



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

**REVISED ADVISORY OPINION  
2014-03**

*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 INSURANCE COMPANIES AUTHORIZED TO TRANSACT  
BUSINESS IN THE COMMONWEALTH OF KENTUCKY**

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

**RE: GUARANTEED ISSUE OF MEDICARE SUPPLEMENT PLANS FOR  
APPLICANTS ELIGIBLE FOR MEDICARE BY REASON OF BEING UNDER  
AGE 65**

**DATE: APRIL 21 2014**

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The Department has become aware of recurring problems regarding health insurance companies’ (“Insurers”) refusal to enroll Medicare supplement plan applicants who are younger than 65 years old. This Advisory Opinion clarifies that Medicare supplement plan applicants eligible for Medicare on a basis other than age are under certain circumstances guaranteed enrollment in such plans as described in the Department’s regulations.

The confusion seems to arise from reliance on KRS 304.17-311 as a basis for denying enrollment to applicants who are Medicare eligible for reasons other than their age. KRS 304.17-311 requires that “[i]nsurers delivering or issuing for delivery in Kentucky Medicare supplement insurance policies as defined in KRS 304.14-500 to 304.14-550, or renewing such policies, shall make available upon request Medicare supplement insurance for persons not eligible for Medicare by reason of age.” An insurer must provide the opportunity to apply upon request; however underwriting may be used when accepting applications unless the individual meets the eligibility requirements for guaranteed issue under 806 KAR 17:570 Section 13.

KRS 304.14-510 authorized the Department to promulgate regulations establishing minimum standards for Medicare supplement insurance policies and certificates. Accordingly, the Department promulgated 806 KAR 17:570 Section 13 which established those situations in which the issuance of Medicare supplement insurance is guaranteed to applicants who are eligible for Medicare. 806 KAR 17:570 Section 13(1)(b) provides that “[w]ith respect to eligible persons, an insurer shall not:

1. Deny or condition the issuance or effectiveness of a Medicare supplement policy described in subsection (5) of this section [describing insurance products that must be included in an applicable Medicare supplement policy] that is offered and is available for issuance to new enrollees by the insurer;
2. Discriminate in the pricing of a Medicare supplement policy because of health status, claims experience, receipt of health care, or medical condition; and
3. Impose an exclusion of benefits based on a preexisting condition under a Medicare supplement policy.”

The qualifying events for the above guarantees are described in 806 KAR 17:570 Section 13 (2)(a) – (g). The only events not applicable to individuals under age 65 are (2)(b)1 and (2)(f).

The time period during which eligible persons are entitled to the foregoing guarantees is limited. The measure of the period depends on the circumstances which have made the individual eligible for the guarantees. See 806 KAR 17:570 Section 13 (3)(a)-(f).

The Medicare products guaranteed to eligible persons also varies depending on the circumstances by which the person became eligible for the guarantees described above. See 806 KAR 17:570 Section 13 (5)(a)-(d).

Based on the foregoing, the Department interprets KRS 304.17-311, KRS 304.14-510 and 806 KAR 17:570 Section 13 to mean that Medicare supplement plan applicants eligible for Medicare on a basis other than age are guaranteed enrollment in such plans under those circumstances specifically described in 806 KAR 17:570 Section 13. 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