

806 KAR 17:510. Health benefit plan exclusionary rider requirements.

RELATES TO: KRS 304.12-080(3), 304.14-120(1), 304.17A-250(10), 304.17A-505, 304.17A-540, 304.17A-600 -304.17A-633, 304.17B-015, 304.38-050

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-565

CERTIFICATION STATEMENT:

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the executive director 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. KRS 304.17A-565 requires the executive director to adopt administrative regulations necessary to carry out the provisions of KRS 304.17A-500 to 570, which require an insurer to describe and fully disclose limitations on coverage for any treatment, procedure, drug, device, or covered services. This administrative regulation establishes the requirements of a health benefit plan exclusionary rider.

Section 1. Definitions.

- (1) "Exclusionary rider" means an amendment, attachment, endorsement, or rider to a health benefit plan policy that excludes or limits coverage for a medical condition.
- (2) "Health benefit plan" is defined in KRS 304.17A-005(22).
- (3) "Insurer" is defined in KRS 304.17A-005(27).
- (4) "Mandated benefit" means a state-mandated benefit or federally-mandated benefit as identified in KRS 304.17A or 806 KAR 17:500, Sections 3 and 4(2).
- (5) "Medical condition" means a condition or disease which is diagnosed and identified by code in the International Classification of Diseases, Ninth Version, Clinical Modification, or any subsequent version.
- (6) "Medical service" means medical, surgical, dental, hospital, nursing, medical rehabilitation, medicines, pharmacy, fittings for artificial or prosthetic devices, or any other treatment or service for a medical condition.
- (7) "Office" is defined in KRS 304.1-050(2).
- (8) "Secondary medical condition" means a medical condition which an insurer has determined to be a complication of a medical condition, or a condition caused by or related to the medical condition, based upon:
 - (a) Any of the documentation found in KRS 304.17A-625(1)(b) or (c);
 - (b) A medical consultation by a health care professional; or
 - (c) The medical record of the individual.

Section 2. Requirements of an Insurer.

- (1) An insurer may offer a health benefit plan with an exclusionary rider in the individual market if:
 - (a) The insurer:
 1. Provides to the office annually, by July 1, a complete list of medical conditions that may be excluded under an exclusionary rider; and
 - b. Notifies the office of any changes to the list of conditions as established under clause a of this subparagraph; and
 2. Files with the office a sample exclusionary rider, which conforms to the requirements of Section 3 of this administrative regulation; and
- (b) Prior to issuing a health benefit plan with an exclusionary rider, the insurer discloses to the individual applicant in writing and the individual applicant acknowledges in writing the nature of the exclusionary rider, including:
 1. That the exclusionary rider amends the coverage, benefits, and treatment provided under the health benefit plan related to a specific medical condition that was diagnosed prior to the issuance of coverage;

2. That payment of a claim for a medical service relating to the excluded medical condition or a secondary medical condition may be denied by the insurer;
3. Identification of the medical condition excluded under the exclusionary rider;
4. If a claim for an excluded medical condition or secondary medical condition is denied by an insurer, an appeal may be requested by the insured, an authorized representative, or a health care provider acting on behalf of the insured in accordance with the insurer's internal appeal and external review process as required under KRS 304.17A-600 to 304.17A-633; and
5. That a health benefit plan without an exclusionary rider is available through the Kentucky Access Program pursuant to KRS 304.17B-015.

(2) An insurer:

(a) Upon refusing to issue a health benefit plan to an applicant who satisfies the criteria of Section 4(1)(b), may offer a health benefit plan with an exclusionary rider only if the insurer has provided written notice of the individual's eligibility for coverage under the Kentucky Access Program in a denial letter as required under KRS 304.17A-250(10); and

(b) At the time of renewal:

1. Shall not be required to issue a denial letter in accordance with Section 2(2)(a) of this administrative regulation prior to offering a health benefit plan with an exclusionary rider to an insured who satisfies the criteria of Section 4(1)(b) of this administrative regulation; and
2. Shall, upon request of an individual applying for coverage under Kentucky Access, issue a statement verifying that the individual is only eligible for health benefit plan coverage with an exclusionary rider under that insurer.

(3) An insurer shall not offer a health benefit plan with an exclusionary rider which excludes:

- (a) Any mandated benefit; or
- (b) More than three (3) medical conditions.

Section 3. Exclusionary Rider Requirements. An exclusionary rider shall contain the following elements:

- (1) The medical condition excluded from coverage by the exclusionary rider;
- (2) No more than three (3) excluded medical conditions;
- (3) The following informed consent paragraph: "I agree, by placing my signature and the date below, to the terms of this health benefit plan exclusionary rider, which may exclude coverage for any of the following for the medical condition or secondary medical condition that was diagnosed prior to the issuance of coverage: diagnostic testing or procedures, treatment, surgery, and medications. I further agree to accept financial responsibility for any claim for expenses excluded under the terms of this rider. I understand that if I am dissatisfied with a decision of the insurer to deny a claim, I may exercise my right to appeal in accordance with the internal appeal and external review process of my health benefit plan."; and
- (4) A signature and date of signature of the individual applicant and an authorized representative of the insurer demonstrating mutual acceptance of the terms and conditions of the exclusionary rider.

Section 4. Unfair Discrimination Prohibited.

- (1) An insurer offering a health benefit plan with an exclusionary rider shall:
 - (a) Apply its underwriting guidelines uniformly to all individuals who apply for coverage; and
 - (b) Only issue a health benefit plan with an exclusionary rider to an individual who:
 1. Otherwise would not meet the insurer's underwriting guidelines; or

2. Would be charged an increased premium amount if the individual's medical conditions were considered.

(2) Pursuant to the insurer's underwriting guidelines, an individual who qualified for a health benefit plan without an exclusionary rider prior to the effective date of coverage shall continue to qualify for a health benefit plan without an exclusionary rider following the effective date of coverage.

(806 KAR 017:510. 32 Ky.R. 1195, 1436, 1890; eff. 5-5-2006; Crt eff. 2-26-2020; Repealed by 806 KAR 017:511, eff. 01-04-2022.)