



COMMONWEALTH OF KENTUCKY
DEPARTMENT OF INSURANCE
Frankfort, Kentucky

**ADVISORY OPINION
2010-04**

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 HEALTH INSURERS AUTHORIZED TO TRANSACT
BUSINESS IN KENTUCKY

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

RE: PATIENT PROTECTION AND AFFORDABLE CARE ACT OF 2010

Overview

The Patient Protection and Affordable Care Act of 2010 (“the Act”)(“PPACA”), (PL 111-148) was enacted by Congress and subsequently signed into law by the President on March 23, 2010. The Act provides a federal standard for certain insurance benefits that group health plans and health insurance issuers offering group or individual coverage must comply with prior to the first plan year beginning on or after September 23, 2010. These market reforms include (but are not limited to):

- Prohibition on lifetime benefit limits with an allowance of restricted annual limits;
- Prohibition on rescissions for reasons other than fraud;
- Establishment of internal and external appeals process;

- Coverage of preventive health services without cost sharing;
- Extension of dependent coverage until age 26;
- Prohibition of application of pre-existing condition exclusions for children under the age of 19;
- Coverage for emergency services at in-network cost sharing with no prior authorization; and
- Allowance for selection of primary care provider of choice and prohibition on requiring referral for obstetrical or gynecological care.

The intent of this Advisory Opinion is to advise insurers of a temporary suspension of the filing procedures for policy and form filings in Kentucky as a result of the Act's market reform provisions listed above.

Filing Requirements for PPACA Early Implementation

Any health insurer that has elected to implement the market reforms listed above prior to the deadline of the first plan year beginning on or after September 23, 2010 is still required to file any revised forms (including policies) with the Commissioner pursuant to KRS 304.14-120 and 806 KAR 14:007. The Commissioner has determined that it is not practicable to require insurers to file the revisions necessary under the Act for early implementation on an approval basis. Additionally, the Commissioner has determined that the early implementation of these market reforms is in the consumer's best interests and is a significant consumer protection. Therefore, pursuant to KRS 304.14-120(4) and the attached Order, the Commissioner is waiving the prior approval requirement under KRS 304.14-120(1). All filings related to revisions required by the Act shall be reviewed on a file and use basis only under the following circumstances:

1. The form filing shall be solely for the purpose of complying with the Act.
2. No other changes shall be made to any previously approved form other than those necessitated by the Act.
3. Such form filing shall be for issuance or delivery prior to September 23, 2010.
4. At the time of submittal, the insurer shall include a certification by an executive officer of the insurer stating that the filing does not include any other revision than those stated under (1).

The review of such filings by the Department shall be in accordance with the procedures outlined in KRS 304.14-120, KRS 304.14-130, and 806 KAR 14:007. Nothing in this Opinion shall change or amend the procedure for the filing and reviewing of rates under KRS 304.17A-095 through KRS 304.17A-0954.

Filings Not Subject to the Exemption

Forms submitted as a result of the Act for issuance or delivery on or after September 23, 2010 shall be subject to the approval process as set forth under KRS 304.14-120. Such forms shall not be issued or delivered in the Commonwealth unless they are filed and

approved by the Commissioner. The Department shall have sixty (60) days to review such filings, with an available thirty (30) day extension. The review of such filings by the Department shall be in accordance with the procedures outlined in KRS 304.14-120, KRS 304.14-130, and 806 KAR 14:007.

Also, any revised form that contains both revisions for new state legislation or other insurer changes to the policy in addition to the revisions for the market reforms of the Act shall be subject to the approval process as set forth under KRS 304.14-120. Such forms shall not be issued or delivered in the Commonwealth unless they are filed and approved by the Commissioner. The Department shall have sixty (60) days to review such filings, with an available thirty (30) day extension. The review of such filings by the Department shall be in accordance with the procedures outlined in KRS 304.14-120, KRS 304.14-130, and 806 KAR 14:007.

PPACA Interactions with State Law

Insurers should be aware that the Act sets forth more stringent consumer protections in some areas than the Kentucky Insurance Code and related regulations. In these areas, insurers should draft their policies and forms in compliance with the Act.

/s/ Sharon P. Clark
Sharon P. Clark, Commissioner
Kentucky Department of Insurance
On this 26th day of May, 2010



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

IN THE MATTER OF:

Limited exemption of the filing and prior approval of forms for health insurers in light of the Patient Protection and Affordable Care Act of 2010.

ORDER

WHEREAS, KRS 304.14-120 provides that no basic insurance policy or printed rider or endorsement form or form of renewal certificate (collectively referred to herein as “forms”) shall be delivered or issued for delivery in this state unless the form has been filed with and approved by the Commissioner;

WHEREAS, KRS 304.14-120 allows the Commissioner sixty (60) days to review any form filed by an insurer with an available extension of thirty (30) days;

WHEREAS, the Patient Protection and Affordable Care Act of 2010 (“PPACA”) was signed into law on March 23, 2010 by President Obama and requires insurers to comply with certain insurance market changes no later than the first plan year beginning on or after September 23, 2010 (six months after enactment);

WHEREAS, insurers have expressed a desire to comply with PPACA reforms immediately pursuant to a request by the Secretary of Health and Human Services;

WHEREAS, provisions of PPACA may trigger necessary form filings with the Commissioner pursuant to KRS 304.14-120 and 806 KAR 14:007;

WHEREAS, KRS 304.14-120(4) allows the Commissioner to exempt certain form filings from the requirements under KRS 304.14-120; and

WHEREAS, the Commissioner has determined that the application of KRS 304.14-120 is not practicable in allowing insurers to issue policies with the consumer protection provisions of PPACA prior to the effective date and the provision of such protections is desirable;

WHEREAS, the Commissioner has been duly and sufficiently advised;

IT IS HEREBY FOUND AND ORDERED:

The prior approval requirements for forms pursuant to KRS 304.14-120 are hereby temporarily suspended for the sole purpose of allowing insurers to issue or deliver forms that comply with PPACA prior to the September 23, 2010 deadline. Any form filed solely to comply with PPACA, in accordance with Advisory Opinion 2010-04, for issuance or delivery prior to September 23, 2010 will be on a file and use basis. The review of such filings by the Department shall be in accordance with the procedures outlined in KRS 304.14-120, 304.14-130 and 806 KAR 14:007. Any form for issuance or delivery after the September 23, 2010 or that includes changes for reasons other than compliance with PPACA (including changes for recent Kentucky legislation) is not included in this exemption and shall be filed for prior approval pursuant to KRS 304.14-120. This limited exemption shall expire on September 23, 2010.

Done and effective this the 26th day of May, 2010.

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

Certificate of Service

I hereby certify that the foregoing Order was served by hand delivery to the following on this 26th day of May, 2010.

William J. Nold, Director
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