

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 2001-03

IN RE: The Effect of KRS 304.17A-661, the Mental Health Parity Requirement on the Requirements of KRS 304.17A-143, the Autism Benefit

The Department has been asked to issue an opinion regarding its interpretation of the impact of KRS 304.17A-661 on the requirements of KRS 304.17A-143. This opinion supersedes all other opinions rendered by the Department on this matter.

RELEVANT STATUTES:

In 1998, the Kentucky General Assembly required "[a]ll health benefit plans [to] provide coverage, including therapeutic, respite, and rehabilitative care, for the treatment of autism of a child covered under the policy." KRS 304.17A-143(1). Additionally, KRS 304.17A-143(2) required the coverage for autism to be "subject to a five hundred dollar (\$500) maximum benefit per month, per covered child." The \$500 limit was not to be applied "to other health conditions of the child and services for the child not related to the treatment of autism." KRS 304.17A-143(2).

After July 14, 2000, all health benefit plans, issued or delivered, have to provide coverage for treatment of a mental health condition under the same terms or conditions as provide for treatment of a physical health condition. KRS 304.17A-661. Only large group health benefit plans and associations, with the exception of employer-organized associations, are subject to this requirement. Additionally, there is no provision of the law that mandates a health benefit plan to cover mental health conditions. KRS 304.17A-669. However, carriers must comply with the requirements of KRS 304.17-318 and KRS 304.18-036 requiring carriers to "offer . . . coverage for the inpatient and outpatient treatment of mental illness [as defined], at least to the same extent and degree as coverage provided by the policy or contract for the treatment of physical illnesses."

THE DEPARTMENT'S POSITION:

The rules of statutory construction require that specific statutes take precedence over general statutes. See Williams v. Commonwealth, 829 S.W.2d 942 (1992), citing Kentucky Trust Co. v. Department of Revenue, Ky. 421 S.W.2d 854 (1967); City of Bowling Green v. Board of Education of Bowling Green Independent School District, 443 S.W.2d 243 (1969).

With this rule in mind, it is the Department's position that the specific requirements of KRS 304.17A-143 must be enforced independently of the requirements in KRS 304.17A-661. However, it is also the Department's position that these two statutes are not in conflict and, therefore, both statutes must be enforced as plainly written.

If a carrier offers mental health benefits to its members, that carrier must first determine what mental health benefits it will provide to its members. After determining what mental health benefits it will offer, the carrier must then offer those benefits under the same terms or conditions as it offers the equivalent benefit for the treatment of a physical health condition (i.e., day or visit limits, episodes of care, deductibles, copayments, coinsurance, etc.).

Unlike KRS 304.17A-669, KRS 304.17A-143 mandates that all carriers provide for the coverage of autism. The coverage is subject to the five hundred dollar maximum benefit per month, per covered child as set forth in KRS 304.17A-143. This benefit cannot be limited and must be enforced independently of the requirements under KRS 304.17A-661.

For these reasons, the autism benefit, including the \$500 per month, per child requirement, pursuant to KRS 304.17A-143, exists in addition to any other mental health benefits offered by the carrier.

Please be advised that carriers must administer their coverage in accordance with this Advisory Opinion immediately.

Since this is a change from the Department's previous position that the \$500 autism benefit only applied to respite, carriers will need to resubmit their forms (policies, certificates, benefit summaries, etc.) in order to comply with the Department's current position that the \$500 autism benefit applies to therapeutic, respite, and rehabilitative care as required by KRS 304.17A-143. To the extent changes are needed in forms, this may be accomplished at the time of filing or renewal, whichever occurs first.

Questions regarding this Advisory Opinion may be directed to Elizabeth A. Johnson, Counsel - 502-564-6032.

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Commissioner

Date