

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 2001-02

IN RE: Insurer exemption to the licensing of administrators

RELEVANT FACTS, ISSUES, AND STATUTES:

A question has emerged regarding the interpretation of KRS 304.9-051(1)(c), which states in pertinent part:

An "administrator" is a person who collects charges or premiums from or who adjusts or settles claims on, residents of this state in connection with life insurance, health insurance, annuities, nonprofit hospital, medical-surgical, dental, and health service corporation contracts, health maintenance organization contracts, or prepaid dental plan organization contracts or other life, health, or annuity benefit plans. The following are not considered to be acting as administrator:

An insurer, which is either authorized or permitted to transact business in Kentucky or acting as an insurer with respect to a contract lawfully delivered or issued for delivery by it in and pursuant to the laws of a state in which it was authorized or permitted to do business.

The question is whether an insurer administering the claims made to insurance policies of another insurer, including a self-insured plan, is exempt from the definition of an "administrator," and therefore exempt from the licensing requirements of KRS 304.9-052.

DEPARTMENT'S POSITION:

The exemption provided to an "insurer" in KRS 304.9-051(1)(c) includes any insurer administering claims made to insurance policies it issues. The exemption does not

extend to an insurer that, as a third party, is administering claims made to policies issued by another insurer, including a self-insured plan. Therefore, when an insurer "collects charges or premiums from or adjusts or settles claims on, residents of this state in connection with life insurance, health insurance, annuities, nonprofit hospital, medical-surgical, dental, and health service corporation contracts, health maintenance organization contracts, or prepaid dental plan organization contracts or other life, health, or annuity benefit plans" that are provided by a second insurer, including a self-insured plan, the insurer processing the claims must be licensed as an "administrator" in accordance with the licensing provisions of KRS 304.9-052, even if that insurer holds a certificate of authority in this state.

The Department's position focuses on preventing an insurer holding a certificate of authority to transact one type of insurance from administering the claims made to policies held by an insurer holding a certificate of authority to transact a different type of insurance, without first meeting the licensing requirements of an administrator by demonstrating the necessary knowledge and understanding for

processing claims relating to that second type of insurance. Also, the Department must assure that the protections of KRS 304.9-371 to 304.9-377 for the insurance contract holder are available to all of those using outside administrator services, whether the contract holder is using authorized insurers or others.

Any questions regarding this matter may be directed to Steven C. Gregory, Counsel for the Department of Insurance, at (502) 564-6032.

Janie A. Miller, Commissioner
Kentucky Department of Insurance
Date