



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

**ADVISORY OPINION  
2020-02**

*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 INSURERS AUTHORIZED TO TRANSACT BUSINESS IN KENTUCKY, THE INDEPENDENT INSURANCE AGENTS OF KENTUCKY, INC., THE PROFESSIONAL INSURANCE AGENTS OF KENTUCKY, ALL AGENTS LICENSED TO TRANSACT BUSINESS IN KENTUCKY

**FROM:** SHARON CLARK, COMMISSIONER  
KENTUCKY DEPARTMENT OF INSURANCE

**RE:** ALTERNATIVE COMPENSATION UNDER KRS 304.11-042

**DATE:** MARCH 9, 2020

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The purpose of this Advisory Opinion is to clarify inquiries received by the Department of Insurance (“Department”) regarding the effect of KRS 304.11-042, which was enacted in 2008. This Advisory Opinion also supplements Advisory Opinion 2003-01 and replaces Advisory Opinion 2016-02.

KRS 304.11-042 is titled “Disclosure agreement for compensation received by an agent from an insurer or client for placement of insurance and service rendered to client.” KRS 304.11-042 addresses the types and terms of compensation that an agent may receive. KRS 304.11-042(2) provides:

An agent may receive from an insurer or client, compensation in any amount agreed to by the agent and the insurer or client for placement of insurance and for a service rendered on behalf of the client if, prior to the placement of the insurance, the provision of a service as a result of the placement, or for the provision for any other service, the agent shall:

- (a) Include a description of the services to be provided pursuant to the agreement, specify if any policy or service is exempt from the agreement, and specify the compensation to be received by the agent from the insurer or client;
- (b) Be signed by the client prior to the placement of insurance or provision of services; and
- (c) Be retained by the agent for a period of five (5) years from the date the agreement expires or is otherwise terminated.

KRS 304.11-042 applies to a very narrow class of insureds defined as a “client.” The Department advises agents to consult the definition of “client” within KRS 304.11-042(1)(b) to determine whether a given transaction is covered by KRS 304.11-042.

An agent may quote business net of commission after meeting all requirements of KRS 304.11-042. Because KRS 304.11-042(5) creates a specific exemption from the rate and form filing requirements and because KRS 304.12-100 creates a specific exemption from the prohibition of rebating, the agent may quote the business net of commission even if this is not addressed in the insurer’s filings. If the insurer is unable to issue the policy net of commission, the agent may refund the commission, or a portion of the commission, to the client, provided the terms are expressly incorporated in the written disclosure agreement required by KRS 304.11-042(2).

The terms of the agent compensation permitted by KRS 304.11-042 do not change the statutory relationship between the agent and the insurer. The agent remains an agent of the insurer, rather than an agent of the client. Accordingly, the insurer may refuse to accept an agent as an agent of record.

This Advisory Opinion has been issued industry-wide and is intended as notice to all insurers and agents of the Department’s interpretation of KRS 304.11-042. Insurers are charged with notifying their appointed agents of the Department’s interpretation. Professional associations are charged with notifying their memberships. The Department does not provide legal advice. The position provided herein has been offered to clarify the Department’s regulatory authority pursuant to KRS 304.2-100.



Sharon P. Clark, Commissioner  
Kentucky Department of Insurance  
On this 9<sup>th</sup> day of March 2020



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

**WITHDRAWN**

**Advisory Opinion 2016-02 WITHDRAWN**

**Date: March 9, 2020**

**Advisory Opinion 2016-02 has been replaced by Advisory Opinion 2020-02.**