



**COMMONWEALTH OF KENTUCKY
DEPARTMENT OF INSURANCE
FRANKFORT, KENTUCKY**

**ADVISORY OPINION
2014-04**

The following Advisory Opinion is to advise the reader of the current position of the Kentucky Department of Insurance (the "Department") on the specified issue. The Advisory Opinion is not legally binding on either the Department or the reader.

TO: ALL HEALTH INSURERS AUTHORIZED TO OFFER HEALTH BENEFIT PLANS IN THE COMMONWEALTH OF KENTUCKY

FROM: SHARON P. CLARK, COMMISSIONER
KENTUCKY DEPARTMENT OF INSURANCE

RE: HOSPICE BENEFITS IN HEALTH BENEFIT PLANS

DATE: October 30, 2014

The Department has become aware that insurers offering health benefit plans are applying deductibles and other cost-sharing to hospice benefits. This Advisory Opinion clarifies that cost-sharing may only be applied to the extent permitted by Medicare.

KRS 304.17A-250(6) requires all health benefit plans to cover hospice care at least equal to the Medicare benefits.

Under Medicare, hospice care is available if:

- The individual's doctor and the hospice director certify that the individual is terminally ill and has six (6) months or less to live if the illness runs its normal course;
- The individual signs a statement choosing hospice care instead of other covered benefits to treat the terminal illness; and
- Care is received from a Medicare-approved hospice program.

An individual's liability for hospice care under Medicare is set forth in 42 CFR 418.400, and includes:

- A maximum of \$5 for each prescription drug and other similar products for pain relief and symptom control; and
- 5% of the Medicare-approved amount for inpatient respite care.

Further, 42 CFR 418.402 states that Medicare payment to the hospice discharges an individual's liability for payment for all services other than the coinsurance amounts included in 42 CFR 418.400. No deductible may be applied to hospice care under Medicare. Accordingly, insurers are not permitted to apply a deductible to hospice benefits contained within health benefit plans. Insurers are also not permitted to deny a claim for hospice care received through a Medicare-approved program on the basis that the hospice program is not participating in the insurer's network.

There is an exception to this guidance related to certain high deductible health plans. Pursuant to 806 KAR 17:490, a hospice benefit provided for a person covered under a high deductible health plan with a health savings account is subject to the deductible amounts established in the high deductible health plan.

Please contact the Department's Health and Life Division at (502) 564-6088 with any questions about this Advisory Opinion.

/s/ Sharon P. Clark
Sharon P. Clark, Commissioner
Kentucky Department of Insurance