

1 AN ACT relating to health benefit coverage of chronic pain treatments.

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) Any health benefit plan in the individual, small group, or large group market*
6 *issued or renewed on or after the effective date of this Act, that provides coverage*
7 *for hospital, medical, or surgical expenses, shall include coverage for twenty (20)*
8 *visits per event of chronic pain treatments provided to an insured patient when*
9 *ordered by a licensed health care provider to treat conditions that cause chronic*
10 *pain by a licensed professional specializing in at least one (1) of the following:*

11 *(a) Acupuncture;*

12 *(b) Massage therapy;*

13 *(c) Physical therapy;*

14 *(d) Occupational therapy;*

15 *(e) Osteopathic manipulation;*

16 *(f) Chronic pain management;*

17 *(g) Psychotherapy; or*

18 *(h) Chiropractic services.*

19 *(2) A patient may seek treatment for acupuncture, massage therapy, physical*
20 *therapy, occupational therapy, osteopathic manipulation, chronic pain*
21 *management, psychotherapy, and chiropractic services prior to seeking treatment*
22 *from a health care provider, and a health care provider referral shall not be*
23 *required as a condition of coverage. Any deductible, coinsurance, or copay*
24 *required for any chronic pain treatments provided by a licensed professional shall*
25 *not be greater than the deductible, coinsurance, or copay required for a primary*
26 *care visit.*

27 *(3) Nothing in this section should be construed to require:*

1 (a) That all of the chronic pain treatments provided by a licensed professional
2 listed in subsection (1) of this section are required to be exhausted prior to
3 the patient receiving a prescription for an opioid; or

4 (b) Coverage under Subtitle 39 of KRS Chapter 304 for chronic pain treatments
5 provided by a licensed professional.

6 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO
7 READ AS FOLLOWS:

8 (1) The Department for Medicaid Services or a managed care organization
9 contracted to provide services pursuant to this chapter shall include coverage for
10 twenty (20) visits per event of chronic pain treatments to an insured patient when
11 ordered by a licensed health care provider to treat conditions that cause chronic
12 pain provided a licensed professional specializing in at least one (1) of the
13 following:

14 (a) Acupuncture;

15 (b) Massage therapy;

16 (c) Physical therapy;

17 (d) Occupational therapy;

18 (e) Osteopathic manipulation;

19 (f) Chronic pain management;

20 (g) Psychotherapy; or

21 (h) Chiropractic services.

22 (2) A patient may seek treatment for acupuncture, massage therapy, physical
23 therapy, occupational therapy, osteopathic manipulation, chronic pain
24 management, psychotherapy, and chiropractic services prior to seeking treatment
25 from a health care provider, and a health care provider referral shall not be
26 required as a condition of coverage. Any deductible, coinsurance, or copay
27 required for any chronic pain treatment provided by a licensed professional shall

1 not be greater than the deductible, coinsurance, or copay required for a primary
 2 care visit.

3 (3) Nothing in this section should be construed to require:

4 (a) That all of the chronic pain treatments provided by a licensed professional
 5 listed in subsection (1) of this section are required to be exhausted prior to
 6 the patient receiving a prescription for an opioid; or

7 (b) Coverage under Subtitle 39 of Chapter 304 for chronic pain treatments
 8 provided by a licensed professional.

9 ➔Section 3. KRS 218A.172 is amended to read as follows:

10 (1) Administrative regulations promulgated under KRS 218A.205(3) shall require that,
 11 prior to the initial prescribing or dispensing of any Schedule II controlled substance
 12 or a Schedule III controlled substance containing hydrocodone to a human patient, a
 13 practitioner shall:

14 (a) Obtain a medical history and conduct a physical or mental health examination
 15 of the patient, as appropriate to the patient's medical complaint, and document
 16 the information in the patient's medical record;

17 (b) Query the electronic monitoring system established in KRS 218A.202 for all
 18 available data on the patient for the twelve (12) month period immediately
 19 preceding the patient encounter and appropriately utilize that data in the
 20 evaluation and treatment of the patient;

21 (c) Make a written plan stating the objectives of the treatment and further
 22 diagnostic examinations required;

23 (d) Discuss the risks and benefits of the use of controlled substances with the
 24 patient, the patient's parent if the patient is an unemancipated minor child, or
 25 the patient's legal guardian or health care surrogate, including the risk of
 26 tolerance and drug dependence;~~and~~

27 (e) Discuss and refer or prescribe, if appropriate based on the practitioner's

1 *clinical judgment and treatment availability, chronic pain treatments*
 2 *provided by a licensed professional specializing in at least one (1) of the*
 3 *following:*

- 4 *1. Acupuncture;*
- 5 *2. Massage therapy;*
- 6 *3. Physical therapy;*
- 7 *4. Occupational therapy;*
- 8 *5. Osteopathic manipulation;*
- 9 *6. Chronic pain management;*
- 10 *7. Psychotherapy; or*
- 11 *8. Chiropractic services; and*

12 (f) Obtain written consent for the treatment.

13 (2) (a) Administrative regulations promulgated under KRS 218A.205(3) shall require
 14 that a practitioner prescribing or dispensing additional amounts of Schedule II
 15 controlled substances or Schedule III controlled substances containing
 16 hydrocodone for the same medical complaint and related symptoms shall:

- 17 1. Review, at reasonable intervals based on the patient's individual
 18 circumstances and course of treatment, the plan of care;
- 19 2. Provide to the patient any new information about the treatment; and
- 20 3. Modify or terminate the treatment as appropriate.

21 (b) If the course of treatment extends beyond three (3) months, the administrative
 22 regulations shall also require that the practitioner:

- 23 1. Query the electronic monitoring system established in KRS 218A.202
 24 no less than once every three (3) months for all available data on the
 25 patient for the twelve (12) month period immediately preceding the
 26 query; and
- 27 2. Review that data before issuing any new prescription or refills for the

1 patient for any Schedule II controlled substance or a Schedule III
2 controlled substance containing hydrocodone.

3 (3) Administrative regulations promulgated under KRS 218A.205(3) shall require that,
4 for each patient for whom a practitioner prescribes any Schedule II controlled
5 substance or a Schedule III controlled substance containing hydrocodone, the
6 practitioner shall keep accurate, readily accessible, and complete medical records
7 which include, as appropriate:

- 8 (a) Medical history and physical or mental health examination;
- 9 (b) Diagnostic, therapeutic, and laboratory results;
- 10 (c) Evaluations and consultations;
- 11 (d) Treatment objectives;
- 12 (e) Discussion of risk, benefits, and limitations of treatments;
- 13 (f) Treatments;
- 14 (g) Medications, including date, type, dosage, and quantity prescribed or
15 dispensed;
- 16 (h) Instructions and agreements; and
- 17 (i) Periodic reviews of the patient's file.

18 (4) Administrative regulations promulgated under KRS 218A.205(3) may exempt, in
19 whole or in part, compliance with the mandatory diagnostic, treatment, review, and
20 other protocols and standards established in this section for:

- 21 (a) A licensee prescribing or administering a controlled substance immediately
22 prior to, during, or within the fourteen (14) days following an operative or
23 invasive procedure or a delivery if the prescribing or administering is
24 medically related to the operative or invasive procedure or the delivery and the
25 medication usage does not extend beyond the fourteen (14) days;
- 26 (b) A licensee prescribing or administering a controlled substance necessary to
27 treat a patient in an emergency situation;

- 1 (c) A licensed pharmacist or other person licensed by the Kentucky Board of
2 Pharmacy to dispense drugs or a licensed pharmacy;
- 3 (d) A licensee prescribing or dispensing a controlled substance:
- 4 1. For administration in a hospital or long-term-care facility if the hospital
5 or long-term-care facility with an institutional account, or a practitioner
6 in those hospitals or facilities where no institutional account exists,
7 queries the electronic monitoring system established in KRS 218A.202
8 for all available data on the patient or resident for the twelve (12) month
9 period immediately preceding the query within twelve (12) hours of the
10 patient's or resident's admission and places a copy of the query in the
11 patient's or resident's medical records during the duration of the patient's
12 stay at the facility;
- 13 2. As part of the patient's hospice or end-of-life treatment;
- 14 3. For the treatment of pain associated with cancer or with the treatment of
15 cancer;
- 16 4. In a single dose to relieve the anxiety, pain, or discomfort experienced
17 by a patient submitting to a diagnostic test or procedure;
- 18 5. Within seven (7) days of an initial prescribing or dispensing under
19 subsection (1) of this section if the prescribing or dispensing:
- 20 a. Is done as a substitute for the initial prescribing or dispensing;
- 21 b. Cancels any refills for the initial prescription; and
- 22 c. Requires the patient to dispose of any remaining unconsumed
23 medication;
- 24 6. Within ninety (90) days of an initial prescribing or dispensing under
25 subsection (1) of this section if the prescribing or dispensing is done by
26 another practitioner in the same practice or in an existing coverage
27 arrangement, if done for the same patient for the same medical

1 condition; or

2 7. To a research subject enrolled in a research protocol approved by an
3 institutional review board that has an active federalwide assurance
4 number from the United States Department of Health and Human
5 Services, Office for Human Research Protections, where the research
6 involves single, double, or triple blind drug administration or is
7 additionally covered by a certificate of confidentiality from the National
8 Institutes of Health;

9 (e) The prescribing of a Schedule III, IV, or V controlled substance by a licensed
10 optometrist to a patient in accordance with the provisions of KRS 320.240; or

11 (f) The prescribing of a three (3) day supply of a Schedule III controlled
12 substance following the performance of oral surgery by a dentist licensed
13 pursuant to KRS Chapter 313.

14 (5) (a) A state licensing board promulgating administrative regulations under KRS
15 218A.205(3) may promulgate an administrative regulation authorizing
16 exemptions supplemental or in addition to those specified in subsection (4) of
17 this section. Prior to exercising this authority, the board shall:

18 1. Notify the Kentucky Office of Drug Control Policy that it is considering
19 a proposal to promulgate an administrative regulation authorizing
20 exemptions supplemental or in addition to those specified in subsection
21 (4) of this section and invite the office to participate in the board
22 meeting at which the proposal will be considered;

23 2. Make a factual finding based on expert testimony as well as evidence or
24 research submitted to the board that the exemption demonstrates a low
25 risk of diversion or abuse and is supported by the dictates of good
26 medical practice; and

27 3. Submit a report to the Governor and the Legislative Research

1 Commission of its actions, including a detailed explanation of the
2 factual and policy basis underlying the board's action. A copy of this
3 report shall be provided to the regulations compiler.

4 (b) Within one (1) working day of promulgating an administrative regulation
5 authorizing an exemption under this section, the promulgating board shall e-
6 mail to the Kentucky Office of Drug Control Policy:

- 7 1. A copy of the administrative regulation as filed, and all attachments
8 required by KRS 13A.230(1); and
- 9 2. A request from the board that the office review the administrative
10 regulation in the same manner as would the Commission on Small
11 Business Advocacy under KRS 11.202(1)(e), and submit its report or
12 comments in accordance with the deadline established in KRS
13 13A.270(1)(c). A copy of the report or comments shall be filed with the
14 regulations compiler.

15 ➔Section 4. This Act takes effect January 1, 2022.