

**806 KAR 17:470. Data reporting to an employer-organized association health benefit plan.**

RELATES TO: KRS 304.2-110(1), 304.17A-005, 304.17A-700(7), 304.17A-846(1), 45 C.F.R. 160, 45 C.F.R. 164

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-846

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the executive director to promulgate reasonable 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. KRS 304.17A-846 requires the office to promulgate an administrative regulation to implement its provisions and define the extent that health benefit plan information shall be provided to an employer-organized association. This administrative regulation establishes requirements for the provision of health benefit plan information to an employer-organized association by an insurer offering a health benefit plan.

**Section 1. Definitions.**

- (1) "Aggregate claims experience" means the total dollar amount paid to health care providers of medical and pharmacy services for persons covered under an employer-organized association health benefit plan.
- (2) "Complete request" means a written request for employer-organized association health benefit plan information, including:
  - (a) A certification by a designated representative of the employer-organized association stating the:
    1. Employer-organized association health benefit plan has adopted safeguards and standards for the treatment of health information pursuant to 45 C.F.R. 164.504(f); and
    2. Information requested is the minimum amount necessary to accomplish the intended purpose of the use or disclosure pursuant to 45 C.F.R. 164.502(b) and 164.514(d); and
  - (b) Specific and sufficient details relating to the requested health benefit plan information.
- (3) "Electronically" is defined in KRS 304.17A-700(7).
- (4) "Employer-organized association" is defined by KRS 304.17A-005(12).
- (5) "Employer-organized association health benefit plan" means a health benefit plan issued to an employer-organized association or trust established by one (1) or more employer-organized associations.
- (6) "Executive director" means the Executive Director of the Office of Insurance.
- (7) "Health benefit plan" is defined in KRS 304.17A-005(22).
- (8) "HIPAA" means Health Insurance Portability and Accountability Act of 1996, Pub.L. 104-191.
- (9) "Office" means the Office of Insurance.

**Section 2. Requirements for Provision of Information.**

- (1) Within five (5) business days of receipt of a written request for information relating to an employer-organized association health benefit plan, an insurer shall in writing:
  - (a) Acknowledge receipt of the request; and
  - (b) If the request fails to be a complete request, identify the items necessary to constitute a complete request in the acknowledgment of receipt letter.
- (2) Pursuant to KRS 304.17A-846(1), an insurer shall provide an employer-organized association with its health benefit plan information, as requested:
  - (a) Including:
    1. Total aggregate claims experience;
    2. Total premiums paid by the employer-organized association;

3. Total number of persons covered under the employer-organized association health benefit plan, by coverage tier, as follows:
    - a. Family;
    - b. Individual;
    - c. Individual and spouse;
    - d. Individual and domestic partner; and
    - e. Parent plus; and
  4. Information required under KRS 304.17A-846(1)(d); and
- (b) Within thirty (30) calendar days of receipt of a complete request.
- (3) An insurer may:
- (a) Except if an employer-organized association specifies the method for the delivery of its health benefit plan information, provide the requested information in one (1) of the following formats:
    1. Electronically, pursuant to the requirements for electronic transmission of information as established in 45 C.F.R. 160 and 164; or
    2. Hard copy; and
  - (b) Request an extension of the timeframe for providing an employer-organized association with its health benefit plan information in whole or in part, if the insurer:
    1. Provides evidence to the employer-organized association that a disruption in electricity and communication connections beyond its control has occurred; or
    2. Establishes that an unusual circumstance exists that precludes the provision of health benefit plan information electronically or in hard copy format; and
    3. Deny a complete request if:
      - a. A determination is made by the United States Department of Health and Human Services Office for Civil Rights that provision of health benefit plan information as requested by the employer-organized association is prohibited under HIPAA; and
      - b. A copy of the determination, as established under clause a of this subparagraph, is provided to the employer-organized association which submits a complete request.

Section 3. Preemption. This administrative regulation shall not:

- (1) Preempt or supersede an existing Kentucky law relating to a medical record, health, or insurance information privacy; or
  - (2) Infringe upon the jurisdiction of the United States Department of Health and Human Services Office for Civil Rights in its:
    - (a) Enforcement of 45 C.F.R. 160 and 164; and
    - (b) Responding to a complaint relating to privacy of health information.
- (32 Ky.R. 573; 915; eff. 2-3-2006; Crt eff. 2-26-2020.)