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ADVISORY OPINION

2020-004

The following Advisory Opinion is to advise the reader of the current position of the Kentucky Department of Insurance on the specified issue. The Advisory Opinion is not legally binding on either the Department or the reader.

TO: ALL STOP-LOSS CARRIERS AUTHORIZED TO TRANSACT BUSINESS IN THE COMMONWEALTH OF KENTUCKY

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

RE: STOP-LOSS INSURANCE POLICIES

DATE: April 23, 2020

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The Kentucky Department of Insurance ("Department") issues this Advisory Opinion to provide regulatory guidance on stop-loss insurance policies.

A stop-loss insurance policy insures the employer or its group health plan, not the enrollees covered by the plan. Payment of incurred claims under such policies is made to the plan rather than the individual employee. The specific aggregate amount required to trigger the stop-loss coverage will not or is not likely to be reached. Stated another way, the claim liability limits should not be set so low that payment by the stop-loss insurer is an actuarial certainty.

Insurers are advised that the Department will consider a stop-loss policy that: (1) has an annual attachment point for claims incurred per individual that is lower than \$25,000.00 or (2) has a minimum number of employees less than twenty-five (25) to be a Health Benefit Plan.

Recent stop-loss filings have also included provisions that are common in health insurance policies, but inappropriate for stop-loss policies.

Therefore, insurers are also advised that stop-loss policies that contain provisions as described below will be considered Health Benefit Plans as defined in KRS 304.17A-005(22) and will be

required to meet the requirements relating to group health benefit plans subject to KRS 304.17A and 304.18.

Examples that will trigger a review as a Health Benefit Plan are stop-loss policies that contain provisions relating to the following:

- Claims denials that the employee is legally obligated to pay under the health plan
- Medical necessity determinations
- Usual or customary determinations
- Experimental/investigational determinations
- Case management requirements
- Annual dollar limitations in specific coverage or for specific enrollees
- Mandated provider networks/benefit incentives for enrollees
- Requirements that enrollees be actively at work
- Right to examine enrollees
- Rescission for reasons other than fraud or intentional misrepresentation
- Early termination at the discretion of the carrier other than in accordance with cancellation and nonrenewal laws applicable to these policies
- Terms or conditions that are misleading, deceptive or contrary to the public interest
- Mid-term rate increases at the discretion of carrier
- Provisions that conflict with state law
- Other provisions that are deemed to be health insurance and inappropriate for an excess loss policy



Sharon P. Clark, Commissioner
Kentucky Department of Insurance