

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-005 is amended to read as follows:

4 As used in this subtitle, unless the context requires otherwise:

- 5 (1) "Association" means an entity, other than an employer-organized association, that
6 has been organized and is maintained in good faith for purposes other than that of
7 obtaining insurance for its members and that has a constitution and bylaws;
- 8 (2) "At the time of enrollment" means:
9 (a) At the time of application for an individual, an association that actively
10 markets to individual members, and an employer-organized association that
11 actively markets to individual members; and
12 (b) During the time of open enrollment or during an insured's initial or special
13 enrollment periods for group health insurance;
- 14 (3) "Base premium rate" means, for each class of business as to a rating period, the
15 lowest premium rate charged or that could have been charged under the rating
16 system for that class of business by the insurer to the individual or small group, or
17 employer~~[as defined in KRS 304.17A-0954]~~, with similar case characteristics for
18 health benefit plans with the same or similar coverage;
- 19 (4) "Basic health benefit plan" means any plan offered to an individual, a small group,
20 or employer-organized association that limits coverage to physician, pharmacy,
21 home health, preventive, emergency, and inpatient and outpatient hospital services
22 in accordance with the requirements of this subtitle. If vision or eye services are
23 offered, these services may be provided by an ophthalmologist or optometrist.
24 Chiropractic benefits may be offered by providers licensed pursuant to KRS
25 Chapter 312;
- 26 (5) "Bona fide association" means an entity as defined in 42 U.S.C. sec. 300gg-
27 91(d)(3);

- 1 (6) "Church plan" means a church plan as defined in 29 U.S.C. sec. 1002(33);
- 2 (7) "COBRA" means any of the following:
- 3 (a) 26 U.S.C. sec. 4980B other than subsection (f)(1) as it relates to pediatric
- 4 vaccines;
- 5 (b) The Employee Retirement Income Security Act of 1974 (29 U.S.C. sec. 1161
- 6 et seq. other than sec. 1169); or
- 7 (c) 42 U.S.C. sec. 300bb;
- 8 (8) "Creditable coverage":
- 9 (a) Means, with respect to an individual, coverage of the individual under any of
- 10 the following:
- 11 1. A group health plan;
- 12 2. Health insurance coverage;
- 13 3. Part A or Part B of Title XVIII of the Social Security Act;
- 14 4. Title XIX of the Social Security Act, other than coverage consisting
- 15 solely of benefits under section 1928;
- 16 5. Chapter 55 of Title 10, United States Code, including medical and dental
- 17 care for members and certain former members of the uniformed services,
- 18 and for their dependents; for purposes of Chapter 55 of Title 10, United
- 19 States Code, "uniformed services" means the Armed Forces and the
- 20 Commissioned Corps of the National Oceanic and Atmospheric
- 21 Administration and of the Public Health Service;
- 22 6. A medical care program of the Indian Health Service or of a tribal
- 23 organization;
- 24 7. A state health benefits risk pool;
- 25 8. A health plan offered under Chapter 89 of Title 5, United States Code,
- 26 such as the Federal Employees Health Benefit Program;
- 27 9. A public health plan as established or maintained by a state, the United

- 1 States government, a foreign country, or any political subdivision of a
2 state, the United States government, or a foreign country that provides
3 health coverage to individuals who are enrolled in the plan;
- 4 10. A health benefit plan under section 5(e) of the Peace Corps Act (22
5 U.S.C. sec. 2504(e)); or
- 6 11. Title XXI of the Social Security Act, such as the State Children's Health
7 Insurance Program; and
- 8 (b) Does not include coverage consisting solely of coverage of excepted benefits
9 as defined in this section;
- 10 (9) "Dependent" means any individual who is or may become eligible for coverage
11 under the terms of an individual or group health benefit plan because of a
12 relationship to a participant;
- 13 (10) "Employee benefit plan" means an employee welfare benefit plan or an employee
14 pension benefit plan or a plan which is both an employee welfare benefit plan and
15 an employee pension benefit plan as defined by ERISA;
- 16 (11) "Eligible individual" means an individual:
- 17 (a) For whom, as of the date on which the individual seeks coverage, the
18 aggregate of the periods of creditable coverage is eighteen (18) or more
19 months and whose most recent prior creditable coverage was under a group
20 health plan, governmental plan, or church plan. A period of creditable
21 coverage under this paragraph shall not be counted if, after that period, there
22 was a sixty-three (63) day period of time, excluding any waiting or affiliation
23 period, during all of which the individual was not covered under any
24 creditable coverage;
- 25 (b) Who is not eligible for coverage under a group health plan, Part A or Part B of
26 Title XVIII of the Social Security Act (42 U.S.C. secs. 1395j et seq.), or a
27 state plan under Title XIX of the Social Security Act (42 U.S.C. secs. 1396 et

- 1 seq.) and does not have other health insurance coverage;
- 2 (c) With respect to whom the most recent coverage within the coverage period
- 3 described in paragraph (a) of this subsection was not terminated based on a
- 4 factor described in KRS 304.17A-240(2)(a), (b), and (c);
- 5 (d) If the individual had been offered the option of continuation coverage under a
- 6 COBRA continuation provision or under KRS 304.18-110, who elected the
- 7 coverage; and
- 8 (e) Who, if the individual elected the continuation coverage, has exhausted the
- 9 continuation coverage under the provision or program;
- 10 (12) "Employer-organized association" means any of the following:
- 11 (a) Any entity that was qualified by the commissioner as an eligible association
- 12 prior to April 10, 1998, and that has actively marketed a health insurance
- 13 program to its members since September 8, 1996, and which is not insurer-
- 14 controlled;
- 15 (b) Any entity organized under KRS 247.240 to 247.370 that has actively
- 16 marketed health insurance to its members and that is not insurer-controlled;
- 17 (c) Any entity or association of employers, which has been actively in existence
- 18 for at least two (2) years, formed under the Employee Retirement Income
- 19 Security Act, 29 U.S.C. secs. 1001 et seq., to provide an employee welfare
- 20 benefit plan under guidance issued by the United States Department of Labor
- 21 prior to the issuance of 29 C.F.R. sec. 2510.3-5, and for which the entity's
- 22 health insurance decisions are made by a board or committee, the majority of
- 23 which are representatives of employer members of the entity who obtain
- 24 group health insurance coverage through the entity or through a trust or other
- 25 mechanism established by the entity, and whose health insurance decisions are
- 26 reflected in written minutes or other written documentation; and
- 27 (d) Any entity or association of employers, which has been actively in existence

1 for at least two (2) years, formed under the Employee Retirement Income
2 Security Act, 29 U.S.C. secs. 1001 et seq., to provide an employee welfare
3 benefit plan, whose members consist of employers or a group of employers
4 that satisfy the requirements of 29 C.F.R. sec. 2510.3-5.

5 Except as provided in KRS 304.17A-0954, 304.17A-200, and 304.17A-220, and
6 except as otherwise provided by the definition of "large group" contained in this
7 section, an employer-organized association shall not be treated as an association,
8 small group, or large group under this subtitle, except that an employer-organized
9 association as defined under paragraph (c) or (d) of this subsection shall be treated
10 as a large group under this subtitle;

11 (13) "Employer-organized association health insurance plan" means any health insurance
12 plan, policy, or contract issued to an employer-organized association, or to a trust
13 established by one (1) or more employer-organized associations, or providing
14 coverage solely for the employees, retired employees, directors and their spouses
15 and dependents of the members of one (1) or more employer-organized
16 associations;

17 (14) "Excepted benefits" means benefits under one (1) or more, or any combination of
18 the following:

- 19 (a) Coverage only for accident, including accidental death and dismemberment,
20 or disability income insurance, or any combination thereof;
- 21 (b) Coverage issued as a supplement to liability insurance;
- 22 (c) Liability insurance, including general liability insurance and automobile
23 liability insurance;
- 24 (d) Workers' compensation or similar insurance;
- 25 (e) Automobile medical payment insurance;
- 26 (f) Credit-only insurance;
- 27 (g) Coverage for on-site medical clinics;

- 1 (h) Other similar insurance coverage, specified in administrative regulations,
2 under which benefits for medical care are secondary or incidental to other
3 insurance benefits;
- 4 (i) Limited scope dental or vision benefits;
- 5 (j) Benefits for long-term care, nursing home care, home health care, community-
6 based care, or any combination thereof;
- 7 (k) Such other similar, limited benefits as are specified in administrative
8 regulations;
- 9 (l) Coverage only for a specified disease or illness;
- 10 (m) Hospital indemnity or other fixed indemnity insurance;
- 11 (n) Benefits offered as Medicare supplemental health insurance, as defined under
12 section 1882(g)(1) of the Social Security Act;
- 13 (o) Coverage supplemental to the coverage provided under Chapter 55 of Title 10,
14 United States Code;
- 15 (p) Coverage similar to that in paragraphs (n) and (o) of this subsection that is
16 supplemental to coverage under a group health plan; and
- 17 (q) Health flexible spending arrangements;
- 18 (15) "Governmental plan" means a governmental plan as defined in 29 U.S.C. sec.
19 1002(32);
- 20 (16) "Group health plan" means a plan, including a self-insured plan, of or contributed to
21 by an employer, including a self-employed person, or employee organization, to
22 provide health care directly or otherwise to the employees, former employees, the
23 employer, or others associated or formerly associated with the employer in a
24 business relationship, or their families;
- 25 (17) "Guaranteed acceptance program participating insurer" means an insurer that is
26 required to or has agreed to offer health benefit plans in the individual market to
27 guaranteed acceptance program qualified individuals under KRS 304.17A-400 to

1 304.17A-480;

2 (18) "Guaranteed acceptance program plan" means a health benefit plan in the individual
3 market issued by an insurer that provides health benefits to a guaranteed acceptance
4 program qualified individual and is eligible for assessment and refunds under the
5 guaranteed acceptance program under KRS 304.17A-400 to 304.17A-480;

6 (19) "Guaranteed acceptance program" means the Kentucky Guaranteed Acceptance
7 Program established and operated under KRS 304.17A-400 to 304.17A-480;

8 (20) "Guaranteed acceptance program qualified individual" means an individual who, on
9 or before December 31, 2000:

10 (a) Is not an eligible individual;

11 (b) Is not eligible for or covered by other health benefit plan coverage or who is a
12 spouse or a dependent of an individual who:

13 1. Waived coverage under KRS 304.17A-210(2); or

14 2. Did not elect family coverage that was available through the association
15 or group market;

16 (c) Within the previous three (3) years has been diagnosed with or treated for a
17 high-cost condition or has had benefits paid under a health benefit plan for a
18 high-cost condition, or is a high risk individual as defined by the underwriting
19 criteria applied by an insurer under the alternative underwriting mechanism
20 established in KRS 304.17A-430(3);

21 (d) Has been a resident of Kentucky for at least twelve (12) months immediately
22 preceding the effective date of the policy; and

23 (e) Has not had his or her most recent coverage under any health benefit plan
24 terminated or nonrenewed because of any of the following:

25 1. The individual failed to pay premiums or contributions in accordance
26 with the terms of the plan or the insurer had not received timely
27 premium payments;

1 2. The individual performed an act or practice that constitutes fraud or
2 made an intentional misrepresentation of material fact under the terms of
3 the coverage; or

4 3. The individual engaged in intentional and abusive noncompliance with
5 health benefit plan provisions;

6 (21) "Guaranteed acceptance plan supporting insurer" means either an insurer, on or
7 before December 31, 2000, that is not a guaranteed acceptance plan participating
8 insurer or is a stop loss carrier, on or before December 31, 2000, provided that a
9 guaranteed acceptance plan supporting insurer shall not include an employer-
10 sponsored self-insured health benefit plan exempted by ERISA;

11 (22) "Health benefit plan":

12 (a) Shall include any:

- 13 1. Hospital or medical expense policy or certificate;
- 14 2. Nonprofit hospital, medical-surgical, and health service corporation
15 contract or certificate;
- 16 3. Provider sponsored integrated health delivery network;
- 17 4. Self-insured plan or a plan provided by a multiple employer welfare
18 arrangement, to the extent permitted by ERISA;
- 19 5. Self-insured governmental plan or church plan;
- 20 6. Health maintenance organization contract, except contracts to provide
21 Medicaid benefits under KRS Chapter 205; or
- 22 7. Health benefit plan that affects the rights of a Kentucky insured and
23 bears a reasonable relation to Kentucky, whether delivered or issued for
24 delivery in Kentucky; and

25 (b) Does not include:

- 26 1. Policies covering only accident, credit, dental, disability income, fixed
27 indemnity medical expense reimbursement, long-term care, Medicare

- 1 supplement, specified disease, or vision care;
- 2 2. Coverage issued as a supplement to liability insurance;
- 3 3. Insurance arising out of a workers' compensation or similar law;
- 4 4. Automobile medical-payment insurance;
- 5 5. Insurance under which benefits are payable with or without regard to
- 6 fault and that is statutorily required to be contained in any liability
- 7 insurance policy or equivalent self-insurance;
- 8 6. Short-term limited-duration coverage;
- 9 7. Student health insurance offered by a Kentucky-licensed insurer under
- 10 written contract with a university or college whose students it proposes
- 11 to insure;
- 12 8. Medical expense reimbursement policies specifically designed to fill
- 13 gaps in primary coverage, coinsurance, or deductibles and provided
- 14 under a separate policy, certificate, or contract;
- 15 9. Coverage supplemental to the coverage provided under Chapter 55 of
- 16 Title 10, United States Code;
- 17 10. Limited health service benefit plans;
- 18 11. Direct primary care agreements established under KRS 311.6201,
- 19 311.6202, 314.198, and 314.199; or
- 20 12. Coverage provided under KRS Chapter 205;
- 21 (23) "Health care provider" or "provider" means any:
 - 22 (a) Advanced practice registered nurse licensed under KRS Chapter 314;
 - 23 (b) Chiropractor licensed under KRS Chapter 312;
 - 24 (c) Dentist licensed under KRS Chapter 313;
 - 25 (d) Facility or service required to be licensed under KRS Chapter 216B;
 - 26 (e) Home medical equipment and services provider licensed under KRS Chapter
 - 27 309;

- 1 (f) Optometrist licensed under KRS Chapter 320;
- 2 (g) Pharmacist licensed under KRS Chapter 315;
- 3 (h) Physician, osteopath, or podiatrist licensed under KRS Chapter 311;
- 4 (i) Physician assistant regulated under KRS Chapter 311; and
- 5 (j) Other health care practitioners as determined by the department by
- 6 administrative regulations promulgated under KRS Chapter 13A;
- 7 (24) (a) "Health care service" means health care procedures, treatments, or services
- 8 rendered by a provider within the scope of practice for which the provider is
- 9 licensed.
- 10 (b) Health care service includes the provision of prescription drugs, as defined in
- 11 KRS 315.010, and home medical equipment, as defined in KRS 309.402;
- 12 (25) "Health facility" or "facility" has the same meaning as in KRS 216B.015;
- 13 (26) (a) "High-cost condition," pursuant to the Kentucky Guaranteed Acceptance
- 14 Program, means a covered condition in an individual policy as listed in
- 15 paragraph (c) of this subsection or as added by the commissioner in
- 16 accordance with KRS 304.17A-280, but only to the extent that the condition
- 17 exceeds the numerical score or rating established pursuant to uniform
- 18 underwriting standards prescribed by the commissioner under paragraph (b) of
- 19 this subsection that account for the severity of the condition and the cost
- 20 associated with treating that condition.
- 21 (b) The commissioner by administrative regulation shall establish uniform
- 22 underwriting standards and a score or rating above which a condition is
- 23 considered to be high-cost by using:
- 24 1. Codes in the most recent version of the "International Classification of
- 25 Diseases" that correspond to the medical conditions in paragraph (c) of
- 26 this subsection and the costs for administering treatment for the
- 27 conditions represented by those codes; and

- 1 2. The most recent version of the questionnaire incorporated in a national
2 underwriting guide generally accepted in the insurance industry as
3 designated by the commissioner, the scoring scale for which shall be
4 established by the commissioner.
- 5 (c) The diagnosed medical conditions are: acquired immune deficiency syndrome
6 (AIDS), angina pectoris, ascites, chemical dependency cirrhosis of the liver,
7 coronary insufficiency, coronary occlusion, cystic fibrosis, Friedreich's ataxia,
8 hemophilia, Hodgkin's disease, Huntington chorea, juvenile diabetes,
9 leukemia, metastatic cancer, motor or sensory aphasia, multiple sclerosis,
10 muscular dystrophy, myasthenia gravis, myotonia, open heart surgery,
11 Parkinson's disease, polycystic kidney, psychotic disorders, quadriplegia,
12 stroke, syringomyelia, Wilson's disease, and amyotrophic lateral sclerosis;
- 13 (27) "Index rate" means, for each class of business as to a rating period, the arithmetic
14 average of the applicable base premium rate and the corresponding highest premium
15 rate;
- 16 (28) "Individual market" means the market for the health insurance coverage offered to
17 individuals other than in connection with a group health plan. The individual market
18 includes an association plan that is not employer-related, issued to individuals on an
19 individually underwritten basis, other than an employer-organized association or a
20 bona fide association;
- 21 (29) "Insurer" means any insurance company; health maintenance organization; self-
22 insurer, including a governmental plan, church plan, or multiple employer welfare
23 arrangement, not exempt from state regulation by ERISA; provider-sponsored
24 integrated health delivery network; self-insured employer-organized association, or
25 nonprofit hospital, medical-surgical, dental, or health service corporation authorized
26 to transact health insurance business in Kentucky;
- 27 (30) "Insurer-controlled" means that the commissioner has found, in an administrative

1 hearing called specifically for that purpose, that an insurer has or had a substantial
2 involvement in the organization or day-to-day operation of the entity for the
3 principal purpose of creating a device, arrangement, or scheme by which the insurer
4 segments employer groups according to their actual or anticipated health status or
5 actual or projected health insurance premiums;

6 (31) "Kentucky Access" has the meaning provided in KRS 304.17B-001;

7 (32) "Large group" means:

8 (a) An employer with fifty-one (51) or more employees;

9 (b) An affiliated group with fifty-one (51) or more eligible members; or

10 (c) A fully insured employer-organized association as defined in subsection
11 (12)(c) or (d) of this section that:

12 1. Covers at least fifty-one (51) employee members; and

13 2. Is registered with the department pursuant to administrative regulations
14 promulgated by the commissioner;

15 (33) "Managed care" means systems or techniques generally used by third-party payors
16 or their agents to affect access to and control payment for health care services and
17 that integrate the financing and delivery of appropriate health care services to
18 covered persons by arrangements with participating providers who are selected to
19 participate on the basis of explicit standards for furnishing a comprehensive set of
20 health care services and financial incentives for covered persons using the
21 participating providers and procedures provided for in the plan;

22 (34) "Market segment" means the portion of the market covering one (1) of the
23 following:

24 (a) Individual;

25 (b) Small group;

26 (c) Large group; or

27 (d) Association;

- 1 (35) "Medically necessary health care services" means health care services that a
2 provider would render to a patient for the purpose of preventing, diagnosing, or
3 treating an illness, injury, disease, or its symptoms in a manner that is:
- 4 (a) In accordance with generally accepted standards of medical practice; and
 - 5 (b) Clinically appropriate in terms of type, frequency, extent, and duration;
- 6 (36) "Participant" means any employee or former employee of an employer, or any
7 member or former member of an employee organization, who is or may become
8 eligible to receive a benefit of any type from an employee benefit plan which covers
9 employees of the employer or members of the organization, or whose beneficiaries
10 may be eligible to receive any benefit as established in Section 3(7) of ERISA;
- 11 (37) "Preventive services" means medical services for the early detection of disease that
12 are associated with substantial reduction in morbidity and mortality;
- 13 (38) "Provider network" means an affiliated group of varied health care providers that is
14 established to provide a continuum of health care services to individuals;
- 15 (39) "Provider-sponsored integrated health delivery network" means any provider-
16 sponsored integrated health delivery network created and qualified under KRS
17 304.17A-300 and KRS 304.17A-310;
- 18 (40) "Purchaser" means an individual, organization, employer, association, or the
19 Commonwealth that makes health benefit purchasing decisions on behalf of a group
20 of individuals;
- 21 (41) "Rating period" means the calendar period for which premium rates are in effect. A
22 rating period shall not be required to be a calendar year;
- 23 (42) "Restricted provider network" means a health benefit plan that conditions the
24 payment of benefits, in whole or in part, on the use of the providers that have
25 entered into a contractual arrangement with the insurer to provide health care
26 services to covered individuals;
- 27 (43) "Self-insured plan" means a group health insurance plan in which the sponsoring

1 organization assumes the financial risk of paying for covered services provided to
2 its enrollees;

3 (44) "Small employer" means, in connection with a group health plan with respect to a
4 calendar year and a plan year, an employer who employed an average of at least two
5 (2) but not more than fifty (50) employees on business days during the preceding
6 calendar year and who employs at least two (2) employees on the first day of the
7 plan year;

8 (45) "Small group" means:

9 (a) A small employer with two (2) to fifty (50) employees; or

10 (b) An affiliated group or association with two (2) to fifty (50) eligible members;

11 and

12 (46) "Standard benefit plan" means the plan identified in KRS 304.17A-250.