



COMMONWEALTH OF KENTUCKY
DEPARTMENT OF INSURANCE
FRANKFORT, KENTUCKY

ADVISORY OPINION
2015-01

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 OFFER HEALTH BENEFIT PLANS IN THE COMMONWEALTH OF KENTUCKY, INCLUDING SELF-INSURERS

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

RE: EXTERNAL REVIEW PROCESS FOR SELF-FUNDED NON-ERISA PLANS

DATE: JANUARY 21, 2015

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The Department has become aware that health benefit plans issued by self-funded non-ERISA plans are not complying with Kentucky’s external review process. This advisory opinion clarifies that health benefit plans issued by self-funded non-ERISA plans shall comply with the external review process found in KRS 304.17A-623.

45 CFR 147.136(c) addresses the internal claims and appeals and external review processes for self-funded non-ERISA plans. If the plan is self-insured and not preempted by ERISA “then the plan must comply with the applicable state external review process and is not required to comply with the Federal external review process...”

Further, pursuant to KRS 304.11-045, if a health care benefits provider cannot show that it is subject to another jurisdiction, then Kentucky will assume jurisdiction over the provider. KRS

304.17A-005(27) includes in the definition of insurer any “...self-insurer or multiple employer welfare arrangement not exempt from state regulation by ERISA...” Moreover, the definition of health benefit plan encompasses a plan issued by a self-funded non-ERISA plan. *See* KRS 304.17A-005(22). Therefore, such a health benefits plan would be subject to all the requirements of Chapter 304, Subtitle 17A. This would include the external review process set forth in KRS 304.17A-623, and the requirements of insurers participating in the independent external review program set forth in 806 KAR 17:290. For that reason, self-funded non-ERISA plans must include Kentucky’s external review process in its summary plan description documents.

Please be aware that any self-funded non-ERISA plan participating in the independent external review program, referenced in KRS 304.17A-621, must set up an eServices account; otherwise, the plan may designate the TPA to administer the appeals process, in which case the TPA would set up the eServices account and request the review.

Please contact the Department’s Health and Life Division at (502) 564-6088 with any questions about this Advisory Opinion.

/s/ Sharon P. Clark
Sharon P. Clark, Commissioner
Kentucky Department of Insurance
On this 21st day of January, 2015.