INSURANCE LEGISLATION ADOPTED BY THE 2002 KENTUCKY GENERAL ASSEMBLY (REGULAR SESSION)

June 20 2002

THIS BULLETIN IS FOR INFORMATION 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 LAW CAN BE SECURED WHEN THE 2002 ACTS OF THE KENTUCKY GENERAL ASSEMBLY ARE PUBLISHED IN THE SUMMER OF 2002. UNLESS OTHERWISE NOTED, THE EFFECTIVE DATE OF THE LEGISLATION IS July 15, 2002.

*(Bills as enacted are available on the LRC web site at **www.lrc.state.ky.us/record/02rs/record.htm**)*

Senate Bill 38 – Coverage for Mastectomies; Utilization Review, Internal Appeals, External Appeals; Prompt Payment of Claims

Coverage for Mastectomies - This bill amends KRS 304.17-3163, 304.17A-134, 304.18-0983, 304.32-1593 and 304.38-1934 to require the following coverage if medical and surgical benefits are provided with respect to a mastectomy: all stages of breast reconstruction surgery of the breast on which the mastectomy has been performed, surgery and reconstruction of the non-diseased breast to produce a symmetrical appearance and prostheses and physical complications of all stages of mastectomy including lymphedemas. This provision is in compliance with the federal requirements of the Women's Health and Cancer Rights Act.

Provider Contracting - The bill amends KRS 304.17A-527 to require a provision in the provider contract requiring the insurer to provide the provider with specific fees for requested codes within 30 days of the request. The bill also requires any subcontract in which the subcontractor will bill the managed care plan, subscriber or enrollee directly, to meet all the requirements of KRS 304.17A.

Utilization Review - With respect to utilization review, the bill amends KRS 304.17A-600 to remove the automatic certification of accredited entities as independent review entities, and it amends KRS 304.17A-607 to require an insurer to be available to conduct utilization reviews during regular business hours, and extended hours through 6:00 p.m. on Monday and Friday, including federal holidays. A written notice of the utilization review decision must be provided within one business day of the date the decision is rendered. The written notice may be sent by an electronic transmission. Finally, the bill allows a private review agent to comply with the utilization review standards of any nationally recognized accrediting entity with which it is accredited, provided those standards are comparable and do not conflict with state law.

Internal Appeals, External Appeals - The bill amends KRS 304.17A-617 to clarify the contents of a written notice of an internal appeal decision. If the individual has disenrolled, the insurer will be required to cover the service in question or give notification of the right to external review, but only has to provide coverage for the treatment or service that was denied for a period of 30 days. The bill amends KRS 304.17A-623 to clarify that one of the criteria for a covered person to receive an external review is that the treatment or service would cost the individual at least one hundred dollars ($100) if he or she did not have insurance. KRS 304.17A-625 is amended to require an insurer to notify the Department within 30 days of a decision that is has been implemented.

Prompt Payment of Claims - This bill amends several definitions in KRS 304.17A-700. The definition of "clean claim" is expanded to include claims that involve coordination of benefits for third-party liability, pre-existing condition investigations or subrogation. An insurer may still contest a clean claim if the insurer has documented and reasonable grounds to believe that the claim involves coordination of benefits or pre-existing conditions. Licensed psychologists and social workers were added to the list of providers that are included within the prompt payment laws, and the definition of "health claim attachment," was amended to include only medical information relating to diagnosis, treatment and services rendered to the covered person.

With respect to adjudication of clean claims, KRS 304.17A-704 is amended to require the insurer to notify the provider, at the time of acknowledgment, of any circumstance that prevents the claim from being a "clean claim" and requires the insurer to adjudicate, not necessarily pay, any resubmitted clean claim in accordance with the claims payment time frames. KRS 304.17A-706 is amended to tighten the circumstances in which an insurer may contest a claim on the basis of a pre-existing condition or coordination of benefits. In order to contest on this basis, the insurer must have "reasonable documented grounds" to believe that the claim involves pre-existing conditions or coordination of benefits. Should an insurer request additional information under a retrospective review, KRS 304.17A-706 now requires the provider to submit that information within fifteen business days. If the provider fails to submit the information, within that time period the insurer is not required to pay interest.

Amendments to KRS 301.17A-714 establish a recoupment procedure whereby an insurer must give prior notice to a provider before recoupment can be made from future payments. The procedure gives the provider an opportunity to dispute overpayment of claims and requires disputes regarding recoupment to be processed and completed within 30 days.

The data reporting requirements of KRS 304.17A-722 were amended to require insurers to report claims and claims payment information to the Department on a calendar quarter basis as opposed to the previous requirement of no less than annually. Additionally, the bill establishes specific data elements requirement in the calendar quarter report. Insurers are required to report the percentages of claims received in a quarter that were adjudicated, those that were paid within various timeframes, and those not yet adjudicated. Insurers are also required to report the percentage of the total dollars of claims that were paid timely and the amount of interest.

Finally, KRS 304.32-320 was amended to require single employers who implement a self-insured health plan for their employees to include in their notice to the Department the name of any outside third party administrator that they are utilizing. Any change in third party administrators must be reported to the Department within 30 days of the change.

Contact: Health Insurance Policy and Managed Care Division

(502) 564-6088

Senate Bill 41 – Short-Term Nursing Home Policies; Long-Term Care Policies; Non-English Applications

Short-Term Nursing Home Policies - This bill defines "short-term nursing home insurance policies" to provide coverage for less than twelve consecutive months for necessary or medically necessary diagnostic, preventative, therapeutic, rehabilitative, maintenance, or personal care services, provided in

a setting other than an acute care unit of a hospital. It also includes a policy or rider that provides for payment of benefits based upon cognitive impairment or loss of functional capacity. The bill requires the Commissioner to promulgate administrative regulations for the regulation of short-term nursing home insurance policies including standards for disclosure of the terms and conditions of the policy and may include loss ratio standards.

Long-Term Care Policies - This bill requires the Commissioner to promulgate administrative regulations establishing standards for premium rate practices and rate increases for long-term care benefits and incidental long-term care benefits. KRS 304.14-600 is amended to define "incidental" to mean that the value of the long-term care benefits provided in a policy is less than 10% of the total value of the benefits provided over the life of the policy; and to include qualified long-term care policies as defined in 26 U.S.C. sec. 7702B(b) within the definition of long-term care insurance. KRS 304.14-560 is amended to require the Commissioner to specify, through an administrative regulation, the information to be provided to the Department to complete the biennially compiled consumer's guide to long-term care insurance in Kentucky.

Contact: Kentucky Insurance Program for Seniors

(502) 564-6088

Non-English Applications - This section of the bill amends KRS 304.14-435 to allow applications required to be filed with the department to be filed in a language other than English. The non-English version of the application must be accompanied by a certification written in English that the non-English version is a complete and accurate translation of the English form filed, be in the same format as the English version, and contain all items in English immediately followed in parenthesis with the non-English translation. If there is a dispute between the English version and the non-English version, the English version shall control, and the non-English version must carry a disclaimer in the non-English language to this effect.

Contact: Health Insurance Policy and Managed Care Division

(502) 564-6088

Property and Casualty Division

(502) 564-6046

Life Division

(502) 564-6071

Senate Bill 117 - Sprinkler Contractor Proof of Insurance - This bill amends KRS 198B.595 regarding the proof of insurance requirements for fire protection sprinkler contractors' license. The workers' compensation insurance required by this section must be in the form of certificate of insurance executed by an insurer authorized to do business in this state. The liability insurance required by this section must be professional liability insurance that covers the legal liability of the licensed person as the result of erroneous acts or failure to act in his or her capacity as a fire protection sprinkler contractor

and must be in the form of certificate of insurance executed by an insurer authorized to do business in this state or exported by a licensed surplus lines broker to an eligible carrier pursuant to KRS 304.10-020 to 304.10-210.

Contact: Property and Casualty Division

(502) 564-6046

Senate Bill 139 - Private Investigators - This bill establishes a private investigator license but specifically excludes from the requirement "an insurance company, licensed insurance agent, or staff or independent adjuster if authorized

to do business in Kentucky, performing investigative duties limited to matters strictly pertaining to an insurance transaction."

Contact: Agent Licensing Division

(502) 564-6004

Kentucky Board of Licensure for Private Investigators

(to be established)

Senate Bill 146 - Limited Health Service Organizations; Health Discount Plans

Limited Health Service Organizations - This bill establishes a new certificate of authority for limited health service organizations. A limited health service organization is defined as an entity that undertakes to provide or arrange a limited health service or services to enrollees. The bill also establishes the requirements to obtain and maintain a certificate of authority as a limited health service organization. Entities that currently hold a certificate of authority as an HMO - Single Service Organization will be transitioned to this new certificate of authority.

The bill also creates a new subtitle, KRS 304.17C, addressing the regulation of limited health service benefit plans, including required disclosures, network access and adequacy standards, and provider contracting and participation standards.

Health Discount Plans - With respect to health discount plans, this bill repeals the requirement that health discount plans receive a certificate of filing from the Department of Insurance. However, the bill creates a new statute in KRS 367, requiring specific disclosures to consumers and requiring a separate contract with each health care provider listed in conjunction with the health discount plan. These provisions are to be enforced by the Office of the Attorney General.

Ambulance Services - The bill amends KRS 304.1-120 to specifically exempt from regulation under the Insurance Code a public or private ambulance service licensed and regulated by the Cabinet for Health Services to the extent that it solicits membership subscriptions, accepts membership applications, charges membership fees and furnishes prepaid or discounted ambulance services, including both

ground and air ambulance services, to subscription members and designated members of their households.

Contact: Health Insurance Policy and Managed Care Division

(502) 564-6088

Financial Standards and Examination Division

(502) 564-6082

Office of the Attorney General

Consumer Protection Division

(502) 696-5389

Senate Bill 152 - Coverage for Hearing Aids and Related Services - This bill creates a new section of Subtitle 17A of KRS Chapter 304 to require all health benefit plans to provide coverage for the full cost of one hearing aid per hearing impaired ear and all related services for persons under 18 years of age up to $1,400 every 36 months.

Contact: Health Insurance Policy and Managed Care Division

(502) 564-6088

House Bill 39 - Coverage for Anesthesia and Hospitalization Services In Connection with Dental Procedures - This bill creates a new section of Subtitle 17A of KRS Chapter 304 to require health benefit plans that provide coverage for general anesthesia and hospitalization services to provide coverage for payment of anesthesia and hospital or facility charges for services performed in a hospital in connection with dental procedures for children below the age of nine years, persons with serious mental or physical conditions, and persons with behavioral problems

Contact: Health Insurance Policy and Managed Care Division

(502) 564-6088

House Bill 47 - Telemarketing - This bill defines "telephone solicitation" and prohibits anyone making a telephone solicitation from calling a person on the zero call list maintained by the Office of the Attorney General. The exceptions to the definition of "telephone solicitation" have been amended and will now include:

- Calls from charitable organizations soliciting only donations (If the telemarketer is soliciting a donation as part of a sale, the telemarketer must comply with the law.);
- Calls regarding existing debts or contracts;
- Calls from businesses with whom the Kentucky consumer has a prior or existing relationship;

- Calls made with the express permission of the Kentucky consumer; and
- Business to business calls.

This bill removes many of the previous specific exemptions, and makes agents, insurers, and all others in the insurance industry subject to the new telephone solicitation restrictions and exceptions like any other caller. The Attorney General is responsible for enforcement and interpretation of the law. The Public Service Commission is responsible for educating the public of the provisions of this law.

Contact: Office of the Attorney General (enforcement issues)

Consumer Protection Division

(502) 696-5389

Public Service Commission (education issues)

(502) 564-3940

House Bill 136 - Illegal Inducement - This bill amends KRS 304.12-110 to change the value limit for prizes, goods, wares, merchandise, or property that may be offered by insurers, agents, surplus lines brokers, and solicitors to insureds, prospective insureds, or others from $10 to $25.

Contact: Legal Division

(502) 564-6032

House Bill 165 - Licensing; Surplus Lines Taxes

Producer Licensing - This bill makes changes to the licensing provisions to address recent federal interpretations of licensing reciprocity requirements, newly adopted amendments to the NAIC Model Producer Act, and uniformity among licenses by:

- Separating appointment from the agent licensing procedure;
- Allowing agent to hold license without an appointment (but agent still needs appointment to exercise license)
- Increasing the minimum amount of financial responsibility of resident agent and consultant to $20,000/$100,000;
- Requiring resident agent to confirm financial responsibility at time of license renewal;
- Establishing uniform rules for all licensed business entity designations;
- Changing agent lines of authority:
- Adds Personal Lines;
- Consolidates Marine & Transportation and Mortgage Guaranty with other existing lines of authority;
- Changes the name of "Common Carrier" to "Travel";
- Sunsets 2 obsolete limited lines of authority (Motor Vehicle Physical Damage and Mechanical Breakdown);

- Specifying Commissioner to determine character of resident individual before issuing agent license;
- Biennial license renewal for agent
- Renewing cycle for all licenses biennially for
- Individual by the last day of birth month based on odd/even birth year;
- Business Entity by March 31 based on odd/even year license issued;
- Renewing all appointments biennially by March 31 based on insurer's certificate of authority;
- Expanding to all licenses
- Application contents, procedures, and fee refund;
- Late renewal grace period and penalty;
- Reverting back to 12 month period for apprentice adjuster training (currently 180 days);
- Reenacting requirement that licensee give notice of criminal or administrative action;
- Changing requirements for surplus lines broker license:
- Hold agent license with lines of authority for property and casualty;
- Be deemed to be competent and trustworthy;
- File evidence of financial responsibility for $1 million / $2 million dollars;
- Pay fees;
- Allowing bank to hold specialty credit insurance producer license.
- Issues license for non-resident surplus lines broker effective July 1, 2002
- Allows non-resident surplus lines broker to be licensed, but cannot exercise license without a non-resident agent license with property and casualty lines of authority

Contact: Agent Licensing Division

(502) 564-6004

Safeharbors - This section amends licensure and disclosure requirements in KRS 304.9-135 to mirror the federal Gramm-Leach-Bliley Act.

Contact: Legal Division

(502) 564-6032

Surplus Lines Taxes - Includes amendment to KRS 304.10-170 and 10-180 to require Surplus Lines brokers to file quarterly reports and pay the 3% tax, within thirty (30) days of the end of each calendar quarter, on all surplus lines insurance transacted during the preceding calendar quarter.

Contact: Property and Casualty Division

(502) 564-6046

House Bill 260 - Auto Insurance for "Loaner" Vehicles **-** This bill amends KRS 190.033 regarding a motor vehicle dealer's license requirement of a bond or policy for all dealers to provide public liability and property damage coverage for the operation of any vehicle owned or being offered for sale by the dealer or wholesaler when being operated by the owner or seller, his agents, servants, employees, prospective customers, or other persons. In circumstances where a customer's or other person's vehicle is out of use because of breakdown, repair, or servicing and a motor vehicle is loaned, with or without

consideration, the coverage mandated by this section shall be in excess of, and be deemed secondary to, the collision, bodily injury, and property damage liability coverage under a customer's or other person's own coverage for that person's own negligence, otherwise the mandated dealer's coverage shall be primary.

This bill also amends KRS 304.20-065 to provide that every motor vehicle insurance policy insuring a motor vehicle with coverage for collision, bodily injury, and property damage liability, or all three (3), licensed in this state shall extend these coverages to cover the insured individual's negligence while operating a motor vehicle which is loaned, with or without consideration, to the insured individual as a replacement vehicle while the insured's vehicle is out of use because of breakdown, repair, or servicing and if the other motor vehicle is loaned by a person, firm or corporation engaged in the business of selling, repairing, and servicing motor vehicles. The extension of coverage shall include coverage for damage to or loss of the loaned vehicle as a result of the negligence of the insured.

Contact: Property and Casualty Division

(502) 564-6046

House Bill 281 - Insurance Purchasing Outlets - This bill allows for the creation of an "insurance purchasing outlet" in order to purchase a health benefit plan for its members. Those eligible to be members of an insurance purchasing outlet include an employer, eligible employee, self-employed person, unemployed person or retiree who is not eligible for Medicare. An insurance purchasing outlet must receive a certificate of registration from the Department of Insurance. The specific duties and requirements for the operation of the insurance purchasing outlet are enumerated in the bill. Additionally, the bill sets forth the rate-making procedures and restrictions for health benefit plans issued through an insurance purchasing outlet.

Employers participating in an insurance purchasing outlet shall provide a voucher to its eligible employees to purchase a health benefit plan through the insurance purchasing outlet. The procedures for issuing and redeeming the voucher will be established through administrative regulations promulgated by the Commissioner. A companion bill, HB 280, allows for an income tax credit for vouchers issued for the purchase of health insurance.

Contact: Health Insurance Policy and Managed Care Division

(502) 564-6088

House Bill 296 - Student Loans - This bill requires that the Department

suspend or revoke the licenses or deny the applications of individuals who are not meeting their repayment obligation for student loans.

Contact: Agent Licensing Division

(502) 564-6004

John Royalty

Kentucky Higher Education Assistance Authority

(502) 696-7272, (800) 668-5772

House Bill 348 - Workers' Compensation; Black Lung - The bill lowers medical thresholds and increases benefits for black lung awards to include simple CWP (Coal Workers Pneumoconiosis) as being compensable for a retraining incentive benefit. Pulmonary impairment is no longer be a requirement for certain retraining incentive benefits. The bill requires that all doctors evaluating miners for black lung be certified "B Readers" and includes a consensus reading process in the determination of awards. The university examination procedure has been eliminated. Claims made after HB 1 of 1996 to the present can be reconsidered under the new standards and extends the time allowed for the filing of post HB 1 claims to December 12, 2002. The bill also provides up to 17 weeks of additional retraining benefits for GED attainment, allows retraining benefits to be extended in time, but not amount, for those who want to attend school part-time rather than full time, provides a completion bonus when retraining is completed, and provides that miners 57 years of age or older may take advantage of a 25% permanent partial award in lieu of a retraining benefit. Coal employers shall be required to post notices of these changes, the notices shall also be posted by the Department of Workers Claims.

Contact: Department of Workers Claims

(502) 564-5550

House Bill 391 - Health Benefit Plans; Kentucky Access; Extension of Benefits, Continuation Coverage and Conversion Coverage; Charitable Health Care Medical Malpractice Coverage; Rental Reimbursement Coverage

Health Benefit Plans - This bill makes several amendments to Subtitle 17A of KRS Chapter 304 regarding health benefit plans.

- makes the referral of an "individual" rather than an "employee" to Kentucky Access an unfair trade practice;
- allows health benefit plans to be nonrenewed if the group no longer meets the participation requirements;
- clarifies when a new health benefit plan rate filing must be made and when an existing filing can be amended;
- consolidates the provisions for health benefit plan rate hearings;
- clarifies how the rating bands for the individual health benefit plans will be "collapsed" to +/- 35% (on and after 1/1/03);
- maintains the expanded rating bands (+/- 50%) for health benefit plans issued to small groups, associations and employer-organized associations;
- repeals KRS 304.17A-137 that requires coverage of drugs not approved by the FDA for cancer treatment under certain conditions; and
- repeals KRS 304.17A-260 which requires certain health insurers to be approved to reenter Kentucky's health insurance market.

- repeals the requirement of KRS 304.17A-080 that the Health Insurance Advisory Council review the list of high-cost conditions for the Kentucky Guaranteed Acceptance Program.

Contact: Health Insurance Policy and Managed Care Division

(502) 564-6088

Kentucky Access - With respect to Kentucky Access, the bill creates a new section of Subtitle 17B of KRS Chapter 304 to require the Health Insurance Advisory Council to review the list of high-cost health conditions and make recommendations for changes to the Commissioner. The Commissioner is permitted to add to or delete from the list of high-cost health conditions by administrative regulation. Additionally, the eligibility requirements for Kentucky Access set forth in KRS 304.17B-015 are amended to require rejection by at least one insurer, rather than two insurers.

Contact: Kentucky Access Division

(502) 573-1026

Extension of Benefits, Continuation Coverage and Conversion Coverage - KRS 304.18-126 is amended to define "disability" for the purposes of extension of benefits. Benefits payable under an extension of benefits are limited to the member's hospital confinement or period of total disability. The bill also describes a reasonable extension of benefits under major medical coverage for a period of total disability. With respect to continuation coverage and conversion coverage, the bill amends the current statute to create two separate statutes to deal with each coverage separately.

Contact: Health Insurance Policy and Managed Care Division

(502) 564-6088

Charitable Health Care Medical Malpractice Coverage - This section amends KRS 304.40-075 to require Charitable Health Care Providers who seek state reimbursement of the cost of their medical malpractice coverage to file a copy of their policy, declaration page, and any other documentation necessary to determine the proper amount of premiums and taxes to be reimbursed. Charitable health care providers that receive a premium refund must promptly remit that amount to the Department.

Contact: Property and Casualty Division

(502) 564-6046

Rental Reimbursement Coverage - This section creates a new section in KRS 304 Subtitle12 in connection with rental reimbursement coverage under an automobile policy, prohibiting an insurer, its employees or representatives, agents, consultants, or adjusters from soliciting or accepting a referral fee or gratuity for referring an insured or claimant to a rental vehicle agency, state or suggesting that a specific rental vehicle agency must be used to be covered under the policy, or restricting the insured's or claimant's right to chose a rental vehicle agency.

Contact: Legal Division

(502) 564-6032

House Bill 395 - Coverage for Inherited Metabolic Diseases - This bill amends KRS 304.17A-139 to remove the general $4,000 cap on coverage for inherited metabolic diseases and provides for a $25,000 cap on medical formulas and a separate cap of $4,000 on low-protein modified foods for each plan year.

Contact: Health Insurance Policy and Managed Care Division

(502) 564-6088

House Bill 510 - Cancellation of Health Benefit Plans - This bill amends KRS 304.17A-245 to require 30 days advance written notice, by regular United States first class mail, for cancellation of health benefit plans. If premiums have been paid, the insurer is required to pay all claims through the end of the 30-day notice period. If a group policy is canceled, the insurer must notify each member of the right to conversion within 15 days after the grace period.

Cancellation Due to Non-Payment of Premium - With regard to cancellation due to non-payment of premium, insurers must give at least 30-days notice of cancellation. Additionally, this bill creates a new section of Subtitle 17A of KRS Chapter 304 to provide that if the premium is not paid by the due date, an insurer must allow a 30-day grace period for which payments must be made prior to termination. If premium is not paid at the conclusion of the 30-day grace period, the policy automatically terminates to the last date through which premium was paid. This must be clearly communicated in the 30-day cancellation notice, and all group contracts must include an automatic termination provision. All group contracts must also include an insurer's reinstatement policy, and an insurer is prohibited from denying a contract holder or policyholder reinstatement based on a health status- related factor in KRS 304.17A-200 or consideration of medical loss ratio.

Contact: Health Insurance Policy and Managed Care Division

(502) 564-6088

House Bill 554 - Guaranteed Acceptance Program - This bill amends the definition of a guaranteed acceptance program (GAP) plan claim to mean the dollar amount of benefits paid by an insurer on behalf of a guaranteed acceptance plan enrollee for claims that were incurred while the individual was a guaranteed acceptance program plan enrollee.

Contact: Health Insurance Policy and Managed Care Division

(502) 564-6088

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Janie A. Miller, Commissioner

Kentucky Department of Insurance

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Date