



February 27, 2024

The Honorable Michael Meredith
 Kentucky House of Representatives
 702 Capital Ave
 Annex Room 416A
 Frankfort, KY 40601

Dear Representative Meredith,

We appreciate the opportunity to comment on House Bill 186 Committee Substitute 1 related to health insurance benefits and state defrayal. Our organizations represent millions of patients and consumers who face serious, acute, and chronic health conditions and we urge you to oppose this legislation.

Historically, state legislatures have enacted laws to require insurance coverage of specific health care benefits when there is evidence that coverage is lacking or when patients have experienced access problems. Many of these requirements are carefully constructed to ensure adherence to scientific evidence and flexibility with future innovation. **We are concerned with the duplicative state defrayal process created by the House Bill 186 Committee Substitute 1.**

We also have serious concerns that the bill will enable health insurance carriers to easily avoid compliance with existing state health care benefit laws, including Kentucky's new biomarker testing coverage law which was overwhelmingly approved by the state legislature last year. This legislation could also have a chilling effect on future health insurance requirements the legislature deems necessary to protect the health of Kentucky residents.

Current federal law requires states to make payments to defray the cost of state mandated benefits that are in addition to their Essential Health Benefits (EHB) and includes a very specific process that states must adhere to in order to calculate this cost.ⁱ However, states are not required to notify the federal government of any state-required benefits applicable to qualified health plans that are considered to be in addition to the state's EHB. Nor, to date, has the federal government affirmatively required states to defray the cost of a state mandate, though a few states have chosen to do so with respect to specific mandates. In addition, the pending federal rule on Notice of Benefit and Payment Parameters for plan year 2025 includes provisions related to state-required benefits and the defrayal process.ⁱⁱ Under the proposed rule, if a state requires coverage of a benefit that is in its EHB-benchmark plan at the time the requirement is enacted, the benefit would continue to be considered EHB and the state would not have to defray the costs of the mandate. **We therefore recommend that you postpone changes related to defrayal policy pending the release of the final federal rule.**

House Bill 186 Committee Substitute 1 would create a duplicative state-imposed process for determining defrayal costs. Under federal law, the qualified health plan is responsible for determining the defrayal costs. The calculation has to be: (1) an actuarial analysis; (2) conducted by a member of the American Academy of Actuaries; and (3) reported to the state.ⁱⁱⁱ This legislation would also extend significant authority to the Department of Insurance to determine when a state health insurance requirement triggers the defrayal policy. House Bill 186 states if that enactment of a state mandate results, or would result, in a determination that triggers the defrayal policy such provision should not apply (Section 2(2)). In other words, under this legislation, any state mandate enacted by the legislature could not be enforced if the mandate would trigger a defrayal. **We have significant concerns that this language will enable carriers to easily avoid compliance with existing state laws requiring coverage of specific benefits while also discourage enactment of new laws that ensure coverage of future innovations in disease prevention, detection and treatment.**

Thank you for the opportunity to comment on this legislation. Please feel free to contact Doug Hogan with any questions at doug.hogan@cancer.org.

Sincerely,

American Cancer Society Cancer Action Network
American Kidney Fund
American Lung Association
ALS Association

Autism Speaks
Biomarker Collaborative
Child Neurology Foundation
Epilepsy Foundation
Exon 20 Group
Global Colon Cancer Association
Global Liver Institute
ICAN, International Cancer Advocacy Network
Kentucky Life Sciences Council
Leukemia and Lymphoma Society
Lupus and Allied Diseases Association
MET Crusaders
National Multiple Sclerosis Society
National Organization of Rare Disorders
Patients Rising
PD-L1 Amplifieds
Sharsheret
The AIDS Institute
Triage Cancer
ZERO Prostate Cancer

ⁱ 45 CFR § 155.170.

ⁱⁱ Notice of Benefit and Payment Parameters for Plan Year 2025. 88 Fed. Reg. 82510 (proposed Nov. 23, 2023) (to be codified at 45 CFR § 155.170(a)(2)).

ⁱⁱⁱ 45 CFR 155.170(c)