



**COMMONWEALTH OF KENTUCKY
OFFICE OF INSURANCE
FRANKFORT, KENTUCKY**

**ADVISORY OPINION
2012-05**

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.

TO: ALL HEALTH INSURANCE COMPANIES AUTHORIZED TO TRANSACT
BUSINESS IN THE COMMONWEALTH OF KENTUCKY

FROM: SHARON P. CLARK, COMMISSIONER KENTUCKY DEPARTMENT OF
INSURANCE

RE: CO-PAY PARITY

DATE: JULY 26, 2012

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On June 8, 2011, KRS 304.17A-177 went into effect. That statute established certain limitations on the amount of copayment or coinsurance that can be charged for services rendered by occupational or physical therapists. Following the enactment of KRS 304.17A-177, the Department has received complaints and inquiries regarding the extent of the statutorily-prescribed limitations and the application thereof. Specifically, there is a question as to whether the copayment/coinsurance limitation only applies to services rendered by occupational or physical therapists during an *office visits*, or whether it applies to all services rendered by occupational or physical therapists, regardless of the nature of the services rendered.

KRS 304.17A-177(1) states,

[A]n insurer shall not impose a copayment or coinsurance amount charged to the insured for services rendered for each date of service by an occupational therapist licensed under KRS Chapter 319A or a physical therapist licensed under KRS Chapter 327 that is greater than the copayment or coinsurance amount charged to the insured for the services of a physician or an osteopath licensed under KRS Chapter 311 for an office visit.

The inquiries regarding this statute stem from the reference to an “office visit” at the end of section (1). Insurers have interpreted this reference in such a way as to limit the application of the statute only to “office visits” where an occupational or physical therapist evaluates or re-evaluates the insured. Under this interpretation, copay parity exists only for “office visits” and all other services provided by occupational or physical therapist fall outside the purview of KRS 304.17A.177, leaving insurers free to establish whatever copay is deemed appropriate.

It is a well-settled principal of statutory interpretation that words must be assigned their plain meaning and should not be construed in such a way as to add restrictive language where none exists. *See, Bailey v. Reeves*, 662 S.W.2d 832 (Ky. 1984). By interpreting KRS 304.17A-177(1) as set forth above, insurers have greatly restricted the application of the statute. The services to which the statute applies are: “services rendered for *each date of service* by an occupational therapist licensed under KRS Chapter 319A or a physical therapist licensed under KRS Chapter 327.” (Emphasis added). There is no language whatsoever which limits application of the statute only to *office visits* where an occupational or physical therapist evaluates or re-evaluates the insured. Nor is there any language which suggests that copay parity is only meant to exist for corresponding services, i.e. copays for *office visits* with occupational or physical therapists cannot exceed copays for office visits with physicians or osteopaths. The reference in the statute to an “office visit” is only meant to give context to the maximum amount that insurers are permitted to charge as a copayment. Per the statute, insurers shall not impose a copayment or coinsurance that exceeds the copayment or coinsurance amount charged by physicians or osteopaths for an office visit. That language establishes a cap on the amount of the copayment or coinsurance but does not modify or restrict the scope of occupational or physical therapy services covered by the statute.

Based on the above, the Department interprets KRS 304.17A-177(1) to apply to all services rendered by occupational or physical therapists, regardless of the nature of those services or the environment in which they are offered.

Please contact the Department's Health and Life Division at (502) 564-6088 with questions about the Advisory Opinion.

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