GUARANTEED ISSUE AND PRE-EXISTING CONDITIONS UNDER KRS 304.17A-200(8)

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 2006-03

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: JULIE MIX McPEAK, EXECUTIVE DIRECTOR
               KENTUCKY OFFICE OF INSURANCE

RE: GUARANTEED ISSUE AND PRE-EXISTING CONDITIONS UNDER KRS 304.17A-200(8)

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The Kentucky Office of Insurance (Office) finds it necessary to clarify the circumstances under which an insurer may issue a health benefit plan as an individual policy to individual employees. To begin, KRS 304.17A-200(8) stipulates as follows:

A health benefit plan issued as an individual policy to individual
employees or their dependents through or with the permission of a
small employer shall be issued on a guaranteed-issue basis to all
 full-time employees and shall comply with the pre-existing condition provisions of KRS 304.17A-220.

In other words, individual policies issued to individual employees of a small employer must be issued on a guaranteed basis if issued "through or with the permission of a small employer."

Hence, "through or with the permission of a small employer" is established either by written agreement between the small employer and insurer or by the actions of the small employer and insurer. Specifically, any number of the following circumstances might be indicators that the insurer issued individual policies to individual employees with the permission of the small employer. (This list is not all inclusive.)

1. A small employer changes from providing small group coverage to providing insurance for employees

through individual policies, once the group coverage expires;

2. The insurer's agent contacts the small employer to conduct business;

3. Group and individual quotes are requested and given;

4. Insurer coordinates administration of policy with employer;

5. A small employer pays all or a percentage of the premiums for its employees to the insurer either directly or indirectly through a reimbursement arrangement;

6. Payroll deduction of employees' premium occurs;

7. All employees are with the same individual carrier or the same agent issues individual policies to all or most of the employees;

8. The same agent offers different individual policies from different companies;

9. The employer gives specified agents or companies exclusive access to employees; or

10. Solicitation, negotiation, and sale are done during work hours at the invitation of employer or on employer's time.

As previously stated, once permission by the small employer is established, an insurer may issue health benefit plans as individual policies to individual employees or their dependents. The insurer, however, must comply with the two (2) additional requirements provided under KRS 304.17A-200(8). First, the insurer must issue the individual policies on a guaranteed-issue basis to all full-time employees and their dependents. And, second, the insurer must make certain that the individual policies comply with the pre-existing condition provisions of KRS 304.17A-220.

In summary, if permission from the small employer is evident, but individual policies are not issued to employees and dependents on a guaranteed-issue basis and/or the policies do not comply with the pre-existing condition provisions of KRS 304.17A-220, the insurer would be in violation of KRS 304.17A-200(8).

Any questions should be addressed to Jill Mitchell, Branch Manager, at (502) 564-6088.

 /s/ Julie Mix McPeak

Julie Mix McPeak, Executive Director
Kentucky Office of Insurance

 August 24, 2006

Date