

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 the Department or the reader.

Kentucky Department of Insurance

Advisory Opinion 99-2

In Re: Use of Fee Schedules for Payment of Medical Expenses in

Basic and Added Reparation Benefits Coverage

It is the Department's understanding that some carriers providing coverage under the Motor Vehicle Reparations Act, KRS 304.39 ["reparation obligors"], are using various computer programs to identify usual and customary medical charges for certain services, in essence creating a fee schedule. It is the Department's opinion that these fee schedules are not directly prohibited under KRS 304.39.

Recently-enacted KRS 304.39-245 allows a reparation obligor to request or negotiate a reduction or modification of charges from a provider. It prohibits a provider who agrees to such a reduction or modification from billing the secured person for the amount of such reduction or modification.

However, the provisions of KRS 304.39-020(5)(a) remain unchanged. That statute creates the presumption that any medical bill submitted is reasonable. The burden remains on the reparation obligor to establish both that the original fee is not reasonable, and the amount the reparation obligor proposes in payment is reasonable.

The Department strongly believes secured persons must not be unjustly affected by any dispute between reparation obligors and providers. The reparation obligor must protect the secured person during any period of dispute to avoid any detrimental effects the insured/claimant may experience, which may include collection efforts by the provider, adverse credit references or denial of care. If during the period of dispute the insured/claimant might experience any such detrimental effects, it may become necessary for the reparation obligor to pay the full amount pending resolution of the dispute.

Questions regarding this Advisory Opinion may be directed to Lawrence W. Cook, Counsel for the Department, at (502)-564-6032.

George Nichols III

Commissioner

Date