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BULLETIN
2024-06

INSURANCE LEGISLATION ADOPTED BY THE 2024 KENTUCKY GENERAL ASSEMBLY (REGULAR SESSION)

THIS BULLETIN IS FOR INFORMATIONAL PURPOSES ONLY. IT DOES NOT AMEND OR INTERPRET PROVISIONS OF THE KENTUCKY REVISED STATUTES OR THE KENTUCKY ADMINISTRATIVE REGULATIONS. THE COMPLETE AND ACCURATE TEXT OF THE LAWS CAN BE SECURED WHEN THE 2024 ACTS OF THE KENTUCKY GENERAL ASSEMBLY ARE PUBLISHED IN THE SUMMER OF 2024. THE BULLETIN IS NOT A COMPREHENSIVE REVIEW OF EACH ACT, BUT RATHER, SUMMARIZES THE MAIN PROVISIONS OF EACH ACT.

(Bills as enacted are available on the LRC website 24RS Legislative Record (ky.gov))

House Bill 7- An Act Relating to Autonomous Vehicles (Acts Ch. 176)

This Act creates new sections of KRS Chapter 186 allowing for the operation of autonomous vehicles on Kentucky roadways. The enforcement of this Act will lie with the Transportation Cabinet. Section 3 of this Act mandates that the owner of a fully autonomous vehicle not defined as a motor carrier must submit proof of financial responsibility to the Transportation Cabinet that the vehicle liability coverage is not less than $1,000,000 and that also satisfies the requirements of KRS 304.39-080.

This Act became effective on July 15, 2024.

Contact: *Property and Casualty Division*
(502) 564-6046

House Bill 52- An Act Relating to Coverage for Cancer Detection (Acts Ch. 75)

This Act creates a new section of KRS Chapter 304 Subtitle 17A to require all health benefit plans to provide coverage for any cancer screening, test, or procedure that is required by federal law. In

addition, all health benefit plans must cover cancer screenings, tests, and procedures ordered by an authorized health care provider that is consistent with the recommendations of the United States Preventive Services Task Force, clinical practice guidelines established by the National Cancer Society, and clinical practice guidelines established by the National Comprehensive Cancer Network.

"Cancer screening, test, or procedure" is defined by this Act as any preventive screening, test, or procedure performed for the purpose of detecting cancer, including lung, breast, cervical, prostate, and colorectal cancer. "Health benefit plan" is defined as having the same meaning as in KRS 304.17A-005, and also includes short-term limited duration coverage and student health insurance offered by an insurer to a university or college.

Within ninety (90) days of the effective date, the Department must determine if the coverage mandated by this Act triggers cost defrayal pursuant to 45 C.F.R. 155.170. If cost defrayal is triggered then the Department must apply for a federal innovation waiver, pursuant to 42 U.S.C. Section 18052.

Pursuant to the requirements of this Act and HB 186, The Department has evaluated HB 52 in comparison with Kentucky's essential health benefit benchmark (EHB-Benchmark) plan to determine if this Act triggers cost defrayal. The Department has completed its evaluation. Pursuant to this analysis, the Department has concluded that HB 52 does trigger cost defrayal and accordingly, will be applying for the federal waiver.

This Act is effective on January 1, 2025. However, because it triggers cost defrayal, it cannot be implemented pursuant to KRS 304.17A-099(2)(a) (*See* HB 186, Section 2(2)(a), 2024 R.S.)

Contact: *Health and Life Insurance and Managed Care Division*
(502) 564-6088

House Bill 115- An Act Relating to Coverage for Breast Exams (Acts Ch. 97)

This Act amends various sections of the insurance code related to group and individual health plans to include a definition of "diagnostic breast examination." That term is defined as a medically necessary and appropriate examination of the breast used to evaluate an abnormality seen or suspected from, or detected by, an examination for breast cancer from another means. This Act also adds a definition of "supplemental breast examination" to mean a medically necessary and appropriate breast exam that is used to screen for breast cancer when no abnormality is seen or expected and is based on a personal or family medical history that may increase the risk of breast cancer. Pursuant to the requirements of this Act, the affected health plans that cover diagnostic breast exams and supplemental breast exams cannot impose any cost-sharing requirements on the exams.

Additionally, this Act amends the definition of mammogram found in KRS 304.17-316 to mean an X-ray exam of the breast with at least two (2) views of each breast and with an average radiation exposure at the current recommended level as set forth in guidelines of the American College of Radiology.

This Act is effective on January 1, 2025.

Contact: *Health and Life Insurance and Managed Care Division*
(502) 564-6088

House Bill 179- An Act Relating to Insurance for Loss of Income (Acts Ch. 99)

HB 179 creates a new insurance product, paid family leave insurance. "Paid family leave insurance" is defined as a benefit program provided to an employee to pay for a percentage or portion of the employee's income loss caused by absences not based on the employee's disability.

The product may now be purchased and issued by an insurer to an employer as group coverage. It may be included in a group disability income insurance policy, offered as a rider or supplemental policy to a group disability income policy, or offered as a stand-alone group, paid family leave insurance policy. An employee may access the benefits under the coverage when the employee takes leave to care for a family member under certain circumstances. Those circumstances can include the following: 1) to participate in providing care for a family member with a serious illness; 2) to bond with a child during the first twelve (12) months after the child's birth or adoption; 3) to address a qualifying exigency under the federal Family Medical Leave Act that is related to a family member on active duty or who has been notified of an impending call to active duty in the Armed Forces; 4) or to care for a family member who is in the Armed Forces or who is a first responder, and is injured in the line of duty.

The Department intends to promulgate a new administrative regulation regarding the rate and form filing requirements for this new product. However, because this Act contained an emergency clause making it effective upon the signature by the Governor, the Department will be issuing guidance in the interim for the filing of forms and rates.

This Act became effective on April 5, 2024.

Contact: *Health and Life Insurance and Managed Care Division*
(502) 564-6088

House Bill 186- An Act Relating to Fiscal Impacts of Health Insurance Mandates (Acts Ch. 120)

Section 1 of this Act repeals and reenacts KRS 6.948 regarding proposed legislation. Pursuant to the new provisions of KRS 6.948, if a bill or amendment is identified as having a mandated health benefit, Legislative Research Commission (LRC) staff shall notify the sponsor that a health mandate impact statement and a federal cost defrayal impact statement is required for the proposed legislation. If a bill or amendment is introduced containing a mandated health benefit, the sponsor, any member of the majority or minority leadership, or a chair of a standing committee may request the Department prepare a health mandate impact statement and a federal cost defrayal impact statement.

A health mandate impact statement determines the extent a mandated health benefit will: 1) increase or decrease administrative expenses of insurers offering health benefit plans; 2) increase or decrease health benefit plan premiums in the market in which the mandate applies; and 3) impact the total cost of health care for health benefit plans, including any cost savings.

A federal cost defrayal impact statement shall indicate: 1) whether a bill or amendment that has a mandated health benefit may result in the state being required to make defrayal payments pursuant to 42 U.S.C. §18031(d)(3) and 45 C.F.R. §155.170; and 2) if applicable, which provisions of the bill or amendment may trigger cost defrayal payments. The federal cost defrayal impact statement shall also determine the extent to which the mandated health benefit is already covered by health insurers and include an estimate of the cost defrayal payments the state may be required to make should the mandate be enacted.

Section 2 of this Act creates a process for insurers to report costs to the Department attributable to mandated health benefits that require the state to make cost defrayal payments. The costs are to be attributable to a qualified health plan and must be calculated in accordance with generally accepted actuarial principles. The Department will use the reported information to determine the statewide average of the costs attributable to the mandated health benefit for all qualified health plans. Any required defrayal payments will be made directly to the insurer issuing the qualified health plan based on this statewide average. An insurer that receives such a payment is required to reduce the premium charged to the insured individual or provide a premium rebate to the insured individual.

Section 2(2) of this Act also contains this important provision: if a newly mandated health benefit that was not effective on or before January 1, 2024, triggers cost defrayal, then that mandated health benefit will not go into effect until it no longer triggers cost defrayal.

This Act became effective on April 9, 2024.

Contact: *Health and Life Insurance and Managed Care Division*
(502) 564-6088

House Bill 220- An Act Relating to Step Therapy Protocols (Acts Ch. 4)

This Act makes certain amendments to KRS 304.17A-163 related to step therapy protocols. Specifically, KRS 304.17A-163 is amended to say that an insurer, pharmacy benefit manager, or private review agent is not prohibited from requiring an insured to try a biosimilar product, as defined in 42 U.S.C. sec. 262(i)(2) prior to providing coverage for a prescribed drug.

This Act became effective on July 15, 2024.

Contact: *Health and Life Insurance and Managed Care Division*
(502) 564-6088

House Bill 256- An Act Relating to the Promotion of Stronger Homes to Resist Losses Due to Catastrophic Weather Event (Acts Ch. 102)

This Act is the Strengthen Kentucky Homes Act. Section 1 of this Act creates the Strengthen Kentucky Homes Program (Program). The Program is a grant program within the Department of Insurance that will assist and promote the mitigation of insurable owner-occupied dwellings against catastrophic wind and hail events. Grants will be awarded to contactors to get certified by the Insurance Institute for Business and Home Safety to fortify eligible homes according to their mitigation standards. Grants will also be awarded to homeowners in order to fortify their owner-occupied dwellings in accordance with the standards.

Section 2 of this Act provides that insurance companies writing property insurance for wind and hail damage in Kentucky shall provide a premium discount or rate reduction if the discount or rate reduction is actuarially justified and there is credible evidence of cost savings attributable to the mitigation construction standards. In addition, the Act provides that the Department may promulgate an administrative regulation establishing a standard discount or benchmark primarily for the benefit of insurers that are unable to actuarially justify a premium discount or rate reduction. Insurers will file policy forms and rates with the Department establishing the premium discounts or rate reductions. In order to receive the discount or rate reduction, the insured is required to submit a certificate of compliance to their insurer demonstrating their dwelling meets the mitigation standards of the Insurance Institute for Business and Home Safety. The premium discounts or rate reductions will apply to policies issued on or after March 1, 2026.

The Department will promulgate an administrative regulation that establishes the eligibility for grants and the process for awarding grants.

This Act became effective on July 15, 2024.

Contact: *Property and Casualty Division*
(502) 564-6046

House Bill 280- An Act Relating to Delivery Services (Acts Ch. 13)

This Act defines a "delivery network company" as an entity that operates in Kentucky, using a digital network, which connects a delivery network company customer with a delivery network driver to provide delivery services. A "delivery network driver" is defined as an individual who provides delivery services through a digital network. Examples of such entities include DoorDash and Uber Eats. "Delivery available period" is defined as the period when delivery network driver is in operation of a personal vehicle, is logged on to the delivery network company's network and may receive requests to provide delivery services. This Act sets liability requirements for automobiles that are being employed by delivery network drivers for a delivery network company.

Section 2 of this Act requires the delivery network driver, delivery network company, or any combination of the two (2) to maintain automobile vehicle insurance coverage in accordance with KRS 304.39-080 when the automobile is in a delivery available period. The coverage requirement limits pursuant to this section are as follows: 1) fifty thousand dollars ($50,000) or the amount

required under KRS 304.39-110(1)(a)1., whichever is greater, for all damages arising out of bodily injury sustained by any one (1) person as the result of any one (1) accident; 2) one hundred thousand dollars ($100,000) or the amount required under KRS 304.39-110(1)(a)1., whichever is greater, for all damages arising out of a bodily injury sustained by all persons as a result of any one (1) accident; and 3) twenty-five thousand dollars ($25,000) or the amount required under KRS 304.39-110(1)(a)1., whichever is greater, for all damages arising out of damage to a destruction of property as a result of one (1) accident. The required coverage must also include coverage for basic reparation benefits in the amounts set forth in KRS 304.39-020(2).

Section 5 of this Act permits an insurer that issues motor vehicle liability insurance in Kentucky to exclude all coverage, and the duty to defend or indemnify for an injury or loss that occurs during a delivery available period.

This Act is effective on January 1, 2025.

Contact: Property and Casualty Division
(502) 564-6046

House Bill 371- An Act Relating to Mine Subsidence Insurance (Acts Ch. 31)

Presently, an insurer that issues mine subsidence coverage may reinsure the coverage through the mine subsidence insurance fund up to $300,000 per structure. This Act amends KRS 304.44-030 to allow an insurer to reinsure the coverage for up to $500,000 per structure. This Act also raises the additional living expenses limit for mine subsidence coverage from $25,000 to $50,000.

Section 1 of this Act creates a process whereby the Department will periodically review the maximum reinsurance limit and determine whether the $500,000 limit should be raised, lowered, or kept the same. This amount will be determined based on the solvency of the fund, premiums, and deductibles. Any change to the reinsurance maximum for mine subsidence coverage, after a review, will go into effect nine (9) months after insurers are notified of the change. The Department will promulgate an administrative regulation establishing its notification process to insurers.

This Act is effective on January 1, 2025.

Contact: Property and Casualty Division
(502) 564-6046

House Bill 635- An Act Relating to Fiscal Impact Statements (Acts Ch. 58)

This Act amends KRS 6.948, the statute requiring that health mandate statements be prepared by the Department, when requested, if proposed legislation mandates a health benefit that creates a financial impact. The amendment to KRS 6.948 expands the documentation requirements for requested health mandate statements.

Future health mandate statements must provide any documentation, studies, written opinions, calculations, and citations supporting the conclusions expressed in the statement. Additionally,

the statement must contain an estimate of any potential future cost savings, including why the bill will or will not provide future cost savings. Finally, a health mandate statement must include a certification by the Commissioner of the Department of Insurance that the information is accurate.

This Act became effective on July 15, 2024.

Contact: Health and Life Insurance and Managed Care Division
(502) 564-6088

Senate Bill 29- An Act Relating to Property and Casualty Insurance (Acts Ch. 27)

Section 1 of this Act creates a new section of KRS Chapter 304 Subtitle 20. Pursuant to Section 1, an insured is prohibited from assigning, either prior to or after a claim, the insured's duties or rights, or benefits under a property and casualty policy. The insured is not prohibited from directing the payment of benefits under KRS 304.39-241, or from authorizing or directing payment to, or paying, a person for services or materials under an insurance policy.

Section 2 of this Act amends KRS 304.20-060. In this Section "motor vehicle glass" is defined as the glass and non-glass parts associated with the replacement of the glass used in the windshield, doors, or windows. "Motor vehicle glass repair shop" is defined as any person that for consideration engages in the repair or replacement of damaged motor vehicle glass. Section 2 goes on to provide that any motor vehicle policy issued by an admitted or non-admitted carrier that provides comprehensive coverage or coverage other than collision coverage shall provide complete coverage for repair or replacement on a damaged motor vehicle glass claim. Section 2 also prohibits an insurer from requiring an insured to use a particular motor vehicle glass repair shop when the claim is a first-party claim.

Section 3 of this Act creates a new section of KRS Chapter 367. KRS Chapter 367 is the Consumer Protection Act that is enforced by the Kentucky Attorney General's office. This new section of the Consumer Protection Act places certain requirements on how motor vehicle glass repair shops operate in the state. For example, a motor vehicle glass repair shop shall not offer a rebate, gift, gift card, cash, coupon, fee, prize, bonus, payment incentive, inducement, or any thing of value to an insured or insurance agent for directing or making a claim for motor vehicle glass repair or replacement. Anyone seeking guidance on Section 3 of this Act should contact the Kentucky Attorney General's office.

This Act became effective on April 2, 2024.

Contact: Property and Casualty Division
(502) 564-6046

Senate Bill 74- An Act Relating to Public Health (Acts Ch. 207)

Section 4 of this Act creates new sections of KRS Chapter 304 Subtitle 17. This section requires that individual health benefit plans offer a special enrollment period at any time after a woman has been confirmed pregnant by a medical professional. The enrollment eligibility period shall begin

no later than the first day of the first calendar month in which the pregnancy is confirmed. However, the pregnant woman may direct the coverage to begin on the first day of any month occurring after the pregnancy is confirmed. Student health insurance offered by a Kentucky-licensed insurer covering the students of a college or university must also offer such a special enrollment period to pregnant women.

Section 5 of this Act amends KRS 304.17A-145 to require health benefit plans cover in-home programs for pregnant and postpartum women, and telehealth or digital health services related to maternity care associated with pregnancy, childbirth, and postpartum care. "In-home program" is defined as a program offered by a health care facility or health care professional for the treatment of substance use disorder that is accessed through telehealth or digital health services. This coverage is required of student health insurance offered by a Kentucky-licensed insurer covering college or university students.

This Act is effective on January 1, 2025.

Contact: *Health and Life Insurance and Managed Care Division*
(502) 564-6088

Senate Bill 111- An Act Relating to Coverage for the Treatment of Stuttering (Acts Ch. 69)

Senate Bill 111 creates a new section of KRS Chapter 304 Subtitle 17A for the coverage of the treatment for stuttering. Pursuant to this Act, any health insurance policy that covers habilitative services, rehabilitative services, or both habilitative and rehabilitative services must provide speech therapy services to treat stuttering. This coverage shall not be subject a maximum annual benefit limit, including any limit on the number of visits. This coverage is also not limited based on the type of disease, injury, or disorder that results in stuttering and is not subject to utilization review, including prior authorization.

The requirements of this Act apply to any health insurance plan, including health benefit plans and limited health service benefit plans. This Act also mandates that the Kentucky employee health benefit plan meet these coverage requirements.

Within ninety (90) days of the effective date of this Act, the Department must determine if the coverage mandated by this Act triggers cost defrayal pursuant to 45 C.F.R. 155.170. If cost defrayal is triggered then the Department must apply for a federal innovation waiver, pursuant to 42 U.S.C. Section 18052.

Pursuant to the requirements of this Act and HB 186, The Department has evaluated SB 111 in comparison with Kentucky's essential health benefit benchmark (EHB-Benchmark) plan to determine if this Act triggers cost defrayal. The Department has completed its evaluation. Pursuant to this analysis, the Department has concluded that SB 111 does trigger cost defrayal and accordingly, will be applying for the federal waiver.

This Act is effective on January 1, 2025. However, because it triggers cost defrayal, it cannot be implemented pursuant to KRS 304.17A-099(2)(a) (See HB 186, Section 2(2)(a), 2024 R.S.)

Contact: *Health and Life Insurance and Managed Care Division*
(502) 564-6088

Senate Bill 188- An Act Relating to Patient Access to Pharmacy Benefits (Acts Ch. 104)

Senate Bill 188 enacts several changes to pharmacy contracts with health plans and pharmacy benefit managers (PBMs), and how pharmacies are to be reimbursed by health plans/PBMs. Below is a summary of some of the more pertinent provisions.

Section 1 of this Act defines a health plan as any policy, certificate, or plan that provides coverage for pharmacy or pharmacist services. The definition excludes Medicaid, the Teachers' Retirement System that provides coverage for Medicare eligible individuals, a self-insured health plan provided by a hospital or health system, a prescription drug plan established under Medicare Part D, and student health insurance provided by a university or college for enrolled students.

Section 2 of this Act creates a new section of KRS Chapter 304 Subtitle 17A requiring an insurer or PBM to have an adequate and accessible pharmacy network, to the extent available, with pharmacies within thirty (30) miles from the insured's residence. This calculation excludes mail-order pharmacies.

Section 3 of this Act creates new a new section of KRS Chapter 304 Subtitle 17A that sets forth certain requirements for contracts between a pharmacy and an insurer or PBM. The contract must prohibit the insurer or PBM from: 1) reducing payment for pharmacy services under a reconciliation process to an effective rate of reimbursement; 2) retroactively denying, reducing reimbursement, or seeking any refunds or recoupments after returning a paid claim response as part of the adjudication of the claim, unless the original claim is fraudulent or an actual overpayment was made by the insurer or PBM; 3) reimbursing for a prescription drug or other service at a net amount that is lower than the amount the insurer or PBM reimburses itself or its affiliates; 4) collecting cost sharing that was provided to the pharmacy or pharmacist by an insured; and 5) designating a prescription drug as a specialty drug unless the drug is a limited distribution drug that requires special handling and is not commonly carried at retail pharmacies, oncology clinics, or practices.

Section 3 of this Act also establishes certain minimum reimbursement amounts for pharmacies and pharmacists by insurers and PBMs. Reimbursement for the cost of a drug or other service shall be at an amount not less than the National Average Drug Acquisition Cost (NADAC) of the drug or service at the time the drug or service is dispensed. If the national average drug acquisition cost is not available, reimbursement shall be no less than the wholesale acquisition cost for the drug at the time it is dispensed. HB 190 was passed subsequently, which amends this reimbursement requirement. Pursuant to HB 190, this minimum reimbursement amount shall not apply to pharmacy types designated as retail chain pharmacies.

In addition, for health plan years beginning prior to January 1, 2027, the minimum dispensing fee paid to retail independent pharmacies shall be $10.64, except for mail-order pharmacies. This minimum dispensing fee may be different for health plan years beginning on January 1, 2027, and going forward.

Beginning January 1, 2027, the dispensing fee shall not be less than the average cost to dispense a prescription drug in an ambulatory pharmacy in Kentucky. This Act requires the Department to promulgate administrative regulations, in conjunction with the Kentucky Board of Pharmacy, to collect data from pharmacists, pharmacies, insurers, and PBMs demonstrating the average cost to dispense a prescription drug in an ambulatory pharmacy in Kentucky. Based on this data, the Department shall perform a study setting the average dispensing fee. Beginning January 1, 2027, the demonstrated average dispensing fee will be the required minimum dispensing fee. The Department is required to repeat the study every two (2) years and adjust the minimum average dispensing fee accordingly.

Section 4 of this Act sets forth additional prohibitions on insurers and PBMs. Insurers and PBMs may not: 1) require or incentivize an insured to us a mail-order pharmacy; 2) prohibit a pharmacy or pharmacists from selling a lower cost alternative to an insured if one is available; 3) discriminate against a pharmacy or pharmacist located in the geographic coverage area that is willing to meet the terms and conditions for network participation; 4) impose limits on an insured's access to medication that is more restrictive than a pharmacy affiliate; 5) require or incentivize an insured to obtain a specialty drug from a pharmacy affiliate; or 6) interfere with an insured's right to choose the insured's network pharmacy of choice.

This Act becomes effective on January 1, 2025.

Contact: Health and Life Insurance and Managed Care Division
(502) 564-6088

Senate Bill 194- An Act Relating to Electronic Delivery of Health Plan Communications (Acts Ch. 20)

This Act creates new sections of KRS Chapter 304 Subtitle 18. Pursuant to this Act, an insurer may deliver all communications relating to employer-sponsored group health insurance electronically if the employer consents to electronic delivery on behalf of its employees. The insurer must comply with Federal Electronic Signatures in Global National Commerce Act and the Uniform Electronic Transactions Act when delivering any electronic communications.

This Act became effective on July 15, 2024.

Contact: Health and Life Insurance and Managed Care Division
(502) 564-6088