

1 Public Protection Cabinet
2 Department of Insurance
3 Division of Property and Casualty
4 (Amendment)

5 806 KAR 14:110. Dividend plans; filing, participation.

6 RELATES TO: KRS 304.3-050, 304.24-310, 304.24-320, 304.24-330, 304.24-250,
7 304.13-010-304.13-390, 304.14-120, 304.12-010, 304.12-080-304.12-110

8 STATUTORY AUTHORITY: KRS 304.2-110

9 NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the
10 Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to
11 the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010.
12 [~~KRS 304.2-110 provides that the Executive Director of Insurance may make reasonable rules~~
13 ~~and administrative regulations necessary for or as an aid to the effectuation of any provision of~~
14 ~~the Kentucky Insurance Code.~~] The function of this [This] administrative regulation is to permit
15 [permits the] participation of the insured [by insureds] in writing dividend premium plans
16 [premiums] under a "participating" policy [policies] and shall require [requires] a filing of the
17 [such] dividend plan [plans] with the commissioner [executive director].

18 Section 1. To [It having been demonstrated that improved safety measures and improved
19 claims handling may result in savings in expenses and in losses over and above those levels
20 anticipated and it having also been demonstrated that it is possible, in certain cases, for

1 an insurer to identify and group the policyholders contributing to such savings into specific
2 classifications; to further] encourage [such] savings in the net cost of insurance protection,
3 insurers authorized to transact [such] insurance in this state may[, after complying with the
4 following conditions], issue a policy[policies] allowing the insured [entitled] to participate [from
5 time to time] in the dividend earning of the insurer [earnings of the insurer through dividends].
6 This administrative regulation shall not apply to dividends to shareholders in a stock company
7 or [companies nor] to the general dividends to a policyholder [policyholders] in a mutual
8 company [companies].

9 Section 2. (1) An [Such] insurer shall file or refile with the commissioner [executive
10 director], in [substantially] the same manner as a rate filing, every proposed dividend plan and
11 every modification of a dividend plan [thereof], including discontinuance, which it intends
12 [proposes] to use, accompanied by the information that [upon which the insurer] supports the
13 [such] filing.

14 (2)(a) [(1)] A filing shall not [No such filing shall] propose [in this state] both a
15 participating and nonparticipating policy [policies] for the same class of risk. Any classification
16 by the insurer of its participating policy [policies] and of risks assumed under that policy
17 [thereunder] which the insurer may make shall be reasonable and nondiscriminatory. In
18 determining the proposed eligibility requirements for a dividend plan, the underlying standard
19 shall be the demonstrated or demonstrable success in savings in expenses or in losses [over and]
20 above levels anticipated in previously filed rates.

21 (b) Any proposed dividend plan shall shall [must] be made available to all insureds meeting
22 the eligibility requirements set forth in the dividend plan. [To facilitate this and to broaden the
23 availability of such programs,]

1 (c) An agent appointed [~~agents licensed~~] by one or more companies of a group of
2 affiliated insurers shall also be appointed [~~licensed~~] by the company within the [~~such~~] group
3 authorized to write participating [~~such~~] insurance policies [~~if the company for which such agent~~
4 ~~is then licensed does not write such participating policies~~]. Notice and details of the availability
5 of the program in Kentucky shall be given to all licensed agents within the authorized group [~~of~~
6 ~~the group's licensed agents~~].

7 (3) [(2)] If the [~~such~~] filing is an initial filing or the facts or the laws have changed since a
8 prior filing has been used, the filing shall contain either satisfactory evidence of proper specific
9 charter as defined in KRS 304.3-050, authority to issue a participating policy [~~policies~~], or
10 satisfactory evidence that unless otherwise provided by its charter, the laws of its domicile
11 provide that it may issue a policy [~~policies~~] entitled to participate in the earnings of the insurer
12 through dividends.

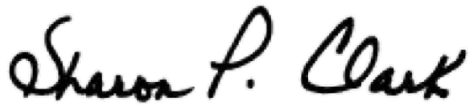
13 (4) [(3)] The [~~Such~~] filing shall also contain proposed policy provisions or proposed
14 policy endorsement forms for the payment of dividends which shall further provide that all
15 [~~such~~] dividends [~~must~~] be paid by the insurer directly to the insured, and that no [~~such~~]
16 dividends may be assigned to associations or others, except upon assignment of the policy for
17 value. If the provision for the payment of dividends is made by separate endorsement rather than
18 incorporated in the policy form, the [~~such~~] endorsement shall [~~must~~] be attached to each [~~and~~
19 ~~every such~~] policy issued.

20 Section 3. (1) Dividends to [~~such~~] participating policies shall be paid only out of that part
21 of [~~such~~] surplus funds that derives [~~which is derived~~] from any realized net profits from the
22 insurer's business. No [~~such~~] insurer or its agents shall guarantee or promise to a policyholder or
23 prospective policyholder the amount of [~~of~~] percentage of dividends to be paid. No [~~and no~~]

1 dividend, otherwise earned, shall be made contingent upon payment of renewal premium on any
2 policy, or membership in, or affiliation with, any association.

3 (2) All brochures and advertising material shall affirmatively and clearly set forth that
4 dividends are not guaranteed and that all policyholders are eligible for the dividend program
5 whether or not they are members of, or affiliated with, any association.

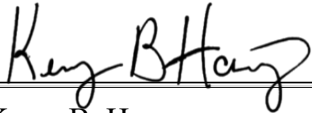
806 KAR 14:110
READ AND APPROVED:



12/18/2020

Sharon P. Clark
Commissioner, Department of Insurance

Date



12/21/2020

Kerry B. Harvey
Secretary, Public Protection Cabinet

Date

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held at 9:00 AM on March 22nd, 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 March 31st, 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
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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation: 806 KAR 14:110

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 is to permit insureds participation in “participating” policies to file the dividend plan with the Commissioner.

(b) The necessity of this administrative regulation: This administration requires insurers to submit a proposed dividend plan and its modifications that it intends to use as well as supporting documents to the Commissioner for regulatory purposes of the department.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effectuation of the Insurance Code, by offering the department more information to regulate insurers offering “participating” policies offering dividend plans.

(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 are changes required by Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The necessity of these amendments are established in the Chapter 13A.222, in which the drafting requirements are set forth. These requirements ensure the administrative regulation language to be uniform and simple for those needing to reference.

(c) How the amendment conforms to the content of the authorizing statutes: Chapter 13A gives a very detailed explanation of the formatting rules as well as prohibited words and phrases, so these amendments remove old language and replace with acceptable unambiguous language.

(d) How the amendment will assist in the effective administration of the statutes: The amendments made to this administrative regulation meet Chapter 13A guidelines, which means the administrative regulation meets standards that are more effective. With clearer language 304.1-010 is more effective and thus, allowing the Department to regulate more effectively.

- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any insurers offering dividend plans.
- (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: Insurers must submit, in a filing format the dividend plan intended for us and the plans supporting documentation to the Commissioner.
- (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There is no cost associated.
- (c) As a result of compliance, what benefits will accrue to the entities: The insurer will be approved to offer the plan or not.
- (5) Provide an estimate of how much it will cost the administrative body to implement this 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: An increase of fees will not be necessary because additional personnel is likely unnecessary.
- (8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees.
- (9) TIERING: Is tiering applied? Explain why or why not. Tiering is not applied because the requirements in this administrative regulation applies to all insurers offering dividend plans.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation: 806 KAR 14:110
Contact Person: Abigail Gall
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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
- (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? This administrative regulation is revenue neutral.
 - (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? This administrative regulation is revenue neutral.
 - (c) How much will it cost to administer this program for the first year? There is no expected cost for implementation.
 - (d) How much will it cost to administer this program for subsequent years? There is no expected cost for implementation.

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: