

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.

Kentucky Department of Insurance

Advisory Opinion 2002-03

IN RE: Insurance policies issued by an "unauthorized insurer" constitute creditable coverage.

QUESTION: Whether an insurance policy issued to an individual or group by a company found to be an "unauthorized insurer" constitutes creditable coverage as defined in 26 CFR 54.9801-4T(a)(2001); 29 CFR 2590.701-4(a)(2001); 45 CFR 146.113(a); and KRS 304.17A-005(7).

ANSWER: Yes. The federal government has defined creditable coverage to include health insurance coverage offered by a company "**that is required to be licensed** to engage in the business of insurance." 29 CFR 2590.701-2(2001), 26 CFR 54.9801-2T (2001); 45 CFR 144.103(2001). (emphasis added). Therefore, the Kentucky Department of Insurance concludes that a policy issued by an "unauthorized insurer" is creditable coverage because that "unauthorized insurer" should have obtained a license from the Kentucky Department of Insurance to engage in the business of insurance prior to selling the policy. Additionally, the Kentucky Department of Insurance has been advised by the Centers for Medicare and Medicaid Services (CMS) that this is also the position of CMS and that all states will be treated the same with regard to this matter.

Any questions regarding this Advisory Opinion may be directed to Elizabeth A. Johnson, attorney, 502-564-6032.

Janie A. Miller

Commissioner