

**Insurer's obligation under the Prompt-Pay law to pay claims directly to provider**

COMMONWEALTH OF KENTUCKY  
ENVIRONMENTAL AND PUBLIC PROTECTION CABINET  
OFFICE OF INSURANCE

Advisory Opinion 2004-01  
July 30, 2004

TO: All Insurers offering Health Benefit Plans in Kentucky

FROM: Martin Koettters, Executive Director

DATE: July 30, 2004

RE: ENFORCEMENT OF KRS 304.17A-700 TO 304.17A-730, KRS 205.593,  
304.14-135, AND 304.99-123 (PROMPT- PAY LAW) AND  
ADMINISTRATIVE REGULATIONS ADOPTED THEREUNDER

ADVISORY OPINION REGARDING AN INSURER'S OBLIGATION  
UNDER THE PROMPT-PAY LAW TO PAY CLAIMS DIRECTLY TO A  
PROVIDER

**STATUTORY ANALYSIS AND ADVISORY OPINION**

The Prompt-Pay Law became effective July 15, 2000. Since that time the Prompt-Pay Law has been amended and administrative regulations have been promulgated. Prior to the enactment of the Prompt-Pay Law, KRS Chapter 304 and administrative regulations promulgated there under contained various provisions relating to the payment of claims. These prior provisions include but are not limited to KRS 304.12-235, 304.18-040, 304.18-090, 304.17-130, and 806 KAR 12:092.

Since July 15, 2000 the Office of Insurance has interpreted the Prompt-Pay Law to require insurers to treat both participating and non-participating providers equally with regard to payment issues. The purpose of this document is to give notice that the Office of Insurance has modified and limited its interpretation of the Prompt-Pay Law.

Effective immediately, the Office of Insurance, through its Executive Director, will enforce the Prompt-Pay Law against an insurer only under those circumstances when the insurer has a contractual obligation to pay the provider.

The Prompt Pay Law requires "Insurers" (as defined in KRS 304.17A-700 (12)) to "Adjudicate" (as defined in KRS 304.17A-700 (1)) a "Clean claim" (as defined in KRS 304.17A-700 (3)) from a "Health care provider" or "Provider" (as defined in KRS 304.17A-700 (9)) in accordance with

the applicable “Claims payment time frame” (as defined in KRS 304.17A-700 (2)). KRS 304.17A-700 (9) does not specifically distinguish between participating providers and those providers choosing not to participate with an insurer.

The specific provisions of the Prompt-Pay Law do not expand any provider’s right to claim a covered person’s benefits. In the absence of a contractual right arising out of an agreement with an insurer, as disclosed in the health benefit plan documents, or in the absence of an assignment of benefits by a covered person if permitted under the plan, a provider has no legal right to submit any claim for benefits on behalf of a person covered under the plan and an insurer has no legal obligation to pay that provider.

The Prompt-Pay Law did not specifically repeal or amend the provisions of KRS 304.12-235, 304.18-040, 304.18-090, or 304.17-130. The provisions of KRS 304.17A-702(2)(a), 304.17A-710, 304.17A-706 (3), 304.17A-708 and 304.17A-728(2)) further indicate an intent that the law only applies to providers participating with the insurer.

For these reasons, the Office of Insurance concludes that:

1. A “clean claim” under the provisions of the Prompt-Pay Law, can only be made by a provider who has the contractual right to submit a claim on behalf of a person covered under the plan.
2. Only providers defined in KRS 304.17A-700 (9), who have directly or indirectly contracted with an insurer to provide services to persons covered under a Kentucky health benefit plan qualify to submit a “properly completed billing instrument“ necessary for a “clean claim”.

Covered persons and providers who do not qualify to submit a “clean claim” under the Prompt-Pay Law continue to benefit from the requirements of all insurer’s as set forth under the provisions of KRS 304.12-235 and 806 KAR 12:092.

Finally, insurers are cautioned that this advisory impacts provisions and requirements of the Prompt-Pay Law other than the claims payment provisions. As an example, the quarterly reporting requirements under KRS 304.17A-722 are based upon the payment of “clean claim”.

Letters of opinion by the Office of Insurance contrary to this advisory are withdrawn.

Any questions concerning these matters should be directed to William J. Nold, Counsel, Legal Division, Kentucky Office of Insurance at (502) 564-6032.

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Martin Koettters, Executive Director  
Office of Insurance

Date: July 30, 2004