

1 AN ACT relating to pharmacy referral practices.

2 WHEREAS, referrals to a pharmacy by an affiliate represent a potential conflict of
3 interest; and

4 WHEREAS, these referral practices may: (1) limit or eliminate alternatives in the
5 health care market; (2) result in the overutilization of health care services; (3) increase
6 costs to the health care system; (4) adversely affect the quality of health care; and (5)
7 disproportionately harm patients in rural and medically underserved areas of Kentucky;

8 NOW, THEREFORE,

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

10 ➔SECTION 1. A NEW SECTION OF KRS 304.17A-165 TO 304.17A-166 IS
11 CREATED TO READ AS FOLLOWS:

12 **(1) As used in this section:**

13 **(a) "Insurer":**

14 **1. Means any of the following persons or entities that offer or provide**
15 **coverage in this state for pharmacy or pharmacist services, whether**
16 **such coverage is by direct payment, reimbursement, or otherwise:**

17 **a. An insurance company;**

18 **b. A health maintenance organization;**

19 **c. A limited health service organization;**

20 **d. A self-insurer, including a governmental plan, church plan, or**
21 **multiple employer welfare arrangement, not exempt by federal**
22 **law from regulation under the insurance laws of this state;**

23 **e. A provider-sponsored integrated health delivery network;**

24 **f. A self-insured employer-organized association;**

25 **g. A nonprofit hospital, medical-surgical, dental, and health service**
26 **corporation; or**

27 **h. Any other third-party payor that is:**

- 1 i. Authorized to transact health insurance business in this
 2 state; or
- 3 ii. Not exempt by federal law from regulation under the
 4 insurance laws of this state; and
- 5 2. Shall include any person or entity that has contracted with a state or
 6 federal agency to provide coverage in this state for pharmacy or
 7 pharmacist services;
- 8 (b) "Pharmacy affiliate" means any pharmacy in which:
- 9 1. The insurer, pharmacy benefit manager, or other administrator of
 10 pharmacy benefits, either directly or indirectly through one or more
 11 intermediaries:
- 12 a. Has an investment or ownership interest; or
- 13 b. Shares common ownership with the pharmacy; or
- 14 2. An investor or ownership interest holder of the insurer, pharmacy
 15 benefit manager, or other administrator of pharmacy benefits, either
 16 directly or indirectly through one or more intermediaries, has an
 17 investment or ownership interest;
- 18 (c) "Pharmacy benefit manager" has the same meaning as in KRS 304.9-020;
- 19 (d) "Pharmacy or pharmacist services" means any health care procedures,
 20 treatments within the scope of practice of a pharmacist, or services provided
 21 by a pharmacy or a pharmacist, including the provision of:
- 22 1. Prescription drugs, as defined in KRS 315.010; and
- 23 2. Home medical equipment, as defined in KRS 309.402; and
- 24 (e) "Referral to a pharmacy affiliate":
- 25 1. Means:
- 26 a. Ordering an insured, either orally or in writing, including online
 27 messaging, to use a pharmacy affiliate in this state; or

1 b. Offering or implementing a plan design in this state that
2 requires or incentivizes insureds to use pharmacy affiliates; and

3 2. Does not include:

4 a. Communications to insureds regarding pharmacy networks and
5 prices if the communication is accurate and includes
6 information about all eligible nonaffiliated pharmacies; or

7 b. Requiring or providing financial incentives for an insured to
8 utilize a pharmacy network that includes pharmacy affiliates if
9 the insurer, pharmacy benefit manager, or other administrator
10 of pharmacy benefits:

11 i. Ensures that the network is reasonably adequate and
12 accessible for the provision of pharmacy or pharmacist
13 services to insureds. A mail-order pharmacy shall not be
14 considered or included when determining the adequacy or
15 accessibility of the network;

16 ii. Does not discriminate, which discrimination may include
17 denying a pharmacy the opportunity to participate in a
18 pharmacy network at preferred participation status, against
19 any pharmacy located within the geographic coverage area
20 of the plan if the pharmacy is willing to meet reasonable
21 terms and conditions established by the insurer, pharmacy
22 benefit manager, or other administrator for network
23 participation, including obtaining preferred participation
24 status; and

25 iii. Does not charge less cost-sharing to insureds that use
26 pharmacy affiliates than the insurer, pharmacy benefit
27 manager, or other administrator charges to insureds that

1 use nonaffiliated network pharmacies or otherwise provide
2 incentives for insureds to use pharmacy affiliates that are
3 not provided for insureds that use nonaffiliated network
4 pharmacies.

5 (2) Beginning March 1, 2021, and annually thereafter, all insurers, pharmacy
6 benefit managers conducting business in this state, and other administrators of
7 pharmacy benefits in this state shall file with the commissioner a disclosure
8 statement in the manner and form prescribed by the commissioner that identifies
9 all pharmacy affiliates.

10 (3) Except as provided in subsection (5) of this section, insurers, pharmacy benefit
11 managers, and any other administrators of pharmacy benefits shall not:

12 (a) Transfer or share Kentucky pharmacy records containing patient
13 identifiable data or prescriber identifiable data to or with a pharmacy
14 affiliate for any commercial purpose; or

15 (b) Make a referral to a pharmacy affiliate, unless the referral is for:

16 1. A limited distribution prescription drug that:

17 a. Requires special handling; and

18 b. Is not commonly carried at retail pharmacies or oncology clinics
19 or practices; or

20 2. Pharmacy or pharmacist services to patients in a hospital, nursing
21 facility, nursing home, personal care home, intermediate care facility,
22 continuing care retirement community, hospice, or home health
23 agency.

24 (4) Nothing in this section shall be construed to prohibit:

25 (a) The exchange of information between an insurer, pharmacy benefit
26 manager, or other administrator of pharmacy benefits and its pharmacy
27 affiliate for purposes that are otherwise permitted by law, including but not

1 limited to reimbursement for pharmacy or pharmacist services, auditing of
2 pharmacy records, public health activities, and utilization review; or

3 (b) An insurer, pharmacy benefit manager, or other administrator of pharmacy
4 benefits from entering into an agreement with a pharmacy affiliate to
5 provide pharmacy services to insureds if the agreement is in compliance
6 with this section.

7 (5) (a) The provisions of this section shall be subject to all applicable federal law
8 and regulations. To the extent any provision of this section conflicts with an
9 applicable federal law or regulation, the applicable federal law or
10 regulation shall control.

11 (b) In instances where the enforcement of a provision of this section would
12 result in the loss of federal funds that may be available for medical
13 assistance provided under KRS Chapter 205, the provision shall not be
14 enforceable to the extent necessary to qualify for receipt of the federal
15 funds.

16 (c) The Cabinet for Health and Family Services, or any of its departments,
17 shall take any steps necessary to effectuate the provisions of this section as
18 applied to the provision of services under KRS Chapter 205, including but
19 not limited to:

20 1. Requesting an amendment to the State Medicaid Plan;

21 2. Filing an application for a waiver or waiver amendment; or

22 3. Making any other submissions necessary to obtain approval or
23 authorization for the Department for Medicaid Services and any
24 managed care organization contracted with the department to provide
25 services under KRS Chapter 205 to comply with the provisions of this
26 section.

27 ➔Section 2. KRS 304.9-440 is amended to read as follows:

- 1 (1) The commissioner may place on probation, suspend, or may impose conditions
2 upon the continuance of a license for not more than twenty-four (24) months,
3 revoke, or refuse to issue or renew any license issued under this subtitle or any
4 surplus lines broker, life settlement broker, or life settlement provider license, or
5 may levy a civil penalty in accordance with KRS 304.99-020, or any combination of
6 actions for any one (1) or more of the following causes:
- 7 (a) Providing incorrect, misleading, incomplete, or materially untrue information
8 in the license application;
- 9 (b) Violating any insurance laws, including but not limited to all laws contained
10 in this chapter, or violating any administrative regulations, subpoena, or order
11 of the commissioner or of another state's insurance commissioner;
- 12 (c) Obtaining or attempting to obtain a license through misrepresentation or
13 fraud;
- 14 (d) Improperly withholding, misappropriating, or converting any moneys or
15 properties received in the course of doing insurance or the business of life
16 settlements;
- 17 (e) Intentionally misrepresenting the terms of an actual or proposed insurance
18 contract, life settlement contract, or application for insurance;
- 19 (f) Having been convicted of or having pled guilty or nolo contendere to any
20 felony;
- 21 (g) Having admitted or been found to have committed any unfair insurance trade
22 practice, insurance fraud, or fraudulent life settlement act;
- 23 (h) Using fraudulent, coercive, or dishonest practices; or demonstrating
24 incompetence, untrustworthiness, or financial irresponsibility; or being a
25 source of injury or loss to the public in the conduct of business in this state or
26 elsewhere;
- 27 (i) Having an insurance license, life settlement license, or its equivalent, denied,

- 1 suspended, or revoked in any other state, province, district, or territory;
- 2 (j) Surrendering or otherwise terminating any license issued by this state or by
- 3 any other jurisdiction, under threat of disciplinary action, denial, or refusal of
- 4 the issuance of or renewal of any other license issued by this state or by any
- 5 other jurisdiction; or revocation or suspension of any other license held by the
- 6 licensee issued by this state or by any other jurisdiction;
- 7 (k) Forging another's name to an application for insurance, to any other document
- 8 related to an insurance transaction, or to any document related to the business
- 9 of life settlements;
- 10 (l) Cheating, including improperly using notes or any other reference material to
- 11 complete an examination for license;
- 12 (m) Knowingly accepting insurance or life settlement business from an individual
- 13 or business entity who is not licensed, but who is required to be licensed under
- 14 this subtitle;
- 15 (n) Failing to comply with an administrative or court order imposing a child
- 16 support obligation;
- 17 (o) Failing to pay state income tax or to comply with any administrative or court
- 18 order directing payment of state income tax;
- 19 (p) Having been convicted of a misdemeanor for which restitution is ordered in
- 20 excess of three hundred dollars (\$300), or of any misdemeanor involving
- 21 dishonesty, breach of trust, or moral turpitude;
- 22 (q) Failing to no longer meet the requirements for initial licensure;
- 23 (r) If a life settlement provider, demonstrating a pattern of unreasonable
- 24 payments to owners or failing to honor contractual obligations set out in a life
- 25 settlement contract;
- 26 (s) Entering into any life settlement contract or using any form that has not been
- 27 approved pursuant to Subtitle 15 of this chapter;

- 1 (t) If a licensee, having assigned, transferred, or pledged a policy subject to a life
2 settlement contract to a person other than a life settlement provider licensed in
3 this state, an accredited investor or qualified institutional buyer as defined,
4 respectively, in Regulation D, Rule 501 or Rule 144a of the Federal Securities
5 Act of 1933, as amended, a financing entity, a special purpose entity, or a
6 related provider trust; or
- 7 (u) Any other cause for which issuance of the license could have been refused,
8 had it then existed and been known to the commissioner.
- 9 (2) The license of a business entity may be suspended, revoked, or refused for any
10 cause relating to an individual designated in or registered under the license if the
11 commissioner finds that an individual licensee's violation was known or should
12 have been known by one (1) or more of the partners, officers, or managers acting on
13 behalf of the business entity and the violation was not reported to the Department of
14 Insurance nor corrective action taken.
- 15 (3) The license of a pharmacy benefit manager may, in the discretion of the
16 commissioner, be suspended, revoked, or refused for any cause enumerated in
17 subsection (1) of this section, and for violations of KRS 205.647~~], 304.9-053,~~
18 ~~304.9-054, 304.9-055, and 304.17A-162].~~ The pharmacy benefit manager shall also
19 be subject to the same civil penalties under KRS 304.99-020 as an insurer.
- 20 (4) The applicant or licensee may make written request for a hearing in accordance with
21 KRS 304.2-310.
- 22 (5) The commissioner shall retain the authority to enforce the provisions and penalties
23 of this chapter against any individual or business entity who is under investigation
24 for or charged with a violation of this chapter, even if the individual's or business
25 entity's license has been surrendered or has lapsed by operation of law.
- 26 (6) The commissioner may suspend, revoke, or refuse to renew the license of a licensed
27 insurance agent operating as a life settlement broker, pursuant to KRS 304.15-700,

1 if the commissioner finds that such insurance agent has violated the provisions of
2 KRS 304.15-700 to 304.15-725.

3 (7) If the commissioner denies a license application or suspends, revokes, or refuses to
4 renew the license of a life settlement provider or life settlement broker, or suspends,
5 revokes, or refuses to renew the license of a licensed life insurance agent operating
6 as a life settlement broker pursuant to KRS 304.15-700, the commissioner shall
7 comply with the provisions of this section and KRS Chapter 13B.

8 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 315 IS CREATED TO
9 READ AS FOLLOWS:

10 (1) As used in this section:

11 (a) "Affiliate" means:

12 1. An insurer, pharmacy benefit manager, or other administrator of
13 pharmacy benefits that, either directly or indirectly through one or
14 more intermediaries:

15 a. Has an investment or ownership interest in a pharmacy holding
16 a permit provided for in this chapter; or

17 b. Shares common ownership with a pharmacy holding a permit
18 provided for in this chapter; or

19 2. An investor or ownership interest holder of an insurer, pharmacy
20 benefit manager, or other administrator of pharmacy benefits that,
21 either directly or indirectly through one or more intermediaries, has
22 an investment or ownership interest in a pharmacy holding a permit
23 provided for in this chapter;

24 (b) "Affiliate referral":

25 1. Means an affiliate:

26 a. Ordering a patient, either orally or in writing, including online
27 messaging, to use an affiliated pharmacy in this state; or

1 b. Offering or implementing a plan design in this state that
2 requires or incentivizes patients to use affiliated pharmacies; and

3 2. Does not include:

4 a. Communications to patients regarding pharmacy networks and
5 prices if the communication is accurate and includes
6 information about all eligible nonaffiliated pharmacies; or

7 b. Requiring or providing financial incentives for an insured to
8 utilize a pharmacy network that includes affiliated pharmacies if
9 the affiliate:

10 i. Ensures that the network is reasonably adequate and
11 accessible for the provision of pharmacy or pharmacist
12 services to insureds. A mail-order pharmacy shall not be
13 considered or included when determining the adequacy or
14 accessibility of the network;

15 ii. Does not discriminate, which discrimination may include
16 denying a pharmacy the opportunity to participate in a
17 pharmacy network at preferred participation status, against
18 any pharmacy located within the geographic coverage area
19 of the plan if the pharmacy is willing to meet reasonable
20 terms and conditions established by the affiliate for
21 network participation, including obtaining preferred
22 participation status; and

23 iii. Does not charge less cost-sharing to insureds that use
24 pharmacy affiliates than the affiliate charges to insureds
25 that use nonaffiliated network pharmacies or otherwise
26 provide incentives for insureds to use pharmacy affiliates
27 that are not provided for insureds that use nonaffiliated

1 network pharmacies;

2 (c) "Insurer" has the same meaning as in Section 1 of this Act;

3 (d) "Pharmacy benefit manager" has the same meaning as in Section 1 of this
4 Act; and

5 (e) "Pharmacy or pharmacist services" has the same meaning as in Section 1
6 of this Act.

7 (2) Except as provided in subsection (4) of this section, a pharmacy holding a permit
8 provided for in this chapter shall not:

9 (a) Transfer or share Kentucky pharmacy records containing patient
10 identifiable data or prescriber identifiable data to or with an affiliate, except
11 affiliates that are not required to comply with subsection (3)(a) of Section 1
12 of this Act, for any commercial purpose; or

13 (b) Present, cause to be presented, or collect payment on a claim or bill for
14 pharmacy or pharmacist services that the pharmacy knows or should know
15 were furnished pursuant to an affiliate referral, unless the referral is:

16 1. From an affiliate that is not required to comply with subsection (3)(b)
17 of Section 1 of this Act;

18 2. For a limited distribution prescription drug that:

19 a. Requires special handling; and

20 b. Is not commonly carried at retail pharmacies or oncology clinics
21 or practices; or

22 3. For pharmacy or pharmacist services to patients in a hospital, nursing
23 facility, nursing home, personal care home, intermediate care facility,
24 continuing care retirement community, hospice, or home health
25 agency.

26 (3) Nothing in this section shall be construed to prohibit:

27 (a) The exchange of information between an affiliate and its affiliated

1 pharmacy for purposes that are otherwise permitted by law, including but
 2 not limited to reimbursement for pharmacy or pharmacist services, auditing
 3 of pharmacy records, public health activities, and utilization review;

4 (b) An affiliate from entering into an agreement with an affiliated pharmacy to
 5 provide pharmacy or pharmacist services to patients if the agreement is in
 6 compliance with the requirements of this section; or

7 (c) A pharmacy from providing pharmacy or pharmacist services so long as the
 8 pharmacy complies with subsection (2)(b) of this section.

9 (4) The provisions of this section shall be subject to all applicable federal law and
 10 regulations. To the extent any provision of this section conflicts with an
 11 applicable federal law or regulation, the applicable federal law or regulation
 12 shall control.

13 ➔Section 4. KRS 205.522 is amended to read as follows:

14 The Department for Medicaid Services and any managed care organization contracted to
 15 provide Medicaid benefits pursuant to this chapter shall comply with the following
 16 provisions of Subtitle 17A of KRS Chapter 304, as applicable:

17 (1) KRS 304.17A-167;~~;~~

18 (2) KRS 304.17A-235;~~;~~

19 (3) KRS 304.17A-515;~~;~~

20 (4) KRS 304.17A-580;~~;~~

21 (5) KRS 304.17A-600, 304.17A-603, and 304.17A-607;~~;~~~~and~~

22 (6) KRS 304.17A-740 to 304.17A-743, ~~as applicable;~~ and

23 (7) Section 1 of this Act.

24 ➔Section 5. KRS 18A.2259 is amended to read as follows:

25 Any fully insured health benefit plan or self-insured plan issued or renewed on or after
 26 the effective date of this Act ~~offered~~ by the Personnel Cabinet shall:

27 (1) Include a mail-order drug option for maintenance drugs for public employees, and

1 maintenance drugs may be dispensed by mail in accordance with Kentucky law. The
 2 mail-order drug option shall not permit the dispensing of a controlled substance
 3 classified in Schedule II; ~~the self-insured plan shall~~

4 **(2)** Not discriminate against any retail pharmacy located within the geographic
 5 coverage area of the plan that meets the terms and conditions for participation
 6 established by the plan, including price, dispensing fee, and copay requirements of a
 7 mail-order drug option. The retail pharmacy shall not be required to dispense by
 8 mail. The net cost to the plan for a quantity of maintenance drugs dispensed by mail
 9 order shall not exceed the net cost to the plan for the same quantity of the same drug
 10 dispensed by a retail pharmacy under the terms and conditions established for
 11 dispensing and reimbursement at retail; ***and***

12 **(3) *Be administered in compliance with Section 1 of this Act.***

13 ➔Section 6. KRS 18A.225 is amended to read as follows:

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

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

- 1 KRS 161.567; or is eligible to participate in a retirement plan
2 established by an employer who ceases participating in the Kentucky
3 Employees Retirement System pursuant to KRS 61.522 whose
4 employees participated in the health insurance plans administered by the
5 Personnel Cabinet prior to the employer's effective cessation date in the
6 Kentucky Employees Retirement System;
- 7 2. Any certified or classified employee of a local board of education;
- 8 3. Any elected member of a local board of education;
- 9 4. Any person who is a present or future recipient of a retirement
10 allowance from the Kentucky Retirement Systems, Kentucky Teachers'
11 Retirement System, the Legislators' Retirement Plan, the Judicial
12 Retirement Plan, or the Kentucky Community and Technical College
13 System's optional retirement plan authorized by KRS 161.567, except
14 that a person who is receiving a retirement allowance and who is age
15 sixty-five (65) or older shall not be included, with the exception of
16 persons covered under KRS 61.702(4)(c), unless he or she is actively
17 employed pursuant to subparagraph 1. of this paragraph; and
- 18 5. Any eligible dependents and beneficiaries of participating employees
19 and retirees who are entitled to participate in the state-sponsored health
20 insurance program;
- 21 (b) The term "health benefit plan" for the purposes of this section means a health
22 benefit plan as defined in KRS 304.17A-005;
- 23 (c) The term "insurer" for the purposes of this section means an insurer as defined
24 in KRS 304.17A-005; and
- 25 (d) The term "managed care plan" for the purposes of this section means a
26 managed care plan as defined in KRS 304.17A-500.
- 27 (2) (a) The secretary of the Finance and Administration Cabinet, upon the

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

27 (b) The policy or policies shall be approved by the commissioner of insurance and

1 may contain the provisions the commissioner of insurance approves, whether
2 or not otherwise permitted by the insurance laws.

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

11 (d) Any carrier bidding to offer health care coverage to employees shall agree to
12 provide enrollment, claims, and utilization data to the Commonwealth in a
13 format specified by the Personnel Cabinet with the understanding that the data
14 shall be owned by the Commonwealth; to provide data in an electronic form
15 and within a time frame specified by the Personnel Cabinet; and to be subject
16 to penalties for noncompliance with data reporting requirements as specified
17 by the Personnel Cabinet. The Personnel Cabinet shall take strict precautions
18 to protect the confidentiality of each individual employee; however,
19 confidentiality assertions shall not relieve a carrier from the requirement of
20 providing stipulated data to the Commonwealth.

21 (e) The Personnel Cabinet shall develop the necessary techniques and capabilities
22 for timely analysis of data received from carriers and, to the extent possible,
23 provide in the request-for-proposal specifics relating to data requirements,
24 electronic reporting, and penalties for noncompliance. The Commonwealth
25 shall own the enrollment, claims, and utilization data provided by each carrier
26 and shall develop methods to protect the confidentiality of the individual. The
27 Personnel Cabinet shall include in the October annual report submitted

1 pursuant to the provisions of KRS 18A.226 to the Governor, the General
2 Assembly, and the Chief Justice of the Supreme Court, an analysis of the
3 financial stability of the program, which shall include but not be limited to
4 loss ratios, methods of risk adjustment, measurements of carrier quality of
5 service, prescription coverage and cost management, and statutorily required
6 mandates. If state self-insurance was available as a carrier option, the report
7 also shall provide a detailed financial analysis of the self-insurance fund
8 including but not limited to loss ratios, reserves, and reinsurance agreements.

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

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

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

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

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

26 (b) Wholly from funds contributed by any department, board, agency, public
27 postsecondary education institution, or branch of state, city, urban-county,

- 1 charter county, county, or consolidated local government; or
- 2 (c) Partly from each, except that any premium due for health care coverage or
3 dental coverage, if any, in excess of the premium amount contributed by any
4 department, board, agency, postsecondary education institution, or branch of
5 state, city, urban-county, charter county, county, or consolidated local
6 government for any other health care coverage shall be paid by the employee.
- 7 (4) If an employee moves his place of residence or employment out of the service area
8 of an insurer offering a managed health care plan, under which he has elected
9 coverage, into either the service area of another managed health care plan or into an
10 area of the Commonwealth not within a managed health care plan service area, the
11 employee shall be given an option, at the time of the move or transfer, to change his
12 or her coverage to another health benefit plan.
- 13 (5) No payment of premium by any department, board, agency, public postsecondary
14 educational institution, or branch of state, city, urban-county, charter county,
15 county, or consolidated local government shall constitute compensation to an
16 insured employee for the purposes of any statute fixing or limiting the
17 compensation of such an employee. Any premium or other expense incurred by any
18 department, board, agency, public postsecondary educational institution, or branch
19 of state, city, urban-county, charter county, county, or consolidated local
20 government shall be considered a proper cost of administration.
- 21 (6) The policy or policies may contain the provisions with respect to the class or classes
22 of employees covered, amounts of insurance or coverage for designated classes or
23 groups of employees, policy options, terms of eligibility, and continuation of
24 insurance or coverage after retirement.
- 25 (7) Group rates under this section shall be made available to the disabled child of an
26 employee regardless of the child's age if the entire premium for the disabled child's
27 coverage is paid by the state employee. A child shall be considered disabled if he

1 has been determined to be eligible for federal Social Security disability benefits.

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

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

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

- 1 (11) Interruption of an established treatment regime with maintenance drugs shall be
2 grounds for an insured to appeal a formulary change through the established appeal
3 procedures approved by the Department of Insurance, if the physician supervising
4 the treatment certifies that the change is not in the best interests of the patient.
- 5 (12) Any employee who is eligible for and elects to participate in the state health
6 insurance program as a retiree, or the spouse or beneficiary of a retiree, under any
7 one (1) of the state-sponsored retirement systems shall not be eligible to receive the
8 state health insurance contribution toward health care coverage as a result of any
9 other employment for which there is a public employer contribution. This does not
10 preclude a retiree and an active employee spouse from using both contributions to
11 the extent needed for purchase of one (1) state sponsored health insurance policy for
12 that plan year.
- 13 (13) ~~{(a)—}~~The policy or policies of health insurance coverage procured under
14 subsection (2) of this section shall comply with Section 5 of this Act~~[include a~~
15 ~~mail-order drug option for maintenance drugs for state employees. Maintenance~~
16 ~~drugs may be dispensed by mail order in accordance with Kentucky law.~~
- 17 ~~(b)—A health insurer shall not discriminate against any retail pharmacy located~~
18 ~~within the geographic coverage area of the health benefit plan and that meets~~
19 ~~the terms and conditions for participation established by the insurer, including~~
20 ~~price, dispensing fee, and copay requirements of a mail-order option. The~~
21 ~~retail pharmacy shall not be required to dispense by mail.~~
- 22 ~~(c)—The mail-order option shall not permit the dispensing of a controlled~~
23 ~~substance classified in Schedule II.~~
- 24 (14) The policy or policies provided to state employees or their dependents pursuant to
25 this section shall provide coverage for obtaining a hearing aid and acquiring hearing
26 aid-related services for insured individuals under eighteen (18) years of age, subject
27 to a cap of one thousand four hundred dollars (\$1,400) every thirty-six (36) months

- 1 pursuant to KRS 304.17A-132.
- 2 (15) Any policy provided to state employees or their dependents pursuant to this section
3 shall provide coverage for the diagnosis and treatment of autism spectrum disorders
4 consistent with KRS 304.17A-142.
- 5 (16) Any policy provided to state employees or their dependents pursuant to this section
6 shall provide coverage for obtaining amino acid-based elemental formula pursuant
7 to KRS 304.17A-258.
- 8 (17) If a state employee's residence and place of employment are in the same county, and
9 if the hospital located within that county does not offer surgical services, intensive
10 care services, obstetrical services, level II neonatal services, diagnostic cardiac
11 catheterization services, and magnetic resonance imaging services, the employee
12 may select a plan available in a contiguous county that does provide those services,
13 and the state contribution for the plan shall be the amount available in the county
14 where the plan selected is located.
- 15 (18) If a state employee's residence and place of employment are each located in counties
16 in which the hospitals do not offer surgical services, intensive care services,
17 obstetrical services, level II neonatal services, diagnostic cardiac catheterization
18 services, and magnetic resonance imaging services, the employee may select a plan
19 available in a county contiguous to the county of residence that does provide those
20 services, and the state contribution for the plan shall be the amount available in the
21 county where the plan selected is located.
- 22 (19) The Personnel Cabinet is encouraged to study whether it is fair and reasonable and
23 in the best interests of the state group to allow any carrier bidding to offer health
24 care coverage under this section to submit bids that may vary county by county or
25 by larger geographic areas.
- 26 (20) Notwithstanding any other provision of this section, the bid for proposals for health
27 insurance coverage for calendar year 2004 shall include a bid scenario that reflects

1 the statewide rating structure provided in calendar year 2003 and a bid scenario that
2 allows for a regional rating structure that allows carriers to submit bids that may
3 vary by region for a given product offering as described in this subsection:

- 4 (a) The regional rating bid scenario shall not include a request for bid on a
5 statewide option;
- 6 (b) The Personnel Cabinet shall divide the state into geographical regions which
7 shall be the same as the partnership regions designated by the Department for
8 Medicaid Services for purposes of the Kentucky Health Care Partnership
9 Program established pursuant to 907 KAR 1:705;
- 10 (c) The request for proposal shall require a carrier's bid to include every county
11 within the region or regions for which the bid is submitted and include but not
12 be restricted to a preferred provider organization (PPO) option;
- 13 (d) If the Personnel Cabinet accepts a carrier's bid, the cabinet shall award the
14 carrier all of the counties included in its bid within the region. If the Personnel
15 Cabinet deems the bids submitted in accordance with this subsection to be in
16 the best interests of state employees in a region, the cabinet may award the
17 contract for that region to no more than two (2) carriers; and
- 18 (e) Nothing in this subsection shall prohibit the Personnel Cabinet from including
19 other requirements or criteria in the request for proposal.

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

27 (22) Any fully insured health benefit plan or self-insured plan issued or renewed on or

1 after July 12, 2006, to public employees pursuant to this section shall comply with
2 the provisions of KRS 304.17A-270 and 304.17A-525.

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

10 (24) Any fully insured health benefit plan or self-insured plan issued or renewed on or
11 after July 1, 2019, to public employees pursuant to this section shall comply with
12 KRS 304.17A-138.

13 ➔Section 7. Any provision of a contract issued, delivered, entered, renewed,
14 extended, or amended on or after the effective date of this Act that is contrary to the
15 provisions of this Act shall be void and unenforceable in this state.

16 ➔Section 8. If any provision of this Act, or this Act's application to any person or
17 circumstance, is held invalid, the invalidity shall not affect other provisions or
18 applications of the Act, which shall be given effect without the invalid provision or
19 application, and to this end the provisions and applications of this Act are severable.

20 ➔Section 9. This Act takes effect on January 1, 2021.