

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 98-03

In re: Health Care Discount Programs

RELEVANT FACTS AND STATUTES: It has come to my attention that the regulation by the Department of Insurance of health care discount programs is an issue. In general, these plans offer access to a network of providers by virtue of the member paying a monthly fee. The network of providers charge the member a discounted fee for the service they perform.

KRS 304.38-030(5) defines health maintenance organization. The statute says:

"Health maintenance organization" means
any person who undertakes to provide,
directly or through arrangements with
others, health care services to individuals
voluntarily enrolled with such an
organization on a per capita or a
predetermined, fixed prepayment basis.

THE DEPARTMENT'S POSITION: If a product covers health care services of its members, rendered by a provider on a prepaid or capitated basis, the entity offering the product must obtain an HMO certificate of authority. This involves a transfer of risk from the member to the entity. However, a product that offers discount provider services is not subject to this requirement if four conditions are met: 1) the providers in the network do not get paid from the entity offering the product (except the entity can pay a nominal fee up front to providers); 2) the product only offers access to a network of providers that give members discounts on their services; 3) the solicitation material clearly states the product is not insurance; and 4) the entity accepts no risk.

Questions regarding this Advisory Opinion may be directed to Shaun T. Orme, Counsel for the Department, (502) 564-6032.

George Nicholas III

Commissioner

Date: 9/16/98