

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. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304
4 IS CREATED TO READ AS FOLLOWS:

5 *As used in Sections 1 to 5 of this Act:*

6 *(1) "Cost sharing" means the cost to an insured under a health plan according to*
7 *any coverage limit, copayment, coinsurance, deductible, or other out-of-pocket*
8 *expense requirements imposed by the plan;*

9 *(2) "Health plan":*

10 *(a) Means any policy, certificate, contract, or plan that offers or provides*
11 *coverage in this state for pharmacy or pharmacist services, whether the*
12 *coverage is by direct payment, reimbursement, or otherwise;*

13 *(b) Includes a health benefit plan; and*

14 *(c) Does not include:*

15 *1. A policy, certificate, contract, or plan that:*

16 *a. Offers or provides services under KRS Chapter 205; or*

17 *b. Is established by the Teachers' Retirement System pursuant to*
18 *KRS 161.675 solely for the purpose of providing coverage to*
19 *Medicare-eligible annuitants and dependents of annuitants; or*

20 *2. A self-insured health plan provided by a hospital or health system to*
21 *its employees and dependents of employees if the hospital or health*
22 *system owns a pharmacy;*

23 *(3) "Insured" means any individual covered under a health plan;*

24 *(4) "Insurer":*

25 *(a) Means any of the following persons that offer or issue a health plan:*

26 *1. An insurance company;*

27 *2. A health maintenance organization;*

- 1 3. A limited health service organization;
- 2 4. A self-insurer, including a governmental plan, church plan, or
- 3 multiple employer welfare arrangement;
- 4 5. A provider-sponsored integrated health delivery network;
- 5 6. A self-insured employer-organized association;
- 6 7. A nonprofit hospital, medical-surgical, dental, and health service
- 7 corporation; or
- 8 8. Any other third-party payor that is:
- 9 a. Authorized to transact health insurance business in this state; or
- 10 b. Not exempt by federal law from regulation under the insurance
- 11 laws of this state; and
- 12 (b) Includes any person that has contracted with a state or federal agency to
- 13 provide coverage in this state under a health plan;
- 14 (5) "Pharmacy" has the same meaning as in KRS 315.010;
- 15 (6) (a) "Pharmacy affiliate" means a pharmacy, including a specialty pharmacy,
- 16 that owns or controls, is owned or controlled by, or is under common
- 17 ownership or common control with an insurer, pharmacy benefit manager,
- 18 or other administrator of pharmacy benefits.
- 19 (b) As used in this subsection:
- 20 1. "Common control" includes sharing common management or
- 21 managers and having common members on boards of directors; and
- 22 2. "Control" may be direct or indirect through one (1) or more
- 23 intermediaries;
- 24 (7) "Pharmacy benefit manager" has the same meaning as in KRS 304.9-020; and
- 25 (8) "Pharmacy or pharmacist services":
- 26 (a) Means any health care procedures, treatments within the scope of practice
- 27 of a pharmacist, or services provided by a pharmacy or pharmacist; and

1 (b) Includes the sale and provision of the following by a pharmacy or
2 pharmacist:

3 1. Prescription drugs as defined in KRS 315.010; and

4 2. Home medical equipment as defined in KRS 309.402.

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

7 To the extent permitted under federal law:

8 (1) (a) An insurer, a pharmacy benefit manager, or any other administrator of
9 pharmacy benefits that utilizes a network to provide pharmacy or
10 pharmacist services under a health plan shall ensure that the network is
11 reasonably adequate and accessible with respect to the provision of
12 pharmacy or pharmacist services.

13 (b) A reasonably adequate and accessible network, with respect to the provision
14 of pharmacy or pharmacist services, shall, at a minimum:

15 1. Offer an adequate number of accessible pharmacies that are not mail-
16 order pharmacies; and

17 2. Provide convenient access to pharmacies that are not mail-order
18 pharmacies within a reasonable distance from the insured's residence,
19 but in no event shall the distance be more than thirty (30) minutes or
20 thirty (30) miles from each insured's residence, to the extent that
21 pharmacy or pharmacist services are available; and

22 (2) (a) An insurer, a pharmacy benefit manager, and any other administrator of
23 pharmacy benefits conducting business in this state shall file with the
24 commissioner an annual report, in the manner and form prescribed by the
25 commissioner, describing the networks of the insurer, pharmacy benefit
26 manager, or other administrator that are utilized for the provision of
27 pharmacy or pharmacist services under a health plan.

1 (b) The commissioner shall review each network to ensure that the network
2 complies with this section.

3 (c) All information and data acquired by the department under this subsection
4 that is generally recognized as confidential or proprietary shall not be
5 subject to disclosure under KRS 61.870 to 61.884, except the department
6 may publicly disclose aggregated information not descriptive of any readily
7 identifiable person or entity.

8 ➔SECTION 3. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304
9 IS CREATED TO READ AS FOLLOWS:

10 (1) As used in this section:

11 (a) "Actual overpayment" means the portion of any amount paid for pharmacy
12 or pharmacist services that:

13 1. Is duplicative because the pharmacy or pharmacist has already been
14 paid for the services; or

15 2. Was erroneously paid because the services were not rendered in
16 accordance with the prescriber's order, in which case only the amount
17 paid for that portion of the prescription that was filled incorrectly or in
18 excess of the prescriber's order may be deemed an actual
19 overpayment. The amount denied, refunded, or recouped shall not
20 include the dispensing fee paid to the pharmacy if the correct
21 medication was dispensed to the patient;

22 (b) "National drug code number" means the unique national drug code
23 number that identifies a specific approved drug, its manufacturer, and its
24 package presentation;

25 (c) "Net amount" means the amount paid to the pharmacy or pharmacist by
26 the insurer, pharmacy benefit manager, or other administrator less any fees,
27 price concessions, and all other revenue passing from the pharmacy or

1 pharmacist to the insurer, pharmacy benefit manager, or other
2 administrator; and

3 (d) "Wholesale acquisition cost" means the manufacturer's list price for the
4 drug to wholesalers or direct purchasers in the United States, not including
5 prompt pay or other discounts, rebates, or reductions in price, for the most
6 recent month for which the information is available, as reported in
7 wholesale price guides or other publications of drug pricing data.

8 (2) To the extent permitted under federal law, every contract between a pharmacy or
9 pharmacist and an insurer, a pharmacy benefit manager, or any other
10 administrator of pharmacy benefits for the provision of pharmacy or pharmacist
11 services under a health plan, either directly or through a pharmacy services
12 administration organization or group purchasing organization, shall:

13 (a) Outline the terms and conditions for the provision of pharmacy or
14 pharmacist services;

15 (b) Prohibit the insurer, pharmacy benefit manager, or other administrator
16 from:

17 1. Reducing payment for pharmacy or pharmacist services, directly or
18 indirectly, under a reconciliation process to an effective rate of
19 reimbursement. This prohibition shall include, without limitation,
20 creating, imposing, or establishing direct or indirect remuneration
21 fees, generic effective rates, dispensing effective rates, brand effective
22 rates, any other effective rates, in-network fees, performance fees,
23 point-of-sale fees, retroactive fees, pre-adjudication fees, post-
24 adjudication fees, and any other mechanism that reduces, or
25 aggregately reduces, payment for pharmacy or pharmacist services;

26 2. Retroactively denying, reducing reimbursement for, or seeking any
27 refunds or recoupments for a claim for pharmacy or pharmacist

1 services, in whole or in part, from the pharmacy or pharmacist after
2 returning a paid claim response as part of the adjudication of the
3 claim, including claims for the cost of a medication or dispensed
4 product and claims for pharmacy or pharmacist services that are
5 deemed ineligible for coverage, unless one (1) or more of the following
6 occurred:

7 a. The original claim was submitted fraudulently; or

8 b. The pharmacy or pharmacist received an actual overpayment;

9 3. Reimbursing the pharmacy or pharmacist for a prescription drug or
10 other service at a net amount that is lower than the amount the
11 insurer, pharmacy benefit manager, or other administrator reimburses
12 itself or a pharmacy affiliate for the same:

13 a. Prescription drug by national drug code number; or

14 b. Service;

15 4. Collecting cost sharing from a pharmacy or pharmacist that was
16 provided to the pharmacy or pharmacist by an insured for the
17 provision of pharmacy or pharmacist services under the health plan;
18 and

19 5. Designating a prescription drug as a specialty drug unless the drug is
20 a limited distribution drug that:

21 a. Requires special handling; and

22 b. Is not commonly carried at retail pharmacies or oncology clinics
23 or practices; and

24 (c) Notwithstanding any other law, provide the following minimum
25 reimbursements to the pharmacy or pharmacist for each prescription drug
26 or other service provided by the pharmacy or pharmacist:

27 1. a. Reimbursement for the cost of the drug or other service at an

1 amount that is not less than:

2 i. The national average drug acquisition cost for the drug or
3 service at the time the drug or service is administered,
4 dispensed, or provided; or

5 ii. If the national average drug acquisition cost is not
6 available at the time a drug is administered or dispensed,
7 the wholesale acquisition cost for the drug at the time the
8 drug is administered or dispensed.

9 b. For purposes of complying with this subparagraph, the insurer,
10 pharmacy benefit manager, or other administrator shall utilize
11 the most recently published monthly national average drug
12 acquisition cost as a point of reference for the ingredient drug
13 product component of a pharmacy's or pharmacist's
14 reimbursement for drugs appearing on the national average
15 drug acquisition cost list; and

16 2. Reimbursement for a professional dispensing fee that is not less than
17 the greater of the following:

18 a. The professional dispensing fee required for a covered outpatient
19 drug prescribed by an authorized provider and dispensed by a
20 participating pharmacy under the state's Medicaid program; or

21 b. Ten dollars and sixty-four cents (\$10.64).

22 ➔SECTION 4. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304
23 IS CREATED TO READ AS FOLLOWS:

24 To the extent permitted under federal law:

25 (1) With respect to the provision of pharmacy or pharmacist services under a health
26 plan, an insurer, a pharmacy benefit manager, or any other administrator of
27 pharmacy benefits:

1 (a) Shall not:

2 1. a. Require or incentivize an insured to use a mail-order
3 pharmaceutical distributor, including a mail-order pharmacy.

4 b. Conduct prohibited under this subparagraph includes but is not
5 limited to:

6 i. Requiring or incentivizing the use of a mail-order
7 pharmaceutical distributor, including a mail-order
8 pharmacy, to furnish a health care provider, including a
9 retail pharmacy, a prescription drug by the United States
10 Postal Service or a common carrier for subsequent
11 administration in a hospital, clinic, pharmacy, or infusion
12 center; and

13 ii. Imposing any cost-sharing requirement, fee, drug supply
14 limitation, or other condition relating to pharmacy or
15 pharmacist services received from a retail pharmacy that is
16 greater, or more restrictive, than what would otherwise be
17 imposed if the insured used a mail-order pharmaceutical
18 distributor, including a mail-order pharmacy;

19 2. Prohibit a pharmacy or pharmacist from, or impose a penalty on a
20 pharmacy or pharmacist for, the following:

21 a. Selling a lower cost alternative to an insured, if one is available;
22 or

23 b. Providing information to an insured under subsection (2) of this
24 section;

25 3. Discriminate against any pharmacy or pharmacist that is:

26 a. Located within the geographic coverage area of the health plan;
27 and

1 b. Willing to agree to, or accept, reasonable terms and conditions
2 established for participation in the insurer's, pharmacy benefit
3 manager's, other administrator's, or health plan's network;

4 4. Impose limits, including quantity limits or refill frequency limits, on
5 an insured's access to medication from a pharmacy that are more
6 restrictive than those existing for a pharmacy affiliate;

7 5. a. Require or incentivize an insured to receive pharmacy or
8 pharmacist services from a pharmacy affiliate.

9 b. Conduct prohibited under this subparagraph includes but is not
10 limited to:

11 i. Requiring or incentivizing an insured to obtain a specialty
12 drug from a pharmacy affiliate;

13 ii. Charging less cost sharing to insureds that use pharmacy
14 affiliates than what is charged to insureds that use
15 nonaffiliated pharmacies; and

16 iii. Providing any incentives for insureds that use pharmacy
17 affiliates that are not provided for insureds that use
18 nonaffiliated pharmacies.

19 c. This subparagraph shall not be construed to prohibit:

20 i. Communications to insureds regarding networks and
21 prices if the communication is accurate and includes
22 information about all eligible nonaffiliated pharmacies; or

23 ii. Requiring an insured to utilize a network that may include
24 pharmacy affiliates in order to receive coverage under the
25 plan, or providing financial incentives for utilizing that
26 network, if the insurer, pharmacy benefit manager, or
27 other administrator complies with this section and Section

- 1 2 of this Act; or
- 2 6. a. Interfere with an insured's right to choose the insured's network
- 3 pharmacy of choice.
- 4 b. For purposes of this subparagraph, interfering includes
- 5 inducing, steering, offering financial or other incentives, and
- 6 imposing a penalty, including but not limited to:
- 7 i. Promoting one (1) participating pharmacy over another;
- 8 ii. Offering a monetary advantage;
- 9 iii. Charging higher cost sharing; and
- 10 iv. Reducing an insured's allowable reimbursement for
- 11 pharmacy or pharmacist services; and

12 (b) Shall:

- 13 1. Provide equal access and incentives to all pharmacies within the
- 14 insurer's, pharmacy benefit manager's, other administrator's, or
- 15 health plan's network; and
- 16 2. Offer all pharmacies located in the health plan's geographic coverage
- 17 area eligibility to participate in the insurer's, pharmacy benefit
- 18 manager's, other administrator's, or health plan's network under
- 19 identical reimbursement terms for the provision of pharmacy or
- 20 pharmacist services; and
- 21 (2) A pharmacist shall have the right to provide an insured information regarding
- 22 lower cost alternatives to assist the insured in making informed decisions.

23 ➔SECTION 5. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304

24 IS CREATED TO READ AS FOLLOWS:

- 25 (1) Any insured, pharmacy, or pharmacist impacted by an alleged violation of
- 26 Section 2, 3, or 4 of this Act may file a complaint with the commissioner.

- 27 (2) The commissioner shall:

- 1 (a) Review and investigate all complaints filed under this section;
2 (b) Issue, in writing, a determination to the insured, pharmacy, or pharmacist
3 as to whether a violation occurred;
4 (c) For alleged violations of subsection (2)(b)5. of Section 3 of this Act, consult
5 with the Kentucky Board of Pharmacy in making the determination of
6 whether a violation occurred; and
7 (d) Otherwise comply with KRS 304.2-160 and 304.2-165.
8 (3) An insurer, a pharmacy benefit manager, or any other administrator of pharmacy
9 benefits shall comply with KRS 304.2-165 and otherwise respond to, and comply
10 with, any requests made by the commissioner under this section.

11 ➔SECTION 6. A NEW SECTION OF SUBTITLE 99 OF KRS CHAPTER 304
12 IS CREATED TO READ AS FOLLOWS:

13 In addition to any other remedies, penalties, or damages available under common law
14 or statute, the commissioner may order reimbursement to any person who has incurred
15 a monetary loss as a result of a violation of Section 2, 3, 4, or 5 of this Act.

16 ➔Section 7. KRS 304.9-053 is amended to read as follows:

- 17 (1) (a) In order to conduct business in this state, a pharmacy benefit manager shall
18 first obtain a license from the commissioner. The license shall be in lieu of an
19 administrator's license as required by KRS 304.9-052.
20 (b) A licensed pharmacy benefit manager performing utilization review, as
21 defined in KRS 304.17A-600, shall be registered as a private review agent in
22 accordance with KRS 304.17A-607.
23 (2) (a) A person seeking a pharmacy benefit manager~~seeking a~~ license shall apply
24 to the commissioner in writing on a form provided by the department.
25 (b) The application~~form~~ shall include:~~state~~
26 1. The name, address, official position, and professional qualifications of
27 each individual responsible for the conduct of affairs of the pharmacy

1 benefit manager, including all members of the board of directors, board
2 of trustees, executive committee, other governing board or committee,
3 the principal officers in the case of a corporation, the partners or
4 members in the case of a partnership or association, and any other
5 person who exercises control or influence over the affairs of the
6 pharmacy benefit manager;~~;~~ and

7 2. The name and address of the applicant's agent for service of process in
8 this state.

9 (3) Each application for a license~~;~~ and subsequent renewal for a license~~;~~ shall be
10 accompanied by:

11 (a) A nonrefundable fee of one thousand dollars (\$1,000);~~;~~ and

12 (b) Evidence of financial responsibility in an amount of one million dollars
13 (\$1,000,000); and

14 (c) Any methodologies utilized, or to be utilized, by the pharmacy benefit
15 manager in connection with reimbursement, which shall:

16 1. Comply with subsection (2)(c) of Section 3 of this Act; and

17 2. Be used in determining all appeals under KRS 304.17A-162.

18 (4) (a) ~~[Any person acting as a pharmacy benefit manager on July 15, 2016, and who~~
19 ~~is required to obtain a license under subsection (1) of this section, shall obtain~~
20 ~~a license from the commissioner not later than January 1, 2017, in order to~~
21 ~~continue to do business in this state. If the license fee required in subsection~~
22 ~~(3) of this section is submitted after January 1, 2017, a penalty fee of five~~
23 ~~hundred dollars (\$500) shall be paid.~~

24 ~~(5)~~ All licenses issued under this section shall be renewed annually in accordance with
25 KRS 304.9-260.

26 (b) If the renewal fee required ~~by~~in subsection (3) of this section is paid after the
27 renewal date, a penalty fee of five hundred dollars (\$500) shall be paid.

1 commissioner's denial or revocation is sustained after a hearing in accordance
2 with KRS Chapter 13B], the previous[an] applicant or licensee may make a
3 new application not earlier than one (1) full year after the date on which the[a]
4 denial or revocation became final[was sustained].

5 ~~(3)~~[(6)] [The department shall promulgate administrative regulations in accordance
6 with KRS Chapter 13A to implement and enforce the provisions of this section and
7 KRS 205.647, 304.9-053, 304.9-055, and 304.17A-162.]The commissioner shall
8 promulgate administrative regulations in accordance with KRS Chapter 13A
9 that[shall] specify the contents and format of:

10 (a) The application submitted under subsection (2) of Section 7 of this
11 Act:[form] and

12 (b) Any other form, disclosure, or report required or permitted under this section
13 or Section 2 or 7 of this Act.

14 ~~(4)~~[(7)] (a) The department may impose a fee upon pharmacy benefit managers, in
15 addition to a license fee, to cover the costs of implementation and
16 enforcement of KRS 205.647 and any provision of this chapter applicable to
17 pharmacy benefit managers, including but not limited to this section and
18 KRS ~~[205.647,]~~304.9-053, 304.9-055, and 304.17A-162.

19 (b) The fees permitted under paragraph (a) of this subsection shall include[-,
20 including] fees to cover the cost of:

21 1.[(a)] Salaries and benefits paid to the personnel of the department
22 engaged in the enforcement;

23 2.[(b)] Reasonable technology costs related to the enforcement process.
24 Technology costs shall include the actual cost of software and hardware
25 utilized in the enforcement process and the cost of training personnel in
26 the proper use of the software or hardware; and

27 3.[(c)] Reasonable education and training costs incurred by the state to

1 maintain the proficiency and competence of the enforcing personnel.

2 ➔Section 9. KRS 304.9-055 is amended to read as follows:

3 **(1)** Pharmacy benefit managers shall be subject to this subtitle and to the provisions of
 4 Subtitles 1, 2, 3, 4, 12, 14, 17, 17A, 17C, 18, 25, 32, 38, 47, and 99 of KRS Chapter
 5 304 to the extent applicable and not in conflict with the expressed provisions of this
 6 subtitle.

7 **(2)** *The commissioner shall promulgate any administrative regulations in accordance*
 8 *with KRS Chapter 13A that are necessary to implement, enforce, or aid in the*
 9 *effectuation of any provision of this chapter applicable to pharmacy benefit*
 10 *managers, including but not limited to administrative regulations that establish:*

11 *(a) Prohibited practices, including market conduct practices, of pharmacy*
 12 *benefit managers;*

13 *(b) Data reporting requirements; and*

14 *(c) Specifications for the sharing of information with pharmacy affiliates.*

15 ➔Section 10. KRS 304.14-120 is amended to read as follows:

16 (1) **(a)** *Except as otherwise provided in this section, a*~~Not~~ basic insurance policy or
 17 annuity contract form, or application form where written application is
 18 required and is to be made a part of the policy or contract, or printed rider or
 19 indorsement form or form of renewal certificate, shall **not** be delivered, or
 20 issued for delivery in this state, unless the form has been filed with and
 21 approved by the commissioner.

22 **(b)** This **subsection**~~provision~~ shall not apply to:

23 **1.** Any rates filed under Subtitle 17A of this chapter;~~;~~

24 **2.** Surety bonds;~~;~~~~or to~~

25 **3.** Specially rated inland marine risks;~~;~~ or~~to~~

26 **4.** Policies, riders, indorsements, or forms of unique character;

27 **a.** Designed for and used with relation to insurance upon a particular

1 subject~~;~~ or

2 b. Which relate to the manner or distribution of benefits or to the
3 reservation of rights and benefits under life or health insurance
4 policies and are used at the request of the individual policyholder,
5 contract holder, or certificate holder.

6 (c) As to group insurance policies issued and delivered to an association outside
7 this state but covering persons resident in this state, all or substantially all of
8 the premiums for which are payable by the insured members, the group
9 certificates to be delivered or issued for delivery in this state shall be filed
10 with and approved by the commissioner.

11 (d)(a) 1. As to forms for use in property, marine (other than wet marine and
12 transportation insurance), casualty, and surety insurance coverages
13 (other than accident and health), the filing required by this subsection
14 may be made by advisory organizations or form providers on behalf of
15 their members and subscribers~~;~~ but this provision~~;~~

16 2. This paragraph shall not be construed~~deemed~~ to prohibit any~~such~~
17 member or subscriber of an advisory organization or form provider
18 from filing any~~such~~ forms on its own behalf.

19 (e)(b) Every advisory organization and form provider shall file with the
20 commissioner for approval every property and casualty policy form and
21 endorsement before distribution to members, subscribers, customers, or
22 others.

23 (f)(e) Every property and casualty insurer shall file with the commissioner
24 notice of adoption before use of any approved form filed by an advisory
25 organization or form provider or filed by the insurer pursuant to paragraph
26 (d)(a) of this subsection.

27 (2) (a) Every~~such~~ filing required under this section shall be made not less than

1 sixty (60) days in advance of any~~[-such]~~ delivery of the form in this state.

2 (b) At the expiration of~~[-such]~~ sixty (60) days, the form so filed shall be deemed
3 approved unless prior thereto it has been affirmatively approved or
4 disapproved by order of the commissioner.

5 (c) Approval of any filing~~[-such form]~~ by the commissioner under this section
6 shall constitute a waiver of any unexpired portion of the~~[-such]~~ waiting period
7 established under this subsection.

8 (d) The commissioner may extend the waiting period established under
9 paragraph (a) of this subsection by not more than a thirty (30) day period,
10 within which time he or she may~~[-so]~~ affirmatively approve or disapprove any
11 filing~~[-such form]~~, by giving notice to the insurer of the~~[-such]~~ extension before
12 expiration of the initial sixty (60) day period.

13 (e) At the expiration of any~~[-such]~~ period~~[-as so]~~ extended under paragraph (d)
14 of this subsection, and in the absence of a~~[-such]~~ prior affirmative approval or
15 disapproval, the filing~~[-any such form]~~ shall be deemed approved.

16 (f) The commissioner may at any time, after notice and for cause shown,
17 withdraw~~[-any such]~~ approval of any filing.

18 (3) (a) Any order of the commissioner disapproving any filing~~[-such form]~~ or any
19 notice of the commissioner withdrawing a previous approval, shall state the
20 grounds therefor and the particulars thereof in such detail as reasonably to
21 inform the insurer~~[-thereof]~~.

22 (b) Any~~[-such]~~ withdrawal of a previously approved filing~~[-form]~~ shall be
23 effective~~[-at expiration of such period,]~~ not less than thirty (30) days after the
24 insurer receives~~[-giving of the]~~ notice of the withdrawal, as the commissioner
25 shall in such notice prescribe.

26 (4) Except as provided in subsection (6) of this section, the commissioner may, by
27 order, exempt from the requirements of this section, for so long as he or she deems

1 proper, any insurance document or form or type thereof, as specified in the
2 commissioner's~~[such]~~ order, to which, in his or her opinion,~~;~~

3 (a) This section may not practicably be applied;~~;~~ or

4 (b) The filing and approval of~~[which]~~ are~~;~~ in his or her opinion, not desirable or
5 necessary for the protection of the public.

6 (5) Appeals from orders of the commissioner disapproving any filing~~[such form]~~ or
7 withdrawing a previous approval shall be taken as provided in Subtitle 2 of this
8 chapter.

9 (6) The commissioner shall:

10 (a) Review every health plan, as defined in Section 1 of this Act, for compliance
11 with Sections 1 to 5 of this Act; and

12 (b) Not approve any health plan referenced in paragraph (a) of this subsection
13 that does not comply with Sections 1 to 5 of this Act.

14 (7) As used in~~[For the purposes of]~~ this section, unless the context requires otherwise:

15 (a) "Advisory organization" has the same meaning as~~[provided]~~ in KRS 304.13-
16 011; and

17 (b) "Form provider" has the same meaning as~~[provided]~~ in KRS 304.13-011.

18 ➔Section 11. KRS 304.17A-712 is amended to read as follows:

19 (1) Except as provided in subsection (2) of this section, if an insurer determines that
20 payment was made for services rendered to an individual who was not eligible for
21 coverage or that payment was made for services not covered by a covered person's
22 health benefit plan, the insurer shall give written notice to the provider and:

23 (a)~~[(1)]~~ Request a refund from the provider; or

24 (b)~~[(2)]~~ Make a recoupment of the overpayment from the provider in accordance
25 with KRS 304.17A-714.

26 (2) An insurer, a pharmacy benefit manager, or any other administrator of pharmacy
27 benefits shall not request a refund or make a recoupment in violation of Section 3

1 of this Act.

2 ➔Section 12. KRS 304.17C-125 (Effective January 1, 2025) is amended to read
3 as follows:

4 The following~~[KRS 304.17A-262]~~ shall apply to limited health service benefit plans,
5 including any limited health service contract, as defined in KRS 304.38A-010:

6 (1) KRS 304.17A-262; and

7 (2) Sections 1 to 5 of this Act.

8 ➔Section 13. KRS 304.38A-115 (Effective January 1, 2025) is amended to read
9 as follows:

10 Limited health service organizations shall comply with:

11 (1) KRS 304.17A-262;

12 (2) KRS 304.17A-265; and

13 (3) Sections 1 to 5 of this Act.

14 ➔SECTION 14. A NEW SECTION OF KRS CHAPTER 18A IS CREATED TO
15 READ AS FOLLOWS:

16 (1) Any fully insured health benefit plan, self-insured plan, or other health plan, as
17 defined in Section 1 of this Act, offered, issued, or renewed to public employees
18 under KRS 18A.225 or 18A.2254 shall comply with Sections 1 to 5 of this Act,
19 including any state cabinet, agency, or official that contracts with a third-party
20 administrator to administer any self-insured plan offered, issued, or renewed to
21 public employees under KRS 18A.225 or 18A.2254.

22 (2) The plan or plans referred to in subsection (1) of this section shall be reviewed
23 and approved by the commissioner of the Department of Insurance in accordance
24 with subsection (6) of Section 10 of this Act.

25 ➔Section 15. KRS 367.828 is amended to read as follows:

26 (1) As used in this section, "health discount plan" means any card, program, device, or
27 mechanism that is not insurance that purports to offer discounts or access to

1 discounts from a health care provider without recourse to the health discount plan.

2 (2) No person shall sell, market, promote, advertise, or otherwise distribute a health
3 discount plan unless:

4 (a) The health discount plan clearly states in bold and prominent type on all cards
5 or other purchasing devices, promotional materials, and advertising that the
6 discounts are not insurance;

7 (b) The discounts are specifically authorized by an individual and separate
8 contract with each health care provider listed in conjunction with the health
9 discount plan;~~and~~

10 (c) The discounts or the range of discounts advertised or offered by the plan are
11 clearly and conspicuously disclosed to the consumer;and

12 (d) For health discount plans that purport to offer discounts or access to
13 discounts on prescription drugs:

14 1. The plan does not utilize the same identifying information used by an
15 insurer under a health insurance policy, certificate, plan, or contract,
16 including but not limited to policy numbers, group numbers, or
17 member identifications; and

18 2. The person or plan does not seek, or contract for, the payment of any
19 refunds, recoupments, or fees from a pharmacy or pharmacist.

20 (3) The provisions of subsection (2) of this section do not apply to the following:

21 (a) A customer discount or membership card issued by a retailer for use in its
22 own facility; or

23 (b) Any card, program, device, or mechanism that:

24 1. Is not insurance;~~and which~~

25 2. Is administered by a health insurer authorized to transact the business of
26 insurance in this state;and

27 3. Does not purport to offer discounts or access to discounts on

1 *prescription drugs.*

2 (4) (a) A violation of this section shall be deemed an unfair, false, misleading, or
3 deceptive act or practice in the conduct of trade or commerce in violation of
4 KRS 367.170.

5 (b) All of the remedies, powers, and duties delegated to the Attorney General by
6 KRS 367.190 to 367.300 and penalties pertaining to acts and practices
7 declared unlawful under KRS 367.170 shall be applied to acts and practices in
8 violation of this section.

9 ➔Section 16. The following KRS section is repealed:
10 304.38A-120 Compliance with KRS 304.17A-265.

11 ➔Section 17. Sections 2, 3, and 4 of this Act apply to contracts issued, delivered,
12 entered, renewed, extended, or amended on or after January 1, 2025.

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

17 ➔Section 19. On or before January 1, 2025, the commissioner of insurance shall
18 promulgate any emergency and ordinary administrative regulations necessary to
19 implement the provisions of this Act.

20 ➔Section 20. Sections 1 to 17 of this Act take effect January 1, 2025.