

Exclusionary Riders

**COMMONWEALTH OF KENTUCKY
ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
OFFICE OF INSURANCE**

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 Office of Insurance
Advisory Opinion 2005-06

**TO: ALL INSURERS AUTHORIZED TO TRANSACT BUSINESS IN KENTUCKY
THE INDEPENDENT INSURANCE AGENTS OF KENTUCKY, INC.
THE PROFESSIONAL INSURANCE AGENTS OF KENTUCKY
ALL AGENTS LICENSED TO TRANSACT BUSINESS IN KENTUCKY**

**FROM: R. GLENN JENNINGS, EXECUTIVE DIRECTOR
KENTUCKY OFFICE OF INSURANCE**

RE: EXCLUSIONARY RIDERS

Exclusionary riders (or exclusion riders) are commonly defined as “[a]n attachment to a health insurance policy that excludes or limits coverage for a specific health impairment.” LOMA’s Glossary of Insurance Terms, Third Edition (1997). In accordance with direction received from the Centers for Medicare and Medicaid Services (CMS) before 2001, Kentucky did not allow the offering of exclusionary riders in the individual market.

It was the position of the Kentucky Office of Insurance that exclusionary riders would violate the prohibition against pre-existing condition exclusions for eligible individuals in accordance with KRS 304.17A-230. The prohibition against exclusionary riders in Kentucky’s individual market is no longer required because of the creation of the Kentucky Access Program in 2001. Eligible individuals (or “HIPAA eligibles”) are guaranteed coverage with Kentucky Access without the risk of imposition of pre-existing condition exclusions or exclusionary riders.

The question remains whether Kentucky law prohibits insurers from issuing exclusionary riders to non-eligible individuals. Non-eligible individuals are eligible for coverage under Kentucky Access only if they are “rejected by at least one (1) insurer for coverage of a health benefit plan that is substantially similar to Kentucky Access coverage” or have been “offered coverage substantially similar to Kentucky Access coverage at a premium rate greater than the Kentucky Access premium.” KRS 304.17B-015(2)(a) and (b).

Accordingly, the non-eligible individual would meet the rejection criterion under KRS 304.17B-015(2)(a), if he applies for full coverage with an insurer and is rejected. The full coverage insurance applied for would be substantially similar to the coverage offered by Kentucky Access. The insurer, at this point, may offer the individual coverage with an exclusionary rider. The non-eligible individual can either accept the rejection for full coverage and then apply to Kentucky Access or elsewhere for coverage without an exclusionary rider, or accept the insurer's offer of coverage with an exclusionary rider. Therefore, to keep in line with the statute, the Kentucky Office of Insurance would require insurers to issue a rejection to the individual for full coverage under the health benefit plan, notify the individual of his or her right to obtain full coverage under Kentucky Access due to the rejection, and notify the individual of the right to accept coverage from the insurer with an exclusionary rider. Simply put, an insurer must first reject offering full coverage to a non-eligible individual before offering coverage with an exclusionary rider, in order to protect the non-eligible individual's rights to coverage under Kentucky Access.

Conclusion

Insurers can offer exclusionary riders in the individual market to HIPAA eligibles and non-eligibles and not be in violation of federal HIPAA law. Before offering coverage with an exclusionary rider, however, an insurer must issue a rejection of full coverage to a non-eligible individual, so that the non-eligible individual may obtain coverage through Kentucky Access.

The Kentucky Office of Insurance would require full disclosure on the part of insurers that the plan includes an exclusionary rider and that coverage, without exclusionary riders, is available through Kentucky Access, in order to protect the rights of HIPAA eligible and non-eligible individuals. The Office is in the process of issuing guidelines and promulgating a regulation on this matter that will be forthcoming in the near future.

Any questions can be addressed to Carrie Banahan, Director, Health Insurance Policy and Managed Care Division, at (502) 564-6088 or Nyra Shields, Legal Division, at (502) 564-6032.

/s/ R. Glenn Jennings

R. Glenn Jennings, Executive Director
Kentucky Office of Insurance

September 22, 2005

Date