

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.

Kentucky Department of Insurance

Advisory Opinion 2000-03

IN RE: Independent Medical Examinations ["IME"] for

Basic or Added Reparations Benefits Coverage

Under Motor Vehicle Liability Insurance Policies

RELEVANT STATUTES: KRS 304.39-270 states in part:

"If the mental or physical condition of a person is material to a claim for past or future basic or added reparation benefits, the reparation obligor may petition the circuit court for an order directing the person to submit to a mental or physical examination by a physician. Upon notice to the person being examined and all persons having an interest, the court may make the order for good cause shown. The order shall specify the time, place, manner, conditions, scope of the examination, and the physician by whom it is to be made."

Many motor vehicle liability policy forms contain clauses that require any person seeking any coverage to submit, as often as the insurance company reasonably requires, to a physical or mental exam by a physician selected by the insurance company.

THE DEPARTMENT'S POSITION: The statute creates an avenue or method by which a company may direct a person making a claim for Basic Reparation Benefits ["BRB"] or Added Reparation Benefits to submit to an IME. Miller vs. USF&G, 909 SW2d 339 (Ky. App. 1995) declared that "a policy provision requiring an independent medical examination 'when and as often as the company may reasonably require'" unenforceable since it violated the public policy underlying KRS 304.39-270.

Therefore, the Department will no longer approve policy forms that require a person to submit to any such examination in derogation of the statutory procedure or the public policy behind it. Avenues or methods by insurers of requiring or obtaining an IME that are any less stringent (other than patient willingness) are in derogation thereof.

2000 LEGISLATION: This advisory opinion will also serve to remind insurance companies of the following legislation passed in the 2000 Regular Session, which is now in force and effect:

SB 119: BRB exclusions of out-of-state accidents no longer comply with the law, if they exclude the described out-of-state bus accidents.

HB 405: The definition of medical expenses commonly used in BRB coverage no longer complies with the law without the inclusion of "licensed ambulance services".

HB 3: Property and casualty policies excluding property coverage (first party coverage) for intentional acts no longer comply with the law without the domestic abuse (or other innocent insured) exception.

HB 415: Personal auto cancellation and non-renewal notices providing a four (4) day period for writing to the department no longer comply with the law. Consumers now have seven (7) days.

Questions regarding this Advisory Opinion may be directed to

Shawn Kiser Hawk, Division of Property & Casualty, at 502-564-6046.

George Nichols III

Commissioner

Date