

Application of Individual and Group Market Principles to Association Coverage

The following Advisory Opinion is to advise the reader of the current position of the Kentucky Office of Insurance (“the Office”) on the specified issue. The Advisory Opinion is not legally binding on either the Office or the reader.

Kentucky Department of Insurance

Advisory Opinion 2004-06

IN RE: Application of Individual and Group Market Principles to Association Coverage

This Advisory Opinion is to notify all affected parties that the Kentucky Office of Insurance will no longer consider all association coverage (employer and non-employer) to be group coverage. Instead, the Kentucky Office of Insurance will review all association filings in accordance with the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), 42 U.S.C. § 300gg et seq. and the guidance provided by the Centers for Medicare and Medicaid Services in Bulletins 02-05, 02-04, 02-03, and 02-02. The Bulletins may be found at www.cms.hhs.gov.

The Kentucky Office of Insurance, Health Insurance Policy and Managed Care Division, will review rate and form filings, and determine whether a group health plan exists. A group health plan may exist either at the association level or the employer level. If there is an employee welfare benefit plan, as defined under the Employee Retirement Income and Security Act (“ERISA”), 29 U.S.C. § 1001 et seq., then group market principles under HIPAA will apply.

Insurers must guarantee the renewal of coverage at the option of the “plan sponsor,” as that term is used in ERISA. Regarding association coverage, the plan sponsor may be the association or the plan sponsor could be “the individual employer-members” within the association. All insurers shall comply with both state and federal law regarding the issuance of association coverage.

The Kentucky Office strongly urges all affected parties to read Bulletins 02-05, 02-04, 02-03, and 02-02. All filings shall be made in compliance with these Bulletins and HIPAA.

Questions regarding this Advisory Opinion may be directed to Elizabeth A. Johnson, Counsel, Office of Legal Services, Insurance Legal Division, 502-564-6032.

/s/ Martin J. Koettters

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Executive Director

December 3, 2004

Date