



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

**BULLETIN 2017-03**

**INSURANCE LEGISLATION ADOPTED BY THE  
2017 KENTUCKY GENERAL ASSEMBLY (REGULAR SESSION)**

**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 2017 ACTS OF THE KENTUCKY GENERAL ASSEMBLY ARE PUBLISHED IN THE SUMMER OF 2017. UNLESS OTHERWISE NOTED, THE EFFECTIVE DATE OF LEGISLATION IS JUNE 29, 2017.**

(Bills as enacted are available on the LRC website at  
<http://www.lrc.ky.gov/record/17RS/record.htm>)

**Senate Bill 4- An act relating to medical review panels.**

The bill establishes within the Cabinet for Health and Family Services a mandatory review process for all malpractice and malpractice related claims against a health care provider before such claim may be pursued before a court in Kentucky. The process requires the claimant to file and present a proposed complaint before a panel consisting of one attorney and three health care providers. All parties involved are permitted to submit evidence as described in the bill. The panel is charged with giving an opinion as to whether the health care provider acted or failed to act within the appropriate standards of care, and if such act was a substantial factor in providing a negative outcome for the individual. The injured party is able to pursue any claim in a court in Kentucky following the rendering of the panel's opinion or after the expiration of nine (9) months from the date the proposed complaint is filed with the panel if no opinion has been rendered.

**Senate Bill 21 – An act relating to use of experimental treatment for terminal illnesses.**

The bill allows manufacturers of investigational drugs, biological products and devices, as defined in the bill, to make them available upon request to eligible patients. Patient eligibility depends on a number of factors including:

- A terminal illness that is attested to by the patient’s treating health care provider;
- Considered all other treatment options currently approved by the US FDA;
- Received a recommendation from the patient’s treating health care provider for an investigational drug, biological product, or device;
- Given written informed consent for the use of the investigational drug, biological product, or device; and
- Has documentation from the treating health care provider that the patient meets these requirements.

As part of the informed consent process, the patient agrees that their health plan, third party administrator, or provider shall *not* be liable for the cost of such treatment or any care consequent to the use of such treatment (unless otherwise required).

The bill does not expand or mandate coverage for such treatments by an insurer, but it authorizes health plans, administrators, and governmental agencies to provide coverage for these types of services.

**Senate Bill 62- An act relating to health savings accounts.**

The bill exempts funds deposited in a health savings account under Section 223 of the Internal Revenue Code from execution, attachment, garnishment, distress or fee-bill.

**Senate Bill 73- An act relating to autocycles.**

The bill changes the definition of “motorcycle” in KRS 186.010 to include an autocycle for the purposes of title and registration only. The bill further defines an autocycle as a motor vehicle and includes the criteria required to become an autocycle.

The bill allows for the operation of an autocycle on a highway where the operator has obtained a valid driver’s license, but does not require the individual operator to obtain a motorcycle license or endorsement. An autocycle shall be insured in compliance with KRS 304.39-110, the required minimum tort liability insurance for motor vehicles. An autocycle must comply with the traffic regulations prescribed in KRS Chapter 189, but the operator is exempt from the requirement to wear protective headgear.

**Senate Bill 79 – An act relating to health care providers.**

The bill establishes the requirements for direct primary care membership agreements and exempts these agreements from regulation by the Department of Insurance as an insurance product or health benefit plan. Health care providers offering these services would not be subject to capital and surplus requirements dictated under KRS Chapter 304.

A direct primary care membership agreement is an agreement between a health care provider and an individual where in exchange for an agreed upon fee over a certain period of time, the provider agrees to provide medical services. Any services requiring additional fees must be disclosed in advance by the provider. Either party may terminate the agreement in writing at any time.

Insurers and health benefit plans are not to be billed for any services rendered under such agreement. Additionally, any payments made by an individual including the membership fee or the additional fee for service, pursuant to the agreement shall not be included by the insurer to fulfill an individual's deductible or any other cost sharing limit.

**Senate Bill 89 – An act relating to health benefit coverage for tobacco cessation treatment.**

The bill requires health benefit plans to provide coverage for “all United States Food and Drug Administration approved tobacco cessation medications, all forms of tobacco cessation services recommended by the United States Preventive Services Task Force.”

The bill also prohibits health benefit plans from requiring counseling for medication, imposing durational (annual or lifetime) limits on the number of covered attempts to quit, and imposing any copayment or cost sharing for such services.

The usage of utilization review is prohibited for these treatments except when:

- A treatment exceeds the duration recommended by the United States Public Health Service clinical practice guidelines; or
- For services associated with more than two attempts to quit within a twelve month period.

The requirements for health benefit plans also apply to the Department of Medicaid Services and managed care organizations administering the Medicaid program.

Due to the requirements, all health benefit plans will need to ensure they provide coverage for tobacco cessation treatment.

**Senate Bill 101- An act relating to the administration of immunizations by pharmacists.**

The bill expands the definition of the “practice of pharmacy” to allow pharmacists to administer immunizations in general rather than simply flu vaccines. It also expands the individuals capable of receiving these pharmacist-administered vaccines to individuals between the age of nine and seventeen.

**Senate Bill 114- An act relating to required minimum tort liability coverage for motor vehicles.**

The bill amend KRS 304.39-110 by increasing the minimum amount of liability for coverage for property damage associated with an automobile accident. Prior to SB 114, the required minimum split limit coverage consisted of:

- \$25,000 for all damages arising out of bodily injury sustained by any one person;
- \$50,000 for all damages arising out of bodily injury sustained by all persons in one accident; and
- \$10,000 for all damages arising out of damage to or destruction of property.

The new limits **effective January 1, 2018** will be:

- \$25,000 for all damages arising out of bodily injury sustained by any one person;

- \$50,000 for all damages arising out of bodily injury sustained by all persons in one accident; and
- \$25,000 for all damages arising out of damage to or destruction of property.

Beginning January 1, 2018, insurers will no longer be able to issue or renew any policy with the old limits. Any policy issued prior to January 1, 2018 may use the old limits, but must be updated with the new limits on its renewal date.

In order to ensure compliance, the Department recommends all insurers offering such coverage commence modifying policies to **ensure all policies are in conformity by January 1, 2018.**

**Senate Bill 128 – An act relating to roofing contractors.**

The bill amends KRS 367.628 to prohibit a roofing contractor, when payment for goods or services are expected to be paid from an insurance policy, from causing or encouraging someone to cause damage to the roof or roof system in order to increase the amount of repair or replacement needed.

The bill also creates a new section of KRS Chapter 367 to provide enforcement measures for persons deemed to be in violation of KRS 367.620 to 367.628 including a claim for an injunction or damages. In terms of damages, the bill entitles a plaintiff to recover two times the amount of sustained economic damages, as well as, reasonable attorneys’ fees and costs.

**Senate Bill 135- An act relating to nonprofit health service corporations.**

The bill amends KRS 304.32-130 allowing non-profit hospital, medical-surgical, dental, or other health service plans greater flexibility in the dues and fees to be paid by subscribers. The entities can now charge fees that:

- Enable the corporation to meet its current and ongoing obligations;
- Is established and justified in accordance with those actuarially sound factors deemed relevant by the commissioner;
- Not be excessive, inadequate, or unfairly discriminatory in relation to the services offered; and
- Enable the corporation to achieve and maintain the highest insurance industry financial strength ratings.

The amendment deletes the prohibition of the accumulation of excess reserves, and simply allows these entities to manage their finances in a manner to secure their future and achieve the highest financial rating.

**Senate Bill 146 – An act relating to the licensure of genetic counselors.**

The bill creates a new section of KRS Chapter 311 to establish a process for the licensure for genetic counselors. **Effective January 1, 2018**, individuals, unless subject to a specific exemption, are prohibited from holding themselves out as genetic counselors until they become licensed. The bill excludes the genetic counseling from the practice of medicine or osteopathy under KRS 311.550(11).

**Senate Bill 151- An act relating to franchises.**

The bill amends provisions in KRS 337.010, 338.021, KRS 341.070, 342.690, 344.030, to exclude a franchisee and a franchisee’s employees from being considered an employee of the franchisor.

**Senate Bill 195 – An act relating to expungement of juvenile records.**

The bill amends KRS 610.330 to expand and clarify the circumstances in which a juvenile may seek and obtain expungement of a prior offense. The amendment states the person whose record is expunged “shall not have to disclose the fact of the record or any matter relating thereto on an application for employment, credit, or other of application.” This exemption would include applications for employment with insurance companies or on applications for insurance.

**Senate Bill 205- An act relating to prescription drugs.**

A new section of KRS Chapter 315 allows a pharmacist to exercise judgement in varying the quantities of the prescribed drug per fill. The pharmacist is unable to go beyond the total number of dosage units authorized by the ordering practitioner. The use of discretion by the pharmacist is not permitted on prescriptions of controlled substances, or when the practitioner specifically states that the amount prescribed is medically necessary. Therefore, pharmacists are now able to utilize professional judgment in both the substitution of therapeutically equivalent generic drugs and the quantity provided.

**House Bill 35 – An act relating to public benefit corporations.**

This new section of KRS Chapter 271B creates a new corporate entity. A “public benefit corporation” is a “for-profit corporation intended to produce a public benefit and to operate in a responsible manner.” The “public benefit” must produce a positive effect on people other than the shareholders. The corporation must balance the pecuniary interests of the stockholders with the specific public benefit identified in the articles of incorporation, as well as, those who are materially affected by the corporation’s conduct. This provides the corporate entity some greater flexibility to take on public interest projects. In achieving these objectives, the corporation is required to provide, at minimum, annual statements to shareholders of how the public interest has been served.

**House Bill 50 – An act relating to administrative regulations.**

House Bill 50 codifies Governor Bevin’s “Red Tape Reduction Initiative.” Both the Legislative Research Commission and the Department will coordinate when regulations must be reviewed and certified in order to remain in effect. Previously, a regulation, once adopted could only be withdrawn, suspended or eliminated through the repeal process. Now, ordinary administrative regulations shall have an expiration date. The statute provides:

- Administrative regulations with a last effective date of on or after July 1, 2012, expire seven years after its last effective date.
- Administrative regulations with a last effective before July 1, 2012 expire on July 1, 2019.

In order to prevent an administrative regulation from expiring, the Department will be required:

- To review the regulation in its entirety for compliance with KRS Chapter 13A;
- Ensure the current law governing the subject matter and giving rise to the regulation still exists; and
- Complete and file a certification letter with the regulations compiler stating whether the regulation shall remain as filed or amended.

The date of the certification letter becomes the administrative regulations “last effective date”, effectively resetting the seven-year review period. In the event the certification letter indicates a regulation is to be amended, the amendment must be filed within eighteen (18) months.

The regulations compiler is required to publish updates every six months with the expiring regulations. Additionally, all regulations must be updated upon receipt of the certification letter to reflect the new dates. Lastly, the certification letters are to be published in summary or their entirety as decided by the regulations compiler.

**House Bill 78 – An act relating to providing breast density information and evidence based breast cancer screening.**

Physicians are now statutorily encouraged to utilize digital mammography (i.e., breast tomosynthesis) when ordering mammograms. The definition of “mammogram” pursuant to KRS 304.17-316 now incorporates digital mammograms.

Insurers providing individual, expense incurred policies under KRS Chapter 304.17, health benefit plans under KRS 304.17A, and group plans under KRS 304.18 are now required to include coverage for digital mammography. The benefit is limited to \$50 per mammogram, and any deductible and coinsurance are required to be “no less favorable than for coverage for physical illness.” Insurers will need to update their filings and list of covered services.

Additionally, in the event a patient’s mammogram reveals dense breast tissue, the physician is required to provide the patient notification of such result substantially similar as required by statute.

**House Bill 112 – An act relating to dogs.**

The owner of a dog has now been clarified to extend beyond simply the individual who keeps a dog. Now an owner will include a person who “permits the dog to remain on or about premises leased *and* occupied by him.” (*emphasis added*) The definition expands the number of people considered an owner of the dog. However, the impact on the rental community will be felt primarily where the landlord occupies the premises, as well. In such instances, not only is the individual who purchased and houses the dog be liable for dog bites or other claims, but the landlord who resides on the premises could also be included in a claim for damages. Therefore, insurers should be aware of this new definition, and the potential impact on increased liability and claims.

**House Bill 113 – An act relating to occupational licensure for military service members and veterans.**

Preferential treatment is provided to honorably discharged veterans for occupational licenses issued by administrative bodies where the profession licensed matches the individual's service. However, individuals are still required to complete any necessary pre-licensure examinations.

The Department of Insurance issues licenses to agents who complete the requirements outlined in various sections of KRS 304, Section 9. The licenses demonstrate an individual's attainment of a level of education necessary to negotiate, solicit, and sell insurance products. Unfortunately, the Department does not envision instances where military service would yield the education required on specific insurance products necessary to become an insurance agent. While the Department appreciates the service and sacrifice of our veterans, these individuals will need to continue to pass all requirements specified by statute. The Department remains willing to outreach with veterans to engage them in the insurance industry and demonstrate the potentially rewarding careers available in the industry.

**House Bill 153 – An act relating to compensation of insurance producers for services performed in relation to a premium finance loan.**

Prior to HB 153, insurance producers who refer insureds to premium finance companies and perform the necessary services for an insured to obtain a loan were unable to receive any compensation for services rendered. Now, insurance producers may receive a payment for arranging and obtaining a premium finance loan for their insured if:

- The agent discloses in writing:
  - The source of any compensation to be received by the agent as a result of the insured entering into a premium finance agreement; and
  - The amount of compensation, as a percentage of the premiums financed, if the amount exceeds two percent (2%) of the premium amount financed; and
- The amount of compensation received by the producer is based on the amount financed and is not:
  - An advance on future premium finance agreements; or
  - A form of bonus for placing finance agreements with a premium finance company.

The disclosure is crucial to inform the insured of the compensation to be received and allow the insured to examine all opportunities. It also prevents premium finance companies from overpaying an agent to secure future loans, and ensures the insured will only be paying back amounts related to their specific loan. The Department will be vigilant in its efforts to protect consumers in these areas, and ensure premiums are paid only as intended.

**House Bill 163 – An act relating to motor vehicle titles.**

Insurance companies often have difficulties obtaining title to vehicles involved in motor vehicle crashes and surrendered by their owners. The previous mechanisms created impediments for insurance companies attempting to obtain salvage titles and moving vehicles along in the sale process. It also created unnecessary and prolonged storage of vehicles on storage facility lots.

Under the new section of KRS 186A.190, county clerks are authorized to issue a new ownership document for motor vehicles following the completion of a specific process. The process includes:

- Inspection by a sheriff to determine the vehicle is not stolen;
- Completion of an affidavit created by the Transportation Cabinet demonstrating:
  - Affiant's (or agent) possession of vehicle;
  - A debt on the vehicle;
  - Payment of damages by an insurance company requiring transfer of title to the insurance company;
  - Vehicle transported to facility to take possession and store motor vehicles and the storage facility has not been paid; and
- More than 30 days before affidavit completion, the affiant attempted to notify the owner of the vehicle and any lienholders of intent to obtain salvage title; and
- Affiant publishes a legal notice in a statewide newspaper 14 days before presenting the affidavit with specific information.

Upon completion of the process, the new ownership document may be a title or a salvage title. Insurers and storage facilities should take note of this new process, and use it accordingly.

### **House Bill 191 – An act relating to insurance.**

This particular house bill contains multiple insurance related provisions. However, none of the provisions relates to another, but they do have broad impacts on both insurers and insureds.

#### **Special Investigative Unit Employee License Exemption**

First, insurance companies are required to have a special investigation unit tasked with investigating and reporting claims of insurance fraud. Although these individuals work on claims, they, generally, do not adjust losses or make claims payments. In the event they do not adjust losses or make claim payments, these investigators are not required to become licensed as a staff adjuster under KRS 304.9-430 and are further exempt from the private investigator requirements of KRS 329A.010 to 329A.090.

#### **Named Insured Rejection of Uninsured Vehicle Coverage**

Uninsured vehicle coverage is required under KRS 304.20-020 unless expressly waived. The Kentucky Supreme Court in *Boarman v. Grange Indemnity Insurance Co.*, 437 S.W.3d 748 (Ky. 2014), required a waiver of uninsured motorist coverage to be signed by **all** named insureds in order to be effective. HB 191 changes KRS 304.20-020, Section (1) to allow a rejection in writing by any named insured to be effective and applicable to all insureds under the policy. A named insured retains the right to request reinstatement of coverage, in writing, to the insurance company. Otherwise, the waiver continues to be effective for supplements or renewals.

#### **Tort Liability Statute of Limitations Change**

The statute of limitations for tort liability actions following a motor vehicle accident have been clarified following the Kentucky Supreme Court decision in *Beaumont v. Zeru*, 460 S.W.3d 904

(Ky. 2015). A tort liability action must now be commenced no later than two (2) years following the later of:

- The injury;
- The death; or
- The date of issuance of the last basic or added reparation payment made by any reparation obligor.

The date of issuance excludes the submission of any “replacement payment” issued by any reparation obligor. Therefore, in the event a provider requests a replacement payment of previously submitted reimbursement, the date the replacement payment is issued no longer resets the statute of limitations. Insurers will be required to provide a claimant or claimant’s attorney information as to the status of the payment upon written request.

**House Bill 192 – An act relating to foster youth operator’s license.**

The amendments to KRS 186.450 allow opportunity for foster children in the custody of the Cabinet for Health and Family Services to apply for an instructional driver’s license permit. In doing so, the individual must demonstrate proof of another individual’s assumption of financial responsibility for the applicant or verification of responsibility by the Cabinet for Health and Family Services.

As a result, the bill extends the opportunity and privilege of obtaining a driver’s license to minor foster children. However, they still must satisfy the financial responsibility provisions required before they may obtain the permit as dictated by KRS 186.590. However, for those minor foster children without such individual, the Cabinet for Health and Family Services, utilizing the reasonable and prudent parent standard under KRS 605.102, Section (5), is now able to provide the proof of financial responsibility.

**House Bill 207 – An act relating to insurance.**

House Bill 207 creates a new section of KRS Chapter 304, Subtitle 45 enacting recommended model law changes related to risk retention group corporate governance. The changes preserve, in general, the hands off regulatory approach typically applied to risk retention groups, but does institute requirements designed to promote additional corporate governance checks and independent financial and legal review.

The law requires in part:

- A majority of independent directors on the board;
- Structured approval of material service provider contracts;
- The adoption of written corporate governance standards;
- The establishment of an audit committee; and
- The development of a code of business conduct and ethics.

The changes increasing the Department’s financial oversight of these groups is necessary to aid in the prevention of future insolvencies.

**House Bill 215 – An act relating to vehicle accident reports.**

KRS 189.635 now specifically defines a “news-gathering organization” permitted to obtain vehicle accident reports outside of the commercial use prohibition. Previously, this organization was not defined. In order to receive accident reports under this standard, the “newspaper or periodical” shall be considered news-gathering if:

- Is published at least fifty (50) of fifty-two (52) weeks during a calendar year;
- Contains at least twenty-five percent (25%) news content in each issue or no more than seventy-five percent (75%) advertising content in any issue in the calendar year;
- Contain news of general interest to its readers that can include news stories, editorials, sports, weddings, births, and death notices.

These news-gathering organizations do not include any product or publication:

- Intended primarily for members of a particular profession or occupational group; or
- With the primary purpose of distributing advertising or of publishing names and other personal identifying information concerning parties to motor vehicle accidents which may be used to solicit for services covered under Subtitle 39 of KRS Chapter 304.

**House Bill 242- An act relating to the Department of Insurance.**

The Department of Insurance is reorganized to gain administrative efficiencies. The Health and Life Division and the Property and Casualty Division will be merged into the newly created Division of Insurance Product Regulation. Also, the Division of Administrative Services is created within the Department. Lastly, an ombudsman is created within the Division of Consumer Protection.

The Department of Insurance has the authority to investigate and pursue a Section 1332 state innovation waiver from the Patient Protection and Affordable Care Act (“ACA”). The Department has until July 1, 2019 to seek a 1332 waiver which is subject to approval by the Kentucky legislature.

**House Bill 294 – An act relating to the disclosure of damages by motor vehicle dealers.**

The amendment to KRS 186A.540 changes the amounts for which motor vehicle dealers must disclose damages to motor vehicles for sale or lease within their possession. Dealers will now be required to disclose damages:

- Which the individual or dealer has direct knowledge;
- Which result in repairs, for items other than wheels, tires, or glass, that exceed two thousand dollars (\$2,000); and
- That occur while the motor vehicle is in the individual’s or the dealer’s possession and prior to delivery to a purchaser.

**House Bill 306 – An act relating to an exemption from workers’ compensation for religious organizations.**

Two primary groups are added to the list of exemptions from the requirement to procure workers’ compensation insurance. The first includes any licensed, unlicensed, commissioned, ordained, unordained, or lay minister of religion who:

- Is without a set agreement with a church to receive fixed regular payment for services provided to the church; or
- Who works no more than 10 hours per week.

The second exemption applies to any caretaker of a cemetery or property owned by a church or religious organization who provides general cleanup services for no more than ten (10) hours per week. Organizations will need to confirm that these two classes of individuals are exempted from their workers’ compensation policies. Also, workers’ compensation carriers should take into consideration the new exemptions and update any filing information.

**House Bill 377 – An act relating to workers’ compensation and declaring an emergency.**

The Coal Workers’ Pneumoconiosis Fund was created to place the financial responsibility for liabilities incurred as a result of coal workers’ pneumoconiosis awards on those employers engaged in the severance and processing of coal. The fund was originally paid for by an assessment on the workers’ compensation insurance premiums paid by coal employers, as well as, an assessment on the tonnage of severed coal. The fund was to pay 50% of indemnity benefits for every coal workers’ pneumoconiosis claim award.

Due to the downturn in the coal market and loss of coal employers, the projected assessments have become financially unmanageable for coal employers. It has been determined that, without dramatic increases, the fund is unable to pay the anticipated future obligations as awards increase in number and value. The Coal Workers’ Pneumoconiosis Fund shall close to any claims filed after June 30, 2017. The responsible coal employer and their insurer, if applicable, shall be liable for 100% of the value of any coal workers’ pneumoconiosis claims filed on or after July 1, 2017.

All current liabilities of the Coal Workers’ Pneumoconiosis Fund shall transfer to the Kentucky Employers’ Mutual Insurance Authority (“KEMI”) through a loss portfolio transfer. KEMI retains the right to levy assessments as limited by HB 377.

/s/Nancy G. Atkins  
Nancy G. Atkins, Commissioner  
Kentucky Department of Insurance

July 18, 2017  
Date