



COMMONWEALTH OF KENTUCKY
DEPARTMENT OF INSURANCE
FRANKFORT, KENTUCKY

BULLETIN
2013-04
(Revised)

The following Bulletin is to advise the reader of the current position of the Kentucky Department of Insurance (the “Department”) on the specified issue. The Bulletin is not legally binding on either the Department or the reader.

TO: ALL INSURANCE COMPANIES WRITING AUTOMOBILE BUSINESS IN KENTUCKY

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

RE: NEGOTIATION OF REDUCTION OR MODIFICATION OF PROVIDERS’
CHARGES FOR KENTUCKY NO-FAULT BENEFITS

DATE: OCTOBER 4, 2013 (Revised, February 18, 2014)

This Bulletin outlines the expectations of the Department regarding an insurance company’s payment to a provider regarding reparation benefit claims (Automobile No-Fault Benefits), where the payment is less than the amount billed by the provider.

KRS 304.39-245 permits the reduction or modification of a provider’s billed charges to a company on a reparation benefits claim. The reduction or modification, however, may only be *requested or negotiated*; the reduction or modification cannot be effected at the discretion of the company alone. Consequently, a company’s explanation of benefits or other record evidencing payment of an amount less than the provider billed on a reparation benefits claim must also

indicate the provider's agreement to the modification or reduction being either by consent to a request or by negotiation. Also, the explanation of benefit or other record must reflect that the modification or reduction takes place pursuant to Kentucky law.

The Department will accept a modified or reduced charge as having been "negotiated" if the modification or reduction occurs pursuant to a written agreement between the insurance company and a provider which states that the agreement applies to Kentucky No-Fault Benefits. The Department will also accept as "negotiated" a modification or reduction pursuant to an agreement between an insurance company's third-party administrator and a provider, if the insurance company can provide upon the Department's request the third-party administrator and provider's written agreement permitting the modification or reduction, as long as the agreement states that it is applicable to Kentucky No-Fault Benefits.

The following Q&A may provide further assistance:

Q: What is the purpose of Bulletin 2013-4?

A: The Kentucky Department of Insurance issued the bulletin to explain its position that under the Kentucky Insurance Code (KRS 304.39-245), if the insurer reduces a provider billing in reference to Kentucky No-Fault benefits, then the insurer must demonstrate to the Department that a negotiation with the provider has been attempted. The Department does not require that the negotiation be successful, only that it has been attempted, and the attempt has been documented. If an insurer and a provider do not reach an agreement on a reduction of charges, the dispute over a provider's charges becomes a matter for the courts.

Q: Upon reduction of a provider charge, please provide examples of negotiation for compliance.

A: Examples of acceptable documentation of attempted negotiation are, but are not limited to: a statement on the EOB indicating an *offer* of payment; a documented phone call in the claim log indicating an attempt by the insurer to negotiate with the provider; a letter explaining the reduction and indicating it is an *offer* of payment; or, a contract with a provider which expressly states the reduction is agreed upon and which includes reference to Kentucky No-Fault benefits. Other methods of documenting an attempted negotiation would be judged on a case-by-case basis.

For questions regarding this Bulletin, please contact Russ Hamblen by e-mail at Russell.Hamblen@ky.gov.

/s/ Sharon P. Clark
Sharon P. Clark, Commissioner
Kentucky Department of Insurance