



COMMONWEALTH OF KENTUCKY
DEPARTMENT OF INSURANCE
Frankfort, Kentucky

**ADVISORY OPINION
2010-03**

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 GROUP HEALTH INSURERS AUTHORIZED TO TRANSACT
BUSINESS IN KENTUCKY

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

RE: EXTENSION OF BENEFITS PROVISIONS

It has come to the Department’s attention that insurers may be experiencing confusion over the requirements set forth in KRS 304.18-126 with regard to the provision of a reasonable extension of benefits for members who are totally disabled or hospitalized on the date their group health policy is discontinued. Further, the Department has received form filings that include limitations on this right, including requirements that the member file a request for extension. The purpose of this opinion is to clarify the Department’s position on extension of benefits provisions required for group policies as set forth in KRS 304.18-126. Any insurance policy, certificate, or contract containing an extension of benefits provision shall be reviewed in accordance with this opinion.

KRS 304.18-126 requires that group policies include a reasonable extension of benefits during disability and requires that such extension be described in the insurer’s policies and certificates. Disability is defined by this statute to include the state of hospitalization. The statute makes clear, however, that policy provisions for extension of benefits are not

subject to the same requirements in the case of total disability versus hospitalization for purposes of determining a reasonable extension of benefits. 304.18-126(4) sets forth a safe harbor for this determination and states in part:

In the case of hospital or medical expense coverages, a reasonable extension of benefits shall be required. A provision shall be considered reasonable if:

- (a) Under major medical coverages for hospital confinement, it provides an extension until the earlier of one (1) of the following:
 1. Discharge from the hospital confinement;
 2. Until maximum benefits under the policy are received; or
 3. At least twelve (12) months.
- (b) Under major medical coverages for total disability, it provides an extension until the earlier of one (1) of the following:
 1. Until coverage for the total disability has been obtained under another group policy;
 2. Until the total disability ceases;
 3. Until maximum benefits under the policy are received; or
 4. At least twelve (12) months.

There appears to be confusion about whether the above language allows group policies to have one extension of benefits provision for total disability that includes the language set forth in (4)(b) above, without a separate provision for hospital confinements compliant with (4)(a). An extension of benefits provision that did not take into account the differing requirements for hospitalization and total disability would not be considered compliant under KRS 304.18-126. When evaluating an extension of benefits provision to determine if it is reasonable, the Department will require that the extension of benefits as applied to hospitalization must be at a minimum what is set forth under KRS 304.18-126(4)(a) while the benefits for total disability must be at a minimum what is set forth under KRS 304.18-126(4)(b). Any other interpretation of the statute could serve to cut off an extension of benefits prematurely during hospitalization disrupting the care received by the patient. Further, this interpretation is consistent with the legislative intent of KRS 304.18-126 which was to preserve the right to benefits through the end of a hospitalization regardless of the application of HIPAA's non-discrimination rules.

In the review of this issue, the Department has become aware that carriers may be requiring participants to request an extension of benefits within a certain period of time or forfeit the right to an extension. This is inconsistent with both the language and intent of the statute. Under KRS 304.18-126, the right to a reasonable extension of benefits shall be provided by the insurer. The provision of benefits by the insurer is a requirement, not an offer of benefits for which a covered person must make application. Therefore, conditions should not be placed on the receipt of these benefits by participants nor should any carrier require an extension of benefits rider to be purchased as a condition precedent to receiving an extension of benefits under their policy.

Insurers will be expected to correct any deficiencies related to this matter in their forms when the forms are filed with the Department for any other required change. A revised filing on this issue alone shall not be required at this time. Any consumer protection issues that are brought to the Department's attention with regard to this issue shall be resolved in conformity with this opinion.

Any questions should be directed to Andrea Fegley, Counsel, Office of Legal Services, at 502-564-6032 or andrea.fegley@ky.gov.

/s/ Sharon P. Clark

Sharon P. Clark, Commissioner
Kentucky Department of Insurance

On this 10th day of May, 2010