisions of KRS 18A.226 to the Governor, the General
27 Assembly, and the Chief Justice of the Supreme Court, an analysis of the

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (8) The health care contract or contracts for employees shall be entered into for a period

1 of not less than one (1) year.

2 (9) The secretary shall appoint thirty-two (32) persons to an Advisory Committee of
3 State Health Insurance Subscribers to advise the secretary or his designee regarding
4 the state-sponsored health insurance program for employees. The secretary shall
5 appoint, from a list of names submitted by appointing authorities, members
6 representing school districts from each of the seven (7) Supreme Court districts,
7 members representing state government from each of the seven (7) Supreme Court
8 districts, two (2) members representing retirees under age sixty-five (65), one (1)
9 member representing local health departments, two (2) members representing the
10 Kentucky Teachers' Retirement System, and three (3) members at large. The
11 secretary shall also appoint two (2) members from a list of five (5) names submitted
12 by the Kentucky Education Association, two (2) members from a list of five (5)
13 names submitted by the largest state employee organization of nonschool state
14 employees, two (2) members from a list of five (5) names submitted by the
15 Kentucky Association of Counties, two (2) members from a list of five (5) names
16 submitted by the Kentucky League of Cities, and two (2) members from a list of
17 names consisting of five (5) names submitted by each state employee organization
18 that has two thousand (2,000) or more members on state payroll deduction. The
19 advisory committee shall be appointed in January of each year and shall meet
20 quarterly.

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

26 (11) Interruption of an established treatment regime with maintenance drugs shall be
27 grounds for an insured to appeal a formulary change through the established appeal

1 procedures approved by the Department of Insurance, if the physician supervising
2 the treatment certifies that the change is not in the best interests of the patient.

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

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

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

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

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

27 (15) Any policy provided to state employees or their dependents pursuant to this section

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

1 vary by region for a given product offering as described in this subsection:

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

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

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

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

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

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

25 (22) Any fully insured health benefit plan or self-insured plan issued or renewed on or
26 after July 12, 2006, to public employees pursuant to this section shall comply with
27 the provisions of KRS 304.17A-270 and 304.17A-525.

1 (23) Any full insured health benefit plan or self insured plan issued or renewed on or
2 after July 12, 2006, to public employees shall comply with KRS 304.17A-600 to
3 304.17A-633 pertaining to utilization review, KRS 205.593 and 304.17A-700 to
4 304.17A-730 pertaining to payment of claims, KRS 304.14-135 pertaining to
5 uniform health insurance claim forms, KRS 304.17A-580~~[and 304.17A-641]~~
6 pertaining to emergency medical care, KRS 304.99-123, and any administrative
7 regulations promulgated thereunder.

8 ➔Section 3. The following KRS sections are repealed:

- 9 304.17A-640 Definitions for KRS 304.17A-640 et seq.
- 10 304.17A-641 Treatment of a stabilized covered person with an emergency medical
11 condition in a nonparticipating hospital's emergency room.
- 12 304.17A-649 Administrative regulations for the implementation of KRS 304.17A-640 et
13 seq.