

1 AN ACT relating to patient access to pharmacy benefits.

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":

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

13 **2.** ***May be subject to annual limitations, including those imposed under***
14 **42 U.S.C. secs. 18022(c) and 300gg-6(b);**

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

20 (c) "Health plan" ***has the same meaning as in Section 2 of this Act***~~:~~

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

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

25 (d) "Insured" means any individual who is enrolled in a health plan and on whose
26 behalf the insurer is obligated to pay for or provide ***pharmacy or***
27 ***pharmacist***~~[health care]~~ services;

- 1 (e) "Insurer"~~[includes]:~~
- 2 1. Means any of the following persons or entities that offer or issue a
- 3 health plan:
- 4 a. An insurance company;
- 5 b. A health maintenance organization;
- 6 c. A limited health service organization;
- 7 d. A self-insurer, including a governmental plan, church plan, or
- 8 multiple employer welfare arrangement, except any sponsor or
- 9 other entity that provides a self-insured plan if the sponsor or
- 10 entity owns a pharmacy;
- 11 e. A provider-sponsored integrated health delivery network;
- 12 f. A self-insured employer-organized association;
- 13 g. A nonprofit hospital, medical-surgical, dental, and health service
- 14 corporation; or
- 15 h. Any other third-party payor that is:
- 16 i. Authorized to transact health insurance business in this
- 17 state; or
- 18 ii. Not exempt by federal law from regulation under the
- 19 insurance laws of this state; and~~[An insurer offering a~~
- 20 ~~health plan providing coverage for pharmacy benefits; or]~~
- 21 2. Includes any person or entity that has contracted with a state or
- 22 federal agency to provide coverage in this state for pharmacy or
- 23 pharmacist services, except persons or entities that have contracted to
- 24 provide services under KRS Chapter 205~~[Any other administrator of~~
- 25 ~~pharmacy benefits under a health plan];~~
- 26 (f) "Person" means a natural person, corporation, mutual company,
- 27 unincorporated association, partnership, joint venture, limited liability

1 company, trust, estate, foundation, nonprofit corporation, unincorporated
2 organization, government, or governmental subdivision or agency;

3 (g) "Pharmacy" includes:

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

7 (h) "Pharmacy benefit manager" has the same meaning as in KRS 304.9-020,
8 except that for purposes of this section, the term does not include a
9 pharmacy benefit manager that is contracted by and acting under the
10 direction of any sponsor or other entity that provides a self-insured plan if
11 the sponsor or entity owns a pharmacy; and~~[304.17A-161]~~

12 (i) "Pharmacy or pharmacist services" has the same meaning as in Section 2
13 of this Act.

14 (2) To the extent permitted under federal law, an insurer, ~~issuing or renewing a health~~
15 ~~plan on or after January 1, 2022, or~~ a pharmacy benefit manager, or any other
16 administrator of pharmacy benefits shall not:

17 (a) Require an insured~~[purchasing a prescription drug]~~ to:

18 1. Pay a cost-sharing amount for pharmacy or pharmacist services greater
19 than the amount the insured would pay for the services~~[drug]~~ if he or she
20 were to purchase the services~~[drug]~~ without coverage; or

21 2. a. Use a mail-order pharmaceutical distributor, including a mail-
22 order pharmacy, in order to receive coverage under the health
23 plan.

24 b. Conduct prohibited under this subparagraph includes but is not
25 limited to requiring the use of a mail-order pharmaceutical
26 distributor, including a mail-order pharmacy, to furnish a health
27 care provider a prescription drug by the United States Postal

1 Service or a common carrier for subsequent administration in a
2 hospital, clinic, pharmacy, or infusion center;

3 (b) Impose upon an insured any cost-sharing requirement, fee, or other
4 condition relating to:

5 1. Pharmacy or pharmacist services received from a retail pharmacy that
6 is greater, or more restrictive, than what would otherwise be imposed
7 if:

8 a. The insured used a mail-order pharmaceutical distributor,
9 including a mail-order pharmacy; and

10 b. The retail pharmacy has agreed to accept reimbursement at no
11 more than the amount that would have been reimbursed to the
12 mail-order pharmaceutical distributor;

13 2. Prescription drugs furnished by a health care provider for
14 administration in a hospital, clinic, pharmacy, or infusion center that
15 is greater, or more restrictive, than what would otherwise be imposed
16 if a mail-order pharmaceutical distributor, including a mail-order
17 pharmacy, furnished the prescription drugs to the health care
18 provider; or

19 3. Pharmacy or pharmacist services that is not equally imposed upon all
20 insureds in the same benefit category, class, or cost-sharing level
21 under the health plan, unless otherwise required or permitted under
22 this section;

23 (c) Exclude any cost-sharing amounts paid by an insured, or on behalf of an
24 insured by another person, for a prescription drug, including any amount paid
25 under paragraph (a)I. of this subsection, when calculating an insured's
26 contribution to any applicable cost-sharing requirement. The requirements of
27 this paragraph shall not apply;

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

5 2. To any fully insured health benefit plan or self-insured plan provided
 6 to an employee under KRS 18A.225;

7 ~~(d)~~~~(e)~~ Prohibit a pharmacy from discussing any information under subsection
 8 (3) of this section; or

9 ~~(e)~~~~(d)~~ Impose a penalty on a pharmacy for complying with this section.

10 (3) A pharmacist shall have the right to provide an insured information regarding the
 11 applicable limitations on his or her cost sharing~~[cost sharing]~~ pursuant to this
 12 section~~[for a prescription drug].~~

13 ~~[(4) Subsection (2)(b) of this section shall not apply to any fully insured health benefit~~
 14 ~~plan or self-insured plan provided to an employee under KRS 18A.225.]~~

15 ➔SECTION 2. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304
 16 IS CREATED TO READ AS FOLLOWS:

17 (1) As used in this section:

18 (a) "Health plan":

19 1. Means any policy, certificate, contract, or plan that offers or provides
 20 coverage in this state for pharmacy or pharmacist services, whether
 21 such coverage is by direct payment, reimbursement, or otherwise;

22 2. Includes a health benefit plan; and

23 3. Does not include a policy, certificate, contract, or plan that offers or
 24 provides services under KRS Chapter 205;

25 (b) "Pharmacy affiliate" means any pharmacy, including a specialty
 26 pharmacy:

27 1. With which the pharmacy benefit manager shares common ownership,

- 1 management, or control;
- 2 2. Which is owned, managed, or controlled by any of the pharmacy
- 3 benefit manager's management companies, parent companies,
- 4 subsidiary companies, jointly held companies, or companies otherwise
- 5 affiliated by a common owner, manager, or holding company;
- 6 3. Which shares any common members on its board of directors with the
- 7 pharmacy benefit manager; or
- 8 4. Which shares managers in common with the pharmacy benefit
- 9 manager;
- 10 (c) "Pharmacy benefit manager" has the same meaning as in KRS 304.9-020,
- 11 except that for purposes of this section, the term does not include a
- 12 pharmacy benefit manager that is contracted by and acting under the
- 13 direction of any sponsor or other entity that provides a self-insured plan if
- 14 the sponsor or entity owns a pharmacy; and
- 15 (d) "Pharmacy or pharmacist services":
- 16 1. Means any health care procedures, treatments within the scope of
- 17 practice of a pharmacist, or services provided by a pharmacy or
- 18 pharmacist; and
- 19 2. Includes the sale and provision of the following by a pharmacy or
- 20 pharmacist:
- 21 a. Prescription drugs, as defined in KRS 315.010; and
- 22 b. Home medical equipment, as defined in KRS 309.402.
- 23 (2) To the extent permitted under federal law, a pharmacy benefit manager providing
- 24 pharmacy benefit management services on behalf of a health plan:
- 25 (a) 1. Shall not require or incentivize an insured to receive pharmacy or
- 26 pharmacist services from a pharmacy affiliate.
- 27 2. Conduct prohibited under this paragraph includes the offer or

- 1 implementation of a plan design that requires or incentivizes insureds
2 to use pharmacy affiliates, including but not limited to:
- 3 a. Requiring or incentivizing an insured to obtain a specialty drug
4 from a pharmacy affiliate;
- 5 b. Charging less cost sharing to insureds that use pharmacy
6 affiliates than the pharmacy benefit manager charges to
7 insureds that use nonaffiliated pharmacies; and
- 8 c. Providing any incentives for insureds that use pharmacy
9 affiliates that are not provided for insureds that use nonaffiliated
10 pharmacies.
- 11 3. This paragraph shall not be construed to prohibit:
- 12 a. Communications to insureds regarding pharmacy networks and
13 prices if the communication is accurate and includes
14 information about all eligible nonaffiliated pharmacies; or
- 15 b. Requiring an insured to utilize a pharmacy network that may
16 include pharmacy affiliates in order to receive coverage under
17 the plan, or providing financial incentives for utilizing that
18 network, if the pharmacy benefit manager complies with
19 paragraph (b) of this subsection and KRS 304.17A-515; and
- 20 (b) 1. Shall provide equal access and incentives to all pharmacies within the
21 health plan's or pharmacy benefit manager's network.
- 22 2. Conduct prohibited under this paragraph includes but is not limited to
23 interfering with an insured's right to choose the insured's network
24 pharmacy of choice.
- 25 3. For purposes of subparagraph 2. of this paragraph, interfering
26 includes inducement, steering, offering financial or other incentives,
27 or imposing a penalty.

1 ➔SECTION 3. A NEW SECTION OF SUBTITLE 17C OF KRS CHAPTER 304
2 IS CREATED TO READ AS FOLLOWS:

3 *Sections 1 and 2 of this Act shall apply to limited health service benefit plans,*
4 *including limited health service contracts as defined in KRS 304.38A-010.*

5 ➔SECTION 4. A NEW SECTION OF SUBTITLE 38A OF KRS CHAPTER 304
6 IS CREATED TO READ AS FOLLOWS:

7 *A limited health service organization shall comply with Section 1 of this Act.*

8 ➔Section 5. Section 1 of this Act applies to health plans issued or renewed on or
9 after January 1, 2024.

10 ➔Section 6. Section 2 of this Act applies to contracts issued, delivered, entered,
11 renewed, extended, or amended on or after January 1, 2024.

12 ➔Section 7. If any provision of this Act, or this Act's application to any person or
13 circumstance, is held invalid, the invalidity shall not affect other provisions or
14 applications of the Act, which shall be given effect without the invalid provision or
15 application, and to this end the provisions and applications of this Act are severable.

16 ➔Section 8. Sections 1 to 6 of this Act take effect on January 1, 2024.