

304.17A-235 Notice of proposed material change in health benefit plan's agreement with participating provider.

- (1) As used in this section, unless the context requires otherwise:
 - (a) "Material change" means a change to a contract, the occurrence and timing of which is not otherwise clearly identified in the contract, that decreases the health care provider's payment or compensation or changes the administrative procedures in a way that may reasonably be expected to significantly increase the provider's administrative expense, and includes any changes to provider network requirements, or inclusion in any new or modified insurance products; and
 - (b) "Participating provider" means a provider that has entered into an agreement with an insurer to provide health care services.
- (2) Each insurer offering a health benefit plan shall establish procedures for changing an existing agreement with a participating provider that shall include the requirements of this section.
- (3) If an insurer offering a health benefit plan makes any material change to an agreement it has entered into with a participating provider for the provision of health care services, the insurer shall provide the participating provider with at least ninety (90) days' notice of the material change. The notice of a material change required under this section shall:
 - (a) Provide the proposed effective date of the change;
 - (b) Include a description of the material change;
 - (c) Include a statement that the participating provider has the option to either accept or reject the proposed material change in accordance with this section;
 - (d) Provide the name, business address, telephone number, and electronic mail address of a representative of the insurer to discuss the material change, if requested by the participating provider;
 - (e) Provide notice of the opportunity for a meeting using real-time communication to discuss the proposed changes if requested by the participating provider. For purposes of this paragraph, "real-time communication" means any mode of telecommunications in which all users can exchange information instantly or with negligible latency and includes the use of traditional telephone, mobile telephone, teleconferencing, and videoconferencing. If requested by the provider, the opportunity to communicate to discuss the proposed changes may occur via electronic mail instead of real-time communication; and
 - (f) Provide notice that upon three (3) material changes in a twelve (12) month period, the provider may request a copy of the contract with material changes consolidated into it. Provision of the copy of the contract by the insurer shall be for informational purposes only and shall have no effect on the terms and conditions of the contract.
- (4) If a material change relates to the participating provider's inclusion in any new or modified insurance products, or proposes changes to the participating provider's

membership networks:

- (a) The material change shall only take effect upon the acceptance of the participating provider, evidenced by a written signature; and
 - (b) The notice of the proposed material change shall be sent by certified mail, return receipt requested.
- (5) For any other material change not addressed in subsection (4) of this section:
- (a)
 - 1. The material change shall take effect on the date provided in the notice unless the participating provider objects to the change in accordance with this paragraph;
 - 2. A participating provider who objects under this paragraph shall do so in writing and the written protest shall be delivered to the insurer within thirty (30) days of the participating provider's receipt of notice of the proposed material change;
 - 3. Within thirty (30) days following the insurer's receipt of the written objection, the insurer and the participating provider shall confer in an effort to reach an agreement on the proposed change or any counter-proposals offered by the participating provider; and
 - 4. If the insurer and participating provider fail to reach an agreement during the thirty (30) day negotiation period described in subparagraph 3. of this paragraph, then thirty (30) days shall be allowed for the parties to unwind their relationship, provide notice to patients and other affected parties, and terminate the contract pursuant to its original terms; and
 - (b) The notice of proposed material change shall be sent in an orange-colored envelope with the phrase "ATTENTION! CONTRACT AMENDMENT ENCLOSED!" in no less than fourteen (14) point boldface Times New Roman font printed on the front of the envelope. This color of envelope shall be used for the sole purpose of communicating proposed material changes and shall not be used for other types of communication from an insurer.
- (6) If an insurer issuing a health benefit plan makes a change to an agreement that changes an existing prior authorization, precertification, notification, or referral program, or changes an edit program or specific edits, the insurer shall provide notice of the change to the participating provider at least fifteen (15) days prior to the change.
- (7) Any notice required to be mailed pursuant to this section shall be sent to the participating provider's point of contact, as set forth in the provider agreement. If no point of contact is set forth in the provider agreement, the insurer shall send the requisite notice to the provider's place of business addressed to the provider.

Effective: January 1, 2017

History: Repealed, reenacted, renumbered, and amended 2016 Ky. Acts ch. 143, sec. 1, effective January 1, 2017. -- Amended 2010 Ky. Acts ch. 85, sec. 48, effective July 15, 2010. -- Created 2008 Ky. Acts ch. 169, sec. 4, effective July 15, 2008.

Formerly codified as KRS 304.17A-578.