

1 Public Protection Cabinet

2 Department of Insurance

3 Division of Health and Life Insurance and Manager Care

4 (Amendment)

5 806 KAR 17:085. Minimum standards for short-term nursing home insurance policies.

6 RELATES TO: KRS 304.14-650-304.14-675

7 STATUTORY AUTHORITY: KRS 304.2-110(1), 304.14-660

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the

9 Commissioner [~~Executive Director~~] of Insurance to promulgate administrative regulations

10 necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as

11 defined in as defined in KRS 304.1-010 through KRS 304.99-154 [~~KRS 304.1-010~~]. KRS

12 304.14-660 authorizes [~~requires~~] the Commissioner [~~Executive Director~~] of Insurance to

13 promulgate administrative regulations to establish the [~~establishing~~] requirements for short-term

14 nursing home insurance policies. The purpose of this [~~This~~] administrative regulation is to

15 establish the [~~establishes~~] minimum standards for short-term nursing home insurance policies.

16 Section 1. Definitions. As used in this administrative regulation: (1) "Applicant" means:

17 (a) For an individual short-term nursing home insurance policy, the person who seeks to

18 contract for benefits; and

1 (b) For a group short-term nursing home insurance policy, the proposed certificate holder.

2 (2) "Attained age rating" means a schedule of premiums starting from the issue age that  
3 ~~[which]~~ may increase ~~[increases]~~ at least one (1) percent per year prior to age fifty (50), and at  
4 least three (3) percent per year beyond age fifty (50).

5 (3) "Benefit trigger" means a contractual provision in the insureds policy conditioning the  
6 payment of benefits on a determination of the insureds ability to perform activities of daily living  
7 and on cognitive impairment.

8 (4) ~~[(3)]~~ "Certificate" means any certificate issued under a group short-term nursing home  
9 insurance policy, which has been delivered or issued for delivery in Kentucky.

10 (5) ~~[(4)]~~ "Claim" means a request for payment of benefits under an in-force policy  
11 regardless of whether the benefit claimed is covered under the policy or any terms or conditions  
12 of the policy have been met.

13 (6) ~~[(5)]~~ "Commissioner" is defined by KRS 304.1-050.

14 (7) ~~[(6)]~~ "Compensation" means pecuniary or nonpecuniary remuneration of any kind  
15 relating to the sale or renewal of short-term nursing home insurance or certificates, including  
16 bonuses, gift, prizes, awards, and finders fees.

17 (8) ~~[(7)]~~ "Elimination period" means the time that shall elapse before benefits commence  
18 under a short-term nursing home insurance policy or certificate.

19 (9) ~~[(8)]~~ "Insurer" means an entity authorized to issue short-term nursing home insurance  
20 in Kentucky.

21 (10) ~~[(9)]~~ "Maintenance or personal care services" means any care the primary purpose of  
22 which is the provision of needed assistance with any of the disabilities as a result of which the

1 individual is a chronically-ill individual (including the protection from threats to health and  
2 safety due to severe cognitive impairment).

3 (11) [~~(10)~~] "Policy" means any policy, contract, subscriber agreement, enrollment  
4 agreement, rider, or endorsement delivered or issued for delivery in Kentucky.

5 (12) [~~(11)~~] "Short-term nursing home insurance policies" is defined in KRS 304.14-650.

6 Section 2. Policy Requirements. A short-term nursing home insurance policy delivered or  
7 issued for delivery in Kentucky shall not use the terms set forth below unless the terms are  
8 defined in the policy as follows:

9 (1) "Activities of daily living" means at least bathing, continence, dressing, eating,  
10 toileting, and transferring.

11 (2) "Acute condition" means that the individual is medically unstable. The individual  
12 requires frequent monitoring by medical professionals, such as physicians and registered nurses,  
13 in order to maintain health status.

14 (3) "Adult day care" means a program for four (4) or more individuals, of social or  
15 health-related, or both, services provided during the day in a community group setting for the  
16 purpose of supporting frail, impaired elderly or other disabled adults who can benefit from care  
17 in a group setting outside the home.

18 (4) "Bathing" means washing oneself by sponge bath; or in either a tub or shower,  
19 including the task of getting into or out of the tub or shower.

20 (5) "Cognitive impairment" means a deficiency in a person's short or long-term memory,  
21 orientation as to person, place, and time, deductive or abstract reasoning, or judgement as it  
22 relates to safety awareness.

1           (6) "Continence" means the ability to maintain control of bowel and bladder function; or  
2 [if], when unable to maintain control of bowel or bladder function, the ability to perform  
3 associated personal hygiene (including caring for catheter or colostomy bag).

4           (7) "Dressing" means putting on and taking off all items of clothing and any necessary  
5 braces, fasteners, or artificial limbs.

6           (8) "Eating" means feeding oneself by getting food into the body from a receptacle (such  
7 as a plate, cup, or table) or by a feeding tube or intravenously.

8           (9) "Hands-on assistance" means physical assistance (minimal, moderate, or maximal)  
9 without which the individual would not be able to perform the activity of daily living.

10          (10) "Home health care services" means medical and nonmedical services, provided to ill,  
11 disabled or infirm persons in their residences. The services may include homemaker services,  
12 assistance with activities of daily living, and respite care services.

13          (11) "Medicare" means "The Health Insurance for the Aged Act, Title XVIII of the Social  
14 Security Amendments of 1965 as Then Constituted or Later Amended", or "Title I, Part I of PL  
15 89-97, as Enacted by the Eighty-Ninth Congress of the United States of America and popularly  
16 known as the Health Insurance for the Aged Act, as then constituted and any later amendments  
17 or substitutes thereof", or words of similar import.

18          (12) "Mental or nervous disorder" shall not be defined to include more than neurosis,  
19 psychoneurosis, psychopathy, psychosis, or mental or emotional disease or disorder.

20          (13) "Personal care" means the provision of hands-on services to assist an individual with  
21 activities of daily living.

1 (14) "Skilled nursing care", "intermediate care", "personal care", "home care",  
2 "specialized care", "assisted living" and other services shall be defined in relation to the level of  
3 skill required, the nature of the care, and the setting in which care shall be delivered.

4 (15) "Toileting" means getting to and from the toilet, getting on and off the toilet, and  
5 performing associated personal hygiene.

6 (16) "Transferring" means moving into or out of bed, chair, or wheelchair.

7 Section 3. Policy Practices and Provisions. (1) Renewability. The terms "guaranteed  
8 renewable" and "noncancellable" shall not be used in any individual short-term nursing home  
9 insurance policy without further explanatory language in accordance with the disclosure  
10 requirements of Section 5 of this administrative regulation.

11 (a) A short-term nursing home insurance policy issued to an individual shall not contain  
12 renewal provisions other than "guaranteed renewable" or "noncancellable".

13 (b) The term "guaranteed renewable" may be used only if the insured has the right to  
14 continue the short-term nursing home insurance in force by the timely payment of premiums and  
15 if the insurer has no unilateral right to make any change in any provision of the policy or rider  
16 while the insurance is in force, and cannot decline to renew, except that rates may be revised by  
17 the insurer on a class basis.

18 (c) The term "noncancellable" may be used only if the insured has the right to continue  
19 the short-term nursing home insurance in force by the timely payment of premiums during which  
20 period the insurer has no right to unilaterally make any change in any provision of the insurance  
21 or in the scheduled premium rate.

1 (d) The term "level premium" may only be used if the insurer does not have the right to  
2 change the premium.

3 (2)(a) Limitations and exclusions. A policy shall not be delivered or issued for delivery in  
4 Kentucky as a short-term nursing home insurance if the policy limits or excludes coverage by  
5 type of illness, treatment, medical condition, or accident, except as follows:

6 1. Preexisting conditions or diseases as defined in Section 5(7) through (9) of this  
7 administrative regulation;

8 2. Mental or nervous disorders, but this shall not permit exclusion or limitation of  
9 benefits on the basis of Alzheimer's disease;

10 3. Alcoholism and drug addiction;

11 4. Illness, treatment, or medical condition arising out of:

12 a. War or act of war (whether declared or undeclared);

13 b. Participation in a felony, riot, or insurrection;

14 c. Service in the armed forces or auxiliary units;

15 d. Suicide (sane or insane), attempted suicide, or intentionally self-inflicted injury; or

16 e. Aviation (this exclusion shall apply only to nonfare-paying passengers);

17 5. Treatment provided in a government facility (unless otherwise required by law),  
18 services for which benefits are available under Medicare or other governmental program (except  
19 Medicaid), any state or federal workers' compensation, employer's liability, or occupational  
20 disease law, services provided by a member of the covered person's immediate family, and  
21 services for which no charge is normally made in the absence of insurance;

1 (b) This subsection shall not prohibit exclusions and limitations by type of provider or  
2 territorial limitations.

3 (3) Continuation or conversion.

4 (a) Group short-term nursing home insurance issued in Kentucky on or after the effective  
5 date of this administrative regulation shall provide:

6 1. A covered individual with a basis for continuation or conversion of coverage without  
7 underwriting upon termination of coverage; and

8 2. A converted policy or continued coverage including benefits identical to or benefits  
9 determined by the Commissioner [~~executive director~~] to be substantially similar to or in excess  
10 of those provided under the group policy from which conversion or continued coverage is made.

11 (b) Written application for the converted policy or continued coverage shall be made and  
12 the first premium due, if any, shall be paid as directed by the insurer not later than thirty-one (31)  
13 days following notice of continuation or conversion rights under the group policy. The converted  
14 policy shall be issued effective on the day following the termination of coverage under the group  
15 policy and shall be renewable annually.

16 (4) The premium charged to an insured for short-term nursing home insurance shall not  
17 increase due to either:

18 (a) The increasing age of the insured at ages beyond sixty-five (65); or

19 (b) The duration the insured has been covered under the policy.

20 (5) Extension of benefits. Termination of short-term nursing home insurance shall be  
21 without prejudice to any benefits payable for institutionalization if the institutionalization began  
22 while the short-term nursing home insurance was in force and continues without interruption

1 after termination. The extension of benefits beyond the period the short-term nursing home  
2 insurance was in force may be limited to the duration of the benefit period, if any, or to payment  
3 of the maximum benefit and may be subject to any policy waiting period, and all other applicable  
4 provisions of the policy.

5 (6) Discontinuance and Replacement..If a group short-term policy is replaced by another  
6 group short-term policy issued to the same policyholder, the succeeding insurer shall offer  
7 coverage to all persons covered under the previous group policy on its date of termination.  
8 Coverage provided or offered to individuals by the insurer and premiums charged to persons  
9 under the new group policy shall not:

10 (a) Result in an exclusion for preexisting conditions that would have been covered under  
11 the group policy being replaced; and

12 (b) Vary or otherwise depend on the individual's health or disability status, claim  
13 experience or use of short term care services.

14 (7) Premium Changes.

15 (a) The premium charged to an insured for short-term nursing home insurance shall not  
16 increase due to either:

17 1. The increasing age of the insured at ages beyond sixty-five (65); or

18 2. The duration the insured has been covered under the policy.

19 Section 4. Unintentional Lapse. An insurer offering short-term nursing home insurance  
20 shall, as a protection against unintentional lapse, comply with the following:

21 (1) Notice before lapse or termination. An individual short-term nursing home policy or  
22 certificate shall not be issued until the insurer has received from the applicant either a written:



1 (a) Designation of at least one (1) person, in addition to the applicant, who is to receive  
2 notice of lapse or termination of the policy or certificate for nonpayment of premium; or

3 b) Waiver, dated and signed by the applicant, electing not to designate additional persons  
4 to receive notice.

5 (2) Lapse or termination for nonpayment of premium:

6 (a) An individual short-term nursing home policy or certificate shall not lapse or be  
7 terminated for nonpayment of premium unless the insurer, at least thirty (30) days before the  
8 effective date of the lapse or termination, has given notice to the insured and to those persons  
9 designated pursuant to subsection (1)(a) of this section, at the address provided by the insured for  
10 purposes of receiving notice of lapse or termination; and

11 (b) Notice shall:

12 1. Be given by first class United States mail, postage prepaid;

13 2. Not be given until thirty (30) days after a premium is due and unpaid; and

14 3. Be deemed to have been given as of five (5) days after the date of mailing.

15 (3) Reinstatement. A short-term nursing home policy shall contain a reinstatement  
16 provision as required in KRS 304.17-080.

17 Section 5. Required Information and Disclosure Provisions.

18 (1) Renewability.

19 (a) Individual short-term nursing home insurance policies shall contain a renewability  
20 provision.

21 (b) The provision shall:

22 1. Be appropriately captioned;

1           2. Appear on the first page of the policy; and

2           3. State clearly that the coverage is guaranteed renewable and that premium rates are  
3 subject to change or that the coverage is noncancellable.

4           (c) All short-term nursing home policies or certificates issued in the commonwealth of  
5 Kentucky shall state in (16) sixteen point bold type print on the front page of the policy the  
6 following statement: This is a short-term nursing home product that offers benefits for less than  
7 twelve (12) months. This is not a long-term care policy.

8           (2) Riders and endorsements.

9           (a) Except for riders or endorsements by which the insurer effectuates a request made in  
10 writing by the insured under an individual short-term nursing home insurance policy, riders or  
11 endorsements added to an individual short-term nursing home insurance policy after date of  
12 issue, reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall  
13 require signed acceptance by the individual insured.

14           (b) After the date of policy issue, a rider or endorsement which increases benefits or  
15 coverage with a concomitant increase in premium during the policy term shall be agreed to in  
16 writing signed by the insured, except if the increased benefits or coverage are required by law.

17           (c) If a separate additional premium is charged for benefits provided in connection with  
18 riders or endorsements, the premium charge shall be set forth in the policy, rider, or  
19 endorsement.

20           (3) Payment of benefits. A short-term nursing home insurance policy or certificate shall  
21 clearly define how benefits will be paid.

1 (4) Limitations. If a short-term nursing home insurance policy or certificate contains any  
2 limitations with respect to preexisting conditions, the limitations shall appear as a separate  
3 paragraph of the policy or certificate and shall be labeled as "Preexisting Condition Limitations".

4 (5) Other limitations or conditions on eligibility for benefits. A short-term nursing home  
5 insurance policy or certificate containing any limitations or conditions for eligibility including  
6 any elimination period shall be clearly defined in the policy or certificate and the paragraph shall  
7 be labeled [~~the paragraph~~] "Limitations or Conditions on Eligibility for Benefits".

8 (6) Benefit triggers. Activities of daily living and cognitive impairment shall be used to  
9 measure an insured's need for short-term nursing home care, shall be described in the policy or  
10 certificate in a separate paragraph, and shall be labeled "Eligibility for the payment of benefits."  
11 Any additional benefit triggers shall also be explained in this section. If these triggers differ for  
12 different benefits, explanation of the trigger shall accompany each benefit description. If an  
13 attending physician or other specified person must certify a certain level of functional  
14 dependency in order to be eligible for benefits, this too shall be specified.

15 ~~(7)~~ A provider of service shall be defined in relation to the services and facilities  
16 required to be available and the licensure or degree status of those providing or supervising the  
17 services. The definition may require that the provider be appropriately licensed or certified.

18 ~~(8)~~ Short-term nursing home policies or certificates shall not use a definition of  
19 preexisting condition that [which] is more restrictive than the following: "Preexisting condition  
20 means a condition for which medical services or treatment is [was] recommended by, or received  
21 from, a provider of health care services within six (6) months preceding the effective date of  
22 coverage of an insured person."

1           (9)[(8)] A short-term nursing home policy or certificate shall not exclude coverage for a  
2 loss or confinement which is the result of a preexisting condition unless that loss or confinement  
3 begins within six (6) months following the effective date of coverage of the insured person.

4           (10)[(9)] A short term nursing home policy or certificate shall not exclude or use waivers  
5 or riders of any kind to exclude, limit, or reduce coverage or benefits for specifically named or  
6 described preexisting conditions or physical conditions beyond the preexisting condition periods  
7 described in subsections (7) and (8) of this section.

8           (11)[(10)] Insurers shall offer an option to purchase [~~disclose whether or not~~] inflation  
9 protection [~~is offered~~] at a minimum of 3% compounded annually with any short-term nursing  
10 home policy or certificate.

11           (12)[(11)] Short-term nursing home policies shall contain on the front page of the policy  
12 or certificate the following statement: “Notice to buyer: This policy may not cover all of the  
13 costs associated with nursing home care incurred by the buyer during the period of coverage. The  
14 buyer is advised to review carefully all policy limitations”.

15           (13)[(12)] An elimination period shall be calculated based upon consecutive calendar  
16 days, beginning the first day eligible services are received by the individual, and ending the first  
17 day benefits are payable.

18           Section 6. Prohibition Against Post claims Underwriting. (1)(a) If an application for  
19 short-term nursing home insurance contains a question that [~~which~~] asks if [~~whether~~] the  
20 applicant has had medication prescribed by a physician, it shall also ask the applicant to list all  
21 medication that has been prescribed.

1 (b) If the medications listed in the application ~~are~~ ~~were~~ known by the insurer, or should  
2 have been known at the time of application, to be directly related to a medical condition ~~that~~ ~~[for~~  
3 ~~which]~~ coverage would otherwise be denied, then the policy or certificate shall not be rescinded  
4 for that condition.

5 (2)(a) The following language, or language substantially similar to the following, shall be  
6 set out conspicuously on the short-term nursing home insurance policy or certificate no later than  
7 when it is delivered: "Caution: The issuance of this short-term nursing home insurance (policy or  
8 certificate) is based upon your responses to the questions on your application. A copy of your  
9 (application or enrollment form) ~~[is enclosed or was retained by you when you applied]~~. If  
10 your answers, to the best of your knowledge and belief, are incorrect or untrue, the insurer may  
11 have the right to deny benefits or rescind your policy. The best time to clear up any questions is  
12 now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the  
13 insurer at this address: (insert address)."

14 (3) A copy of the completed application or enrollment form, whichever is applicable,  
15 ~~[(whichever is applicable)]~~ shall be delivered to the insured no later than when the policy or  
16 certificate is delivered unless it was retained by the applicant at the time of application.

17 Section 7. Reserve Standards. (1)(a) If short-term nursing home insurance benefits are  
18 provided through the acceleration of benefits under group or individual life policies or riders to  
19 these policies, policy reserves for these benefits shall be determined in accordance with KRS  
20 304.6-130 to 304.6-180.

21 (b) Claim reserves shall also be established if the policy or rider is in claim status.

1 (c) In the development and calculation of reserves for policies and riders subject to the  
2 requirements of this subsection, due regard shall be given to the applicable policy provisions,  
3 marketing methods, administrative procedures, and all other considerations that may ~~[which]~~  
4 have an impact on projected claim costs.

5 (d) Any applicable valuation morbidity table shall be certified as appropriate as a  
6 statutory valuation table by a member of the American Academy of Actuaries.

7 (2) If short-term nursing home benefits are provided other than as described in subsection  
8 (1) of this section, reserves shall be determined in accordance with KRS 304.6-070.

9 Section 8. Loss Ratio.

10 (1) Rate filings shall follow the filing procedures contained in 806 KAR 14:007 and 806  
11 KAR 17:070.

12 (2) Initial premium rate schedules shall be calculated using ~~[such that]~~ the present value  
13 of future projected incurred claims, without the inclusion of active life reserves, shall ~~[will]~~ not  
14 be less than the present value of future projected earned premiums times sixty (60) percent.

15 (3) Premium rate schedule increases shall be calculated using ~~[such that]~~ the sum of the  
16 accumulated value of incurred claims, without the inclusion of active life reserves, and the  
17 present value of future projected incurred claims, excluding ~~[without the inclusion of]~~ active life  
18 reserves, shall ~~[will]~~ not be less than the sum of the following:

19 (a) The accumulated value of the initial earned premiums times sixty (60) percent;

20 (b) Eighty-five (85) percent of the accumulated value of prior premium rate schedule  
21 increases on an earned basis;

1 (c) The present value of future projected initial earned premiums times sixty (60) percent;  
2 and

3 (d) Eighty-five (85) percent of the present value of future projected premiums not  
4 described in paragraph (c) of this subsection on an earned basis.

5 (4) All present and accumulated values used to determine rates shall use the maximum  
6 valuation interest rate for contract reserves as specified in 806 KAR 6:080. The actuary shall  
7 disclose as part of the actuarial memorandum required by 806 KAR 17:070, Section 3, the use of  
8 any appropriate averages.

9 Section 9. Minimum Standards for Home Health and Community Care Benefits in Short-  
10 term nursing Insurance Policies. (1) A short-term nursing home insurance policy or certificate  
11 that shall provide benefits for home health care or community care services shall not limit or  
12 exclude benefits by:

13 (a) Requiring that the insured or claimant would need care in a skilled nursing facility if  
14 home health care services are not provided;

15 (b) Requiring that the insured or claimant first or simultaneously shall receive nursing or  
16 therapeutic services, or both, in a home, community, or institutional setting before home health  
17 care services are covered;

18 (c) Limiting eligible services to services provided by registered nurses or licensed practical  
19 nurses;

20 (d) Requiring that a nurse or therapist provide services covered by the policy that may be  
21 provided by a:

1        1. Home health aide; or

2        2. Other licensed or certified home care worker acting within the worker's scope of licensure  
3 or certification;

4        (e) Excluding coverage for personal care services provided by a home health aide;

5        (f) Requiring that the provision of home health care services be at a level of certification or  
6 licensure greater than that required by the eligible service;

7        (g) Requiring that the insured or claimant have an acute condition before home health care  
8 services are covered;

9        (h) Limiting benefits to services provided by Medicare-certified agencies or providers; or

10       (i) Excluding coverage for adult day care services.

11       (2)(a) A short term nursing insurance policy or certificate that includes home health or  
12 community care services shall provide the total home health or community care coverage that is  
13 a dollar amount equivalent to at least one-half (1/2) of one (1) year of coverage available for  
14 nursing home benefits under the policy or certificate, when covered home health or community  
15 care services are received.

16       (b) The requirement identified in paragraph (a) of this subsection shall not apply to a policy  
17 or certificate issued to a resident of a continuing care retirement community.



1       (3) In determining maximum coverage under the terms of a policy or certificate, home health  
2 care coverage may be applied to the non-home health care benefits provided in the policy or  
3 certificate.

4           Section 10 [9]. Prohibition Against Preexisting Conditions and Probationary Periods in  
5 Replacement Policies or Certificates. If a short-term nursing home insurance policy or certificate  
6 replaces another short-term nursing home or long-term care policy or certificate, the replacing  
7 insurer shall waive any time periods applicable to preexisting conditions and probationary  
8 periods in the new short-term nursing home insurance policy for similar benefits to the extent  
9 that similar exclusions have been satisfied under the original policy.

10           Section 11. Filing Requirements for Advertising. (1) An insurer providing short term  
11 nursing home care insurance or benefits in Kentucky shall provide a copy any advertisement  
12 intended for use in Kentucky whether through written, radio, or television medium to the  
13 commissioner for review in accordance with this administrative regulation and KRS 304.12-020,  
14 304.14-120, and 806 KAR 12:010, 806 KAR 14:005, 806 KAR 14:007, Section 5(2);

15           (2) An advertisement shall be retained by the insurer for at least five (5) years from the date  
16 the advertisement was first used.

17           (3) The commissioner may exempt advertising from the requirements of this section pursuant  
18 to KRS 304.14-120(4).

19           Section 12. Standards for Marketing. (1) An insurer marketing short term nursing home  
20 insurance coverage in Kentucky, directly or through its agents, shall:

1 (a) Establish marketing procedures and agent training requirements to assure that:

2 1. Marketing activities, including policy comparison, by its agent, shall be fair and  
3 accurate; and

4 2. Excessive insurance shall not be sold or issued.

5 (b) Display prominently by type, stamp, or other appropriate means, on the first page of  
6 the outline of coverage and policy, the notice as established in HIPMC-STN-1.

7 (2) An insurer shall:

8 (a) Comply with the requirements of KRS Chapter 304.12; and

9 (b) Not perform the following acts and practices:

10 1. Twisting;

11 2. High pressure tactics;

12 3. Cold lead advertising; and

13 4. Misrepresentation.

14 (3)(a) To comply with the requirements of this subsection, an association shall have the  
15 primary responsibility of educating members concerning short-term nursing home issues in  
16 general:

17 1. If endorsing or selling short-term nursing home insurance; and

18 2. To ensure that its members make informed decisions.

1           (b) An association shall provide objective information regarding short-term nursing home  
2 insurance policies or certificates endorsed or sold by the association to ensure that members  
3 receive a balanced and complete explanation of the features of the policy or certificate that is  
4 endorsed or sold.

5           (c) An insurer shall file with the department the following:

6           1. An insurance policy and, if applicable, a certificate;

7           2. An outline of coverage, which corresponds to the filed policy or certificate; and

8           3. Advertisements as requested by the department pursuant to Section 11(1) of this  
9 administrative regulation.

10          (d) An association shall disclose in a short-term nursing home insurance solicitation:

11          1. The specific nature and amount of the compensation arrangements, including fees,  
12 commissions, administrative fees, and other forms of financial support, which the association  
13 receives from endorsement or sale of the policy or certificate to its members; and

14          2. A brief description of the process used to select the policy and the insurer, which  
15 issued the policy.

16          (e) If an association and insurer have interlocking directorates or trustee arrangements,  
17 the association shall disclose that fact to the association members.

18          (f) The board of directors of an association selling or endorsing a short-term nursing  
19 home insurance policy or certificate shall review and approve the:

1        1. Insurance policy; and

2        2. Compensation arrangements made with the insurer.

3        (g) Except for a qualified short-term nursing home insurance contract, an association  
4 shall:

5        1. Upon a decision to endorse a short-term nursing home insurance contract, engage the  
6 services of a person with expertise in short-term nursing home insurance not affiliated with the  
7 insurer to:

8        a. Conduct an examination of the policy, including its benefits, features, and rates; and

9        b. Update the examination, if a material change is made to the contract;

10       2. Actively monitor the marketing efforts of the insurer and agents; and

11       3. Review and approve:

12       a. Marketing materials; or

13       b. Insurance communications other than marketing materials, including communications:

14       (i) Used to promote sales; or

15       (ii) Sent to members regarding the policy or certificate.

16       (h) A group short-term nursing home insurance policy or certificate shall not be issued to  
17 an association unless the insurer files with the commissioner the information required in this  
18 subsection.

1           (i) Unless an insurer certifies annually that an association has complied with the  
2 requirements established in this subsection, an insurer shall not:

3           1. Issue a short-term nursing home policy or certificate to the association; or

4           2. Continue to market the policy or certificate.

5           (j) Failure to comply with the filing and certification requirements of this section shall  
6 constitute an unfair trade practice in violation of KRS 304.12-010.

7           Section 13. Standard Format and Content of an Outline of Coverage.

8           (1) An outline of coverage shall:

9           (a) Be a freestanding document, that shall be printed in no less than ten (10) point type;

10 and

11           (b) Not contain material of an advertising nature.

12           (2) Text, shall be capitalized or underscored in the standard format outline of coverage,  
13 may be emphasized by using a method, that provides prominence equivalent to the:

14           (a) Capitalization; or

15           (b) Underscoring.

16           (3) Except as indicated, use of the text and sequence of text shall be:

17           (a) Mandatory; and

18           (b) Consistent with the Outline of Coverage, HIPMC-STN-1.

1           (5) The format to be used for the outline of coverage shall be consistent with the Outline  
2 of Coverage, HIPMC-STN-1.

3           Section 14. Standards for Benefit Triggers. (1) A short term nursing home insurance  
4 policy shall condition the payment of benefits based upon a determination of the insureds:

5           (a) Ability to perform activities of daily living; and

6           (b) Cognitive impairment.

7           (2) Eligibility for the payment of benefits shall not be more restrictive than requiring:

8           (a) A deficiency in the ability to perform no more than three (3) activities of daily living;

9 or

10           (b) The presence of cognitive impairment.

11           (3) (a) Activities of daily living shall include no less than the activities defined in Section

12 2(1) of this administrative regulation and the policy; and

13           (b) To trigger covered benefits, an insurer may use activities of daily living that are:

14           1. Described in paragraph (a) of this subsection; and

15           2. In addition to activities identified in paragraph (a) if defined in the policy.

16           (4)(a) An insurer may use a provision other than activities of daily living as identified in

17 subsection (3) of this section to determine the date benefits are payable under a policy or

18 certificate; and

1           (b) If a provision, as established in paragraph (a) of this subsection is used by the insurer,  
2 the provision shall not:

3           1. Restrict the requirements identified in subsections (1), (2), and (3) of this section; and

4           2. Be used in lieu of the requirements of subsections (1), (2), and (3) of this section.

5           (5) A determination of a deficiency, as identified in this section, shall not be more  
6 restrictive than:

7           (a) Requiring the hands on assistance of another person to perform the prescribed  
8 activities of daily living as identified in subsection (3) of this section; or

9           (b) If the deficiency is due to the presence of a cognitive impairment, supervision or  
10 verbal cueing by another person shall be needed in order to protect the insured or others.

11           (6) An assessment of the insureds activities of daily living and cognitive impairment shall  
12 be performed by a licensed or certified professional, including a:

13           (a) Physician;

14           (b) Nurse; or

15           (c) Social worker.

16           (7) A short-term nursing home insurance policy shall include a clear description of the  
17 process for an appeal and resolution of a benefit determination.

1           Section 15. Incorporation by reference. (1) “Outline of Coverage, HIPMC-STN-1”,  
2           03/2021 is incorporated by reference.

3           (2) This material may be inspected, copied, or obtained, subject to applicable copyright  
4           law, at The Kentucky Department of Insurance, The Mayo-Underwood Building, 500 Mero  
5           Street, Frankfort, KY 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also  
6           available on the Department of Insurance Internet Web site at <http://www.insurance.ky.gov>.



806 KAR 17:085

READ AND APPROVED:

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Sharon P. Clark  
Commissioner, Department of Insurance

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Date

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Kerry B. Harvey  
Secretary, Public Protection Cabinet

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Date

## PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held at 9:00 AM on July 23rd, 2021 at 500 Mero Street, Frankfort, KY 40602. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM on July 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

Contact Person: Abigail Gall  
Title: Executive Administrative Secretary  
Address: 500 Mero Street, Frankfort, KY 40601  
Phone: +1 (502) 564-6026  
Fax: +1 (502) 564-1453  
Email: [abigail.gall@ky.gov](mailto:abigail.gall@ky.gov)

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation: 806 KAR 17:085

Contact Person: Abigail Gall

Phone: +1 (502) 564-6026

Email: abigail.gall@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides standards for short-term nursing home insurance policies.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply KRS 304.14-660, which requires the Commissioner to promulgate administrative regulations establishing requirements for short-term nursing home insurance policies.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable rules and administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation provides minimum standards for short-term nursing home insurance policies as required by KRS 304.14-660.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist by providing the minimum standards for short-term nursing home insurance policies as required by KRS 304.14-660.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendments to this administrative regulation include new benefit explanations for Home Health and Community Care services; marketing standards and advertisement filing procedures; details regarding benefit triggers, premium charges, discontinuance and replacement policies; a new option to purchase inflation protections at a minimum standard of 3%; the incorporation of a new form HIPMC-STN-1. There are also many technical changes to meet the drafting requirements of Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: the necessity of these amendments is based on the relationship to other administrative regulations and statutes. Previously, the requirements currently being added to this regulation were non-existent and thus, they allow for more efficient regulation of policies concerning Home Health and Community Care benefits.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation provides minimum standards for short-term nursing home insurance policies as required by KRS 304.14-660. Many of these amendments provide the minimum standard for these policies and procedures.

(d) How the amendment will assist in the effective administration of the statutes: These amendments assist in the administration of statutes KRS 304.14-660 and 304.2-110 in order to establish requirements for short-term nursing home insurance policies.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will effect approximately six (6) Kentucky insurers who offer short-term nursing home insurance policies to residents of Kentucky.

(4) Provide an analysis of how the entities identified in the previous question will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: The regulated entities providing short-term nursing home insurance policies must abide by the requirements set forth in the applicable sections of this administrative regulation. More specifically, the amended sections such as the benefit triggers, cancellations stipulations, premium charge requirements, extension of benefit updates, advertising and marketing requirements and standards, and utilizing the HIPMC-STN-1 form when outlining coverage to the consumer.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There are no cost associated with this administrative regulation nor the amendments.

(c) As a result of compliance, what benefits will accrue to the entities: Insurers writing short-term nursing home insurance policies will meet the statutory and regulatory requirements.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: There is no cost associated with the administrative regulation.

(a) Initially: Implementation of this amendment is not anticipated to have an initial cost on the Department of Insurance.

(b) On a continuing basis: Implementation of this amendment is not anticipated to have an on-going cost on the Department of Insurance.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department will use funds from its current operational budget to perform the tasks necessary.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees:

(9) TIERING: Is tiering applied? Explain why or why not. Tiering is not applied because this regulation applies equally to all insurers offering short-term nursing home policies in Kentucky.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation: 806 KAR 17:085

Contact Person: Abigail Gall

Phone: +1 (502) 564-6026

Email: abigail.gall@ky.gov

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? .The Department as the implementer.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110(1), 304.14-660

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue is expected to be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue is expected to be generated.

(c) How much will it cost to administer this program for the first year? No cost is expected.

(d) How much will it cost to administer this program for subsequent years? No cost is expected.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

(4) Revenues (+/-): Neutral

(5) Expenditures (+/-): Neutral

(6) Other Explanation:

SUMMARY OF MATERIALS INCOPORATED BY REFERENCE

806 KAR 17:085

(1) “Outline of Coverage, HIPMC-STN-1”, 03/2021 is incorporated by reference. This form provides an example of the outline of coverage formatting that is provided to policy holder.