

COMMONWEALTH OF KENTUCKY
DEPARTMENT OF INSURANCE
Frankfort, Kentucky

BULLETIN 2014-02

INSURANCE LEGISLATION ADOPTED BY THE
2014 KENTUCKY GENERAL ASSEMBLY (REGULAR SESSION)

May 27, 2014

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 2014 ACTS OF THE KENTUCKY GENERAL ASSEMBLY ARE PUBLISHED IN THE SUMMER OF 2014. UNLESS OTHERWISE NOTED, THE EFFECTIVE DATE OF THE LEGISLATION IS JULY 15, 2014.

(Bills as enacted are available on the LRC website at www.lrc.ky.gov/record/14rs/record.htm)

SB 118 – Refills of Prescription Eye Drops

This bill creates a new statute in KRS 304, Subtitle 17A, and KRS 304, Subtitle 17C to require health benefit plans and limited health service benefit plans to provide coverage for a refill of prescription eye drops if:

- The health benefit plan provides coverage for prescription eye drops;
- The refill is requested by the insured;
- The prescribing practitioner indicates on the original prescription that additional quantities are needed; and
- The refill requested by the insured does not exceed the number of quantities needed.

The bill further limits coverage to refills as follows:

- For a 30-day supply, between 25 and 30 days from the later of:
 - the original date the prescription was distributed to the insured; or
 - the date the most recent refill was distributed to the insured.
- For a 90-day supply, between 80 and 90 days from the later of:
 - the original date the prescription was distributed to the insured; or
 - the date the most recent refill was distributed to the insured.

The bill also requires health benefit plans and limited health service benefit plans that provide coverage for prescription eye drops to provide coverage for one additional bottle of prescription eye drops every three months when:

- The additional bottle is requested by the insured or the prescribing practitioner at the time the original prescription is distributed to the insured; and
- The prescribing practitioner indicates on the original prescription that the additional bottle is needed by the insured for use in a day care or school.

The provisions of this bill take effect on January 1, 2015.

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

HB 126 – Own Risk Solvency Assessment; Reserves for Non-Profit Health Service Corporation; Cost-Sharing Parity for Anti-Cancer Medications

Own Risk Solvency Assessment

This bill creates new statutes within KRS 304, Subtitle 3, to adopt the National Association of Insurance Commissioners Own Risk Solvency Assessment model.

The bill requires certain insurers domiciled in Kentucky to:

- Maintain a risk management framework to assist with identifying, assessing, monitoring, managing and report on its material and relevant risks;
- Conduct an Own Risk Solvency Assessment (ORSA) in accordance with the ORSA Guidance Manual on an annual basis and when there are significant changes to the risk profile of the insurer or the insurance group of which the insurer is a member; and
- Submit an ORSA Summary Report to the Commissioner annually and upon the Commissioner's request.

Domestic insurers are exempt from these requirements if:

- The insurer has annual direct written and unaffiliated assumed premium less than \$500,000,000, including international direct and assumed premium, but excluding premiums reinsured with the Federal Crop Insurance Corporation or the Federal Flood Program; and
- The insurance group of which the insurer is a member has annual direct written and unaffiliated assumed premium less than \$1,000,000,000, including

international direct and assumed premium, but excluding premiums reinsured with the Federal Crop Insurance Corporation or the Federal Flood Program.

Notwithstanding the qualifications for an exemption, the Commissioner may require that an insurer comply with these requirements based on:

- Unique circumstances including, but not limited to, the type and volume of business written, ownership and organizational structure, federal agency requests, and international supervisor requests;
- Risk-based capital for a company action level;
- A determination that the insurer meets one or more of the standards of an insurer deemed to be in hazardous financial condition; or
- A determination that the insurer exhibits qualities of a troubled insurer.

The bill specifically treats as confidential the ORSA Summary Report and other information disclosed to the Commissioner in compliance with these requirements.

These provisions are effective on January 1, 2015.

*Contact: Financial Standards & Examination Division
(502) 564-6082*

Reserves for Non-Profit Health Service Corporation

Section 10 of the bill amends KRS 304.32-130 to remove the restriction on reserve levels of non-profit health service corporations.

*Contact: Financial Standards & Examination Division
(502) 564-6082*

Cost-Sharing Parity for Anti-Cancer Medications

Section 11 of this bill creates a new statute within KRS 304, Subtitle 17A to prohibit insurers from including in a health benefit plan a higher copayment, coinsurance, or deductible for patient administered anti-cancer medications than it requires for injected or intravenously administered anti-cancer medications.

The bill further prohibits insurers from meeting these parity requirements by:

- Increasing the copayment, coinsurance, or deductible required for injected or intravenously administered anti-cancer medications; or
- Reclassifying benefits with respect to anti-cancer medications.

An insurer shall be deemed in compliance with this bill if the cost-sharing does not exceed \$100 per prescription for a thirty (30) day period.

The provisions of this section apply to high deductible health plans used in conjunction with a health savings account only after the insured's deductible has been satisfied.

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

HB 170 – Local Government Premium Tax

Section 3 of this bill amends KRS 91A.080 to exempt from the local government premium tax any premium paid by non-profit self-insurance groups or self-insurance entities whose membership consists of cities, counties, charter county governments, urban-county governments, consolidated local governments, unified local governments, school districts, or any other political subdivisions of the Commonwealth.

*Contact: Consumer Protection Division
(502) 564-6034*

HB 218 – Motor Vehicle Insurance

This bill amends KRS 304.39-117 related to proof of motor vehicle insurance to allow either the insurance card or the electronic database to be evidence to a peace officer of the insured status of a vehicle.

The bill also requires an owner who has entered into an insurance contract on a newly acquired motor vehicle or changed insurance carriers on an existing motor vehicle to keep an insurance card, either paper or electronic, in his or her motor vehicle for forty-five (45) days.

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

HB 357 – Self-Service Storage Space Insurance

This bill amends KRS 304.9-230 to create a limited line of authority for an agent license for self-service storage space.

New statutes within KRS 304, Subtitle 9 are created to allow an operator of a self-service storage facility to offer and disseminate insurance for personal property located within a leased space at a self-service storage facility. The operator is not required to be

licensed as an agent if the insurance is offered and disseminated under the control of a limited lines self-service storage space insurance producer.

The limited lines self-service storage space insurance producer can be:

- A licensed managing general agent;
- A licensed agent; or
- A limited lines self-service storage space insurance agent.

The limited lines self-service storage space insurance producer must comply with the following requirements:

- Ensure that the information distributed by the self-service storage facility operator to customers clearly identifies the insurance producer's name and contact information;
- Maintain a register of each facility that offers self-service storage space insurance on the insurance producer's behalf that includes the following:
 - The name, address, contact information, and FEIN of the operator of the facility; and
 - The name, address, and contact information of any person employed by the operator who directs or controls the operation of the self-service storage facility;
- Update the register at least annually and provide it to the Commissioner upon request;
- Designate one of its employees as a licensed individual responsible for compliance with these requirements; and
- Require each employee of the operator whose duties include offering and disseminating insurance to receive training that shall include, at a minimum:
 - Instructions on the type of insurance offered;
 - Ethical sales practices; and
 - Required disclosures to customers.

The following consumer protection disclosures must be made in writing prior to the sale of self-service storage space insurance:

- A clear and concise description of the material terms and conditions of the coverage, including a description of exclusions;
- A description of the process for filing a claim and a toll free telephone number for reporting a claim;
- A statement that the coverage offered by the self-service storage space insurance rental agreement may be a duplication of coverage already provided by an occupant's other source of property coverage;

- A statement that if insurance is required as a condition of an operator's rental agreement with an occupant, the requirement may be satisfied by the customer's:
 - Purchase of self-service storage space insurance that is offered or disseminated by the self-storage facility; or
 - Presentation to the self-storage facility of evidence of other applicable insurance coverage;
- The name and address of the underwriting insurer;
- A separate itemization of all costs for the self-service storage space insurance;
- Confirmation that the insurer underwriting coverage is authorized to transact insurance in Kentucky; and
- A statement that the self-service storage space insurance is primary coverage over any other coverage, which may be made available to the occupant, covering the same loss.

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

HB 375 – Dual Status for Lloyds of London

This bill amends KRS 304.3-070 to expressly specify that large underwriting associations with diverse members, incorporated and unincorporated, may be licensed to transact business in Kentucky. It further provides that only underwriting associations with at least \$250,000,000 in capital and surplus and \$250,000,000 in a central fund will qualify.

The bill also amends KRS 304.10-070 to provide that an underwriting association may also qualify separately as an eligible surplus lines carrier if the member syndicates providing surplus lines coverage are listed on the quarterly listing of alien insurers maintained by the National Association of Insurance Commissioners.

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

Financial Standards & Examination Division
 (502) 564-6082

HB 414 – Life Insurance

HB 414, as enacted, includes two main provisions: payment for long-term care services from settled life insurance policies and treatment of unclaimed life insurance benefits.

Payment for Long-Term Care Services

Section 1 allows the owner of a life insurance policy with a face amount of \$10,000 or more to enter into a life settlement contract, with the proceeds being used to pay directly for long-term care services. Any funds from the settled policy must be held in an irrevocable account for the benefit of the recipient. Further, the greater of (1) 5% of the face amount of the policy (up to \$7,500); or (2) \$5,000 may be reserved and payable to the owner's estate or the beneficiary of the account for final burial expenses of the insured. Any remaining funds in the irrevocable account must be paid to the owner's estate or the beneficiary of the account.

The bill includes the following consumer protections:

- Specific financial responsibility requirements (surety bond or errors and omissions insurance) for any life settlement provider entering into contracts under these provisions;
- Prior approval by the Department of Insurance of the life settlement contract form;
- Filing with the Department of Insurance for advertising and marketing materials used by a life settlement provider; and
- Periodic market conduct examinations of life settlement providers.

Finally, because life insurance policies are considered assets for Medicaid eligibility determinations, the bill recognizes there are methods to exclude life insurance policies other than the life settlement option permitted in this section.

Section 2 creates a new statute within KRS 205 (related to Medicaid) to prohibit the proceeds of a life settlement contract entered into in accordance with Section 1 from being considered a resource or asset in determining Medicaid eligibility. This section further prohibits Medicaid funds from being used to pay for long-term care until the money in the irrevocable account (with the exception of the money reserved for final expenses) is exhausted.

Unclaimed Life Insurance Benefits

These provisions are based on the model law by the National Council of Life Insurers (NCOIL). Kentucky was the first state to put the model into effect.

Currently, KRS 304.15-420 requires insurers to compare their in-force life insurance policies with the U.S. Social Security's Death Master File to determine whether benefits are payable. To address insurer's concerns with the cost associated with the comparison; this bill amends the search requirements to: (1) allow for semi-annual

searches rather than quarterly searches; and (2) allow for a search of the Death Master File updates after the insurer has completed one comparison of the entire Death Master File.

Additionally, the bill addresses the following implementation concerns:

- Permits an insurer to submit unclaimed life insurance benefits to the State Treasurer on its next unclaimed property report rather than immediately upon notification to the State Treasurer on expiration of the statutory time period for escheat;
- Clarifies that a violation of the provisions of this section constitutes an unfair trade practice only if the failure to meet the requirements is frequent enough to be considered a general business practice;
- Clarifies that an insurer shall not be subject to penalties if it is making a good-faith effort to comply with the requirements of this section; and
- Allows for a one-year phase-in upon an insurer's demonstration of hardship to the Commissioner.

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

HB 432 – Local Government Premium Taxes

This bill amends KRS 91A.080 to exempt from local government premium tax any premiums paid to an insurance company or surplus lines broker by non-profit self-insurance groups whose membership consists of school districts.

Contact: *Consumer Protection Division*
 (502) 564-6034

Additional Legislation of Interest

SB 29 – Acupuncture

This bill amends KRS 311.671 to 311.686 to change acupuncture from a certified to a licensed profession.

SB 41 – Physician Assistants

This bill amends KRS 311.856 to require a supervising physician to review and countersign at least ten percent (10%) of a physician assistant's overall medical notes every thirty (30) days to ensure quality of care. A countersignature is not required prior to orders being executed.

SB 59 – Motor carrier transportation contracts

This bill creates a new section of KRS Chapter 281 to establish that indemnification clauses and provisions that require a motor carrier to procure liability insurance covering the acts or omissions of the promisee in motor carrier transportation contracts are void and unenforceable. This law does not apply to the Uniform Intermodal Interchange and Facilities Access Agreement.

SB 61 – Licensure of fee-based pastoral counselors

This bill amends various statutes to change pastoral counselors from a certified to a licensed profession.

SB 105 – Newspaper Carriers

This bill amends KRS 342.640 to remove from the listing of those considered to be employees for workers' compensation purposes people selling or distributing newspapers on the street or to customers at their homes or places of business. Previously, the law considered newspaper carriers to be employees of independent news agencies.

HB 5 – Safety and security of personal information held by public agencies

This bill creates new statutes in KRS Chapter 61 to require all agencies including state, city, and public school entities that maintain or possess personal information to implement procedures to safeguard against security breaches. This law takes effect January 1, 2015.

HB 78 – Trusts and estates

This bill creates KRS Chapter 386B to enact the Kentucky Uniform Trust Code.

HB 90 – Operation of a motor vehicle by persons under the age of 18

This bill amends KRS 24A.175 to prohibit a court from adjudicating a traffic violation involving a defendant under the age of eighteen (18) unless the adult that assumed liability of the minor is present. This requirement does not apply to emancipated minors.

The bill also amends KRS 189.999 to prohibit the prepayment of traffic violations by persons under the age of 18.

HB 133 – Recreational Vehicles

This bill establishes the rights and duties of recreational vehicle dealers. Of note are the following sections:

- Section 15 amends the definition of “motor vehicle” in KRS 190.010 to exclude recreational vehicles and creates within that statute the following definition of recreational vehicle:

“Recreational vehicle” means a vehicle that:

- (a) Is primarily designed as temporary living quarters for noncommercial recreation or camping use;
- (b) Has its own motive power or is towed by another vehicle;
- (c) Is regulated by the National Highway Traffic Safety Administration as a vehicle; and
- (d) Does not require a special highway use permit.

- Section 17 amends KRS 190.033 to require the same insurance or indemnifying bond for a new recreational vehicle dealer as is required of a currently licensed motor vehicle dealer. The required limits are \$100,000 for bodily injury for any one person/\$300,000 for bodily injury in any one accident and \$50,000 property damage.
- Section 20 amends KRS 190.062 to require parties with recreational vehicle franchise issues to submit disputes between the new recreational vehicle dealer and warrantor to mediation before a civil action may be filed. The mediation process tolls the civil statute of limitations. Mediation costs will be split by the parties.
- Section 21 amends KRS 190.090 to state that a recreational vehicle shall be subject to the same requirements as a motor vehicle, in the same manner as a moped is currently required to meet.

HB 169 – Motor vehicle dealers

With regard to insurance, this bill amends KRS 193.033 to change the limits on the required insurance for a motor vehicle dealer’s license, motor vehicle auction dealer’s license, or wholesaler’s license and for commercial general liability for automotive

recycling dealers to \$250,000 for bodily injury or death of any one (1) person, \$500,000 for bodily injury or death in any one (1) accident, and \$250,000 property damage.

A dealer that has a certificate of authority from the Department of Insurance demonstrating proof of self-insurance is exempt from this requirement.

HB 232 – Security Standards

This bill creates new statutes in KRS Chapter 365 to require persons or businesses that hold personally identifiable information to disclose any breach of the security of the system. The bill sets forth specific notification procedures. Persons or businesses that are subject to the privacy provisions within Gramm-Leach-Bliley or the Health Insurance Portability and Accountability Act are not subject to these provisions of this bill.

HB 235 – Executive Branch Budget (Prompt Payment of Claims)

Unlike previous years, the Executive Branch Budget Bill did not amend KRS 304.17A-730 related to interest for claims paid outside the prompt payment timeframes. As such, the three-tiered interest payment, as required by KRS 304.17A-730 will be in effect beginning July 1, 2014.

HB 260 – All-terrain vehicles

This bill amends KRS 189.515 to permit an ATV operator who is sixteen (16) or older, to cross a public roadway with posted speed limit of 45 mph or less without protective headgear in order to get from one ATV trail to another.

HB 316 – Insurance for tangible personal property to secure a loan by a consumer loan company

This bill amends KRS 286.4-560 to establish requirements when a consumer loan company offers insurance on tangible personal property offered as security (collateral) for a loan as a part of the loan process, in loans over \$300. The bill requires the loan company to use a licensed insurance agent, give full disclosure to the consumer as to the coverages and costs of the insurance, and provides that the cost of the insurance may be excluded from the amount of the finance charge if the insurer waives its subrogation rights against the borrower. In addition, the bill allows a consumer loan licensee to request and secure credit property insurance on the tangible personal property, provided that the cost is not charged to the borrower unless the insurer agrees that it will not exercise its right to subrogation against the borrower under the licensee's policy. Any disclosure relating to insurance written in connection with a loan transaction must be delivered to the borrower within thirty (30) days of the date of the loan.

HB 369 – Statute of limitations for written contracts

This bill amends KRS 413.160 to make the statute of limitations for written contracts executed after July 15, 2014, ten (10) years.

HB 527 – Community Mental Health Centers

This bill amends KRS 310.410 to allow community mental health centers to provide primary care services. Primary care services provided by a licensed physician, advanced practice registered nurse, or physician assistant in accordance with this statute are reimbursable at the same rates established by the Department for Medicaid Services for primary care centers.

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

May 27, 2014
Date