

COMMONWEALTH OF KENTUCKY
DEPARTMENT OF INSURANCE
Frankfort, Kentucky

BULLETIN 2011 - 03

INSURANCE LEGISLATION ADOPTED BY THE
2011 KENTUCKY GENERAL ASSEMBLY (REGULAR SESSION)

April 29, 2011

THIS BULLETIN IS FOR INFORMATION PURPOSES ONLY. IT DOES NOT AMEND OR INTERPRET PROVISIONS OF THE KENTUCKY REVISED STATUTES OR THE KENTUCKY ADMINISTRATIVE REGULATIONS. THE COMPLETE AND ACCURATE TEXT OF THE LAW CAN BE SECURED WHEN THE 2011 ACTS OF THE KENTUCKY GENERAL ASSEMBLY ARE PUBLISHED IN THE SUMMER OF 2011. UNLESS OTHERWISE NOTED, THE EFFECTIVE DATE OF THE LEGISLATION IS JUNE 8, 2011.

(Bills as enacted are available on the LRC website at www.lrc.ky.gov/record/11rs/record.htm)

Senate Bill 112 – Occupational and Physical Therapy

This bill creates a new statute in KRS Chapter 304, Subtitle 17A, to prohibit insurers from imposing a copayment or coinsurance amount for services rendered by an occupational therapist or a physical therapist that is greater than a copayment or coinsurance amount charged for the services of a physician or an osteopath for an office visit.

Further, the bill requires insurers to clearly state the availability of occupational and physical therapy coverage under its plan and all related limitations, conditions and exclusions.

Contact: Health and Life Division
(502) 564-6088

Senate Bill 114 – Health Benefit Plan Wellness Programs

This bill creates a new statute in KRS Chapter 304, Subtitle 17A, that lists rewards or incentives that may be provided by an insurer to encourage participation in health benefit plan wellness programs. Those incentives or rewards include, but are not limited to:

- Merchandise;
- Gift cards;
- Debit cards;
- Premium discounts or rebates;
- Contributions toward a member's health savings account;
- Modification to copayment, deductible, or coinsurance amounts; or
- Any combination of the listed incentives.

The bill specifically states that any reward incentive is not a rebate or illegal inducement if it is disclosed in the policy or certificate of coverage.

The bill also permits an insurer to require a member to provide verification that a medical condition makes it unreasonably difficult or medically inadvisable for the member to participate in a wellness or health improvement program.

*Contact: Health and Life Division
(502) 564-6088*

House Bill 167 – Surplus Lines Insurance Multi-State Compliance Compact

This bill creates new statutes in KRS Chapter 304, Subtitle 10 to adopt the enabling legislation that allows Kentucky to join the Surplus Lines Insurance Multi-State Compliance Compact. The compact is a mechanism to adopt nationwide uniform requirements, forms and procedures that provide for the reporting, payment, collection and allocation of premium taxes for multi-state surplus lines policies, as permitted under the Non-Admitted and Reinsurance Reform Act of 2010 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

The provisions of the bill, including the amendments to taxes on multi-state surplus lines policies, will take effect upon legislative enactment of the compact by two compacting states, provided the commission will become effective for purposes of adopting rules, and creating the clearinghouse when there are a total of ten (10) compacting states and contracting states or, alternatively, when there are compacting states and contracting states representing greater than 40 percent of the surplus lines insurance premium volume based on records of the percentage of surplus lines insurance.

With regard to taxes on multi-state surplus lines policies, the bill:

- Amends KRS 91A.080 to exempt multi-state surplus lines policies from local government premium taxes; and

- Amends KRS 304.10-180 to create a surplus lines tax of 11.8% on premiums for multi-state risks. This tax is to be remitted to the Department of Insurance, which will distribute the revenues, no less than semiannually, as follows:
 - 25% of the tax collected to be retained by the Department of Insurance and treated as if collected in accordance with KRS 304.10-180(1)(a) [the existing 3% surplus lines tax];
 - 15% of the tax collected to the Department of Revenue and treated as if collected in accordance with KRS 136.392 [the existing premium surcharge]; and
 - 60% of the tax collected to the Department for Local Government, which shall distribute it to city and county governments, on a pro rata basis, in accordance with historical data of local premium tax collections in calendar years 2007, 2008 and 2009.

*Contact: Property and Casualty Division
(502) 564-6046*

House Bill 301 – Professional Licensure and Certification

This bill creates new statutes in KRS Chapter 12 related to the professional licensure and certification of members of the Armed Forces of the United States.

The bill requires any license or certificate of an active duty member of the Armed Forces to be renewed without:

- Payment of dues or fees;
- Obtaining continuing education credits; or
- Performing any other act typically required for license renewal.

The requirement for continuing education is only waived when:

- Circumstances associated with military duty prevent the licensee from obtaining training and a waiver request has been submitted to administrative agency; or
- The licensee performs the licensed occupation as part of his or her military duties.

The bill further requires an administrative agency to issue a temporary or regular license or certificate to the spouse of an active duty member of the Armed Forces within thirty (30) days if the spouse:

- Applies for the license; and
- Meets the statutory requirements for the license.

An application for a temporary or regular license must include:

- Proof that the applicant is married to an active duty member of the Armed Forces;
- Proof that the applicant holds a valid license or certificate for the profession issued by another state;
- Proof that the applicant's spouse is assigned to a duty station in this state and that the applicant is also assigned to a duty station in this state pursuant to the spouse's official active duty military orders; and
- An application fee in an amount that is no more than is necessary to offset the cost of issuing the temporary or regular license.

Any temporary license issued will expire six (6) months after the date of issuance and is not renewable.

Contact: *Agent Licensing Division*
 (502) 564-6004

House Bill 309 – Life Insurance Beneficiaries

This bill creates a new statute in KRS Chapter 304, Subtitle 12, to provide standards for the use of a retained asset account in the settlement of proceeds payable under a life insurance policy.

The bill requires an insurer to provide the following disclosures to the beneficiary prior to the distribution of proceeds under a life insurance policy:

- Notice of whether the insurer is using a retained asset account as the mode of settlement;
- Notice of the beneficiary's right to receive a lump-sum payment of the proceeds; and
- A complete listing and clear explanation of all life insurance proceeds payment options available to the beneficiary, written in plain language and printed in bold in no smaller than twelve (12) point font.

If an insurer uses a retained asset account, the complete listing and clear explanation of payment options shall include the following:

- The recommendation to consult a tax, investment or other financial advisor regarding tax liability and investment options;

- The initial interest rate, the circumstances and time frames under which interest rates may change, and any dividends and other gains that may be paid or distributed to the account holder;
- The custodian of the funds or assets of the account;
- The coverage guaranteed by the Federal Deposit Insurance Corporation (FDIC), if any, and the amount of the coverage;
- The limitations, if any, on the number or amount of withdrawals or transfers of funds from the account, including any minimum or maximum withdrawal amounts for payment of life insurance proceeds;
- The delays, if any, that the account holder may encounter in completing authorized transactions and the anticipated duration of such delays;
- The services provided for a fee, including a list of the fees and the method of their calculation;
- The nature and frequency of statements of account;
- The payment of some or all of the life insurance proceeds may be by the delivery of checks, drafts, or other instruments to access the available funds;
- The entire life insurance proceeds are available to the account holder by the use of one (1) check, draft, or other instrument;
- The insurer or a related party may derive income, in addition to any fees charged on the account, from the total gains received on the investment of the balance of funds in the account;
- The telephone number, address, and other contact information, including a Web site address, to obtain additional information regarding the account; and
- The following statement, "FOR FURTHER INFORMATION, PLEASE CONTACT YOUR STATE DEPARTMENT OF INSURANCE."

All marketing materials, disclosure statements and supplemental contract forms utilized in connection with retained asset accounts shall be filed with the Department of Insurance prior to their use.

Further, insurers are required to report the following to the Department on an annual basis:

- The number and dollar amount of retained asset accounts:
 - In force at the beginning of the year;
 - Issued or added during the year;
 - Closed or withdrawn during the year;
 - In force at the end of the year; and
 - That are transferred annually pursuant to KRS Chapter 393;
- The dollar amount of investment earnings or interest credited to retained asset accounts during the year;
- The dollar amount of fees and other charges assessed during the year;
- A narrative description of how the retained asset accounts are structured. The description shall include:
 - All of the interest rates paid to retained asset account holders during the reporting year, as well as the number of times changes were made to interest rates during the reporting year;
 - A list of all applicable fees charged by the reporting entity directly or indirectly associated with the retained asset accounts; and
 - Whether the retained asset accounts were the default method for satisfying life insurance claims;
- The number and dollar amount of retained asset accounts in force at the end of the current year as compared to the prior year segregated by the following ages of the outstanding retained asset accounts:
 - Zero (0) to twelve (12) months;
 - Thirteen (13) to twenty-four (24) months;
 - Twenty-five (25) to thirty-six (36) months;
 - Thirty-seven (37) to forty-eight (48) months;
 - Forty-nine (49) to sixty (60) months; and
 - Greater than sixty (60) months;
- The identity of any entity or financial institution that administers retained asset accounts on behalf of the insurer; and
- Any other information relating to retained asset accounts as requested or required by the Commissioner.

Finally, the bill requires an insurer to immediately return any remaining balance in a retained asset account to the beneficiary when the account becomes inactive. An inactive account is defined as an account in which funds are not withdrawn or no affirmative directive has been provided to the insurer by the beneficiary during any continuous three (3) year period.

*Contact: Health and Life Division
(502) 564-6088*

Additional Legislation of Interest

House Bill 255 – Health Insurance Tax Exclusion

This bill amends KRS 141.010 related to state income taxes to allow an exclusion from adjusted gross income for health insurance premiums that are deductible pursuant to the Affordable Care Act.

Contact: *Department of Revenue*

House Bill 382 – Consumer Protection

This bill creates a new statute in KRS Chapter 367 to prohibit the solicitation of a person involved in a motor vehicle accident within the first thirty (30) days following the accident. The penalties for violations of this law include:

- Being found guilty of a Class A misdemeanor;
- Sanctioning by the licensing or regulatory authority;
- Voiding of any charges owed by the individual involved in the accident for services rendered by the person violating this law; and
- Forfeiting of any money paid by or on behalf of a victim of the accident for services rendered by the person violating this law.

The bill excludes from the definition of “solicit”:

- Advertising directed to the public;
- Communications by fire, police, or emergency medical personnel dispatched to a motor vehicle accident; and
- Communications by an insurer, agent or adjuster.

Contact: *Office of the Attorney General*

 /s/ Sharon P. Clark
Sharon P. Clark
Commissioner
Kentucky Department of Insurance

 April 29, 2011
Date