

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

RELATES TO: KRS 304.14-650-304.14-675

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

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Executive Director 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. KRS 304.14-660 requires the Executive Director of Insurance to promulgate administrative regulations establishing requirements for short-term nursing home insurance policies. This administrative regulation establishes minimum standards for short-term nursing home insurance policies.

Section 1. Definitions.

(1) "Applicant" means:

- (a) For an individual short-term nursing home insurance policy, the person who seeks to contract for benefits; and
- (b) For a group short-term nursing home insurance policy, the proposed certificate holder.

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

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

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

(5) "Commissioner" is defined by KRS 304.1-050.

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

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

(8) "Insurer" means an entity authorized to issue short-term nursing home insurance in Kentucky.

(9) "Maintenance or personal care services" means any care the primary purpose of which is the provision of needed assistance with any of the disabilities as a result of which the individual is a chronically-ill individual (including the protection from threats to health and safety due to severe cognitive impairment).

(10) "Policy" means any policy, contract, subscriber agreement, enrollment agreement, rider, or endorsement delivered or issued for delivery in Kentucky.

(11) "Short-term nursing home insurance policies" is defined in KRS 304.14-650.

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

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

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

(3) "Adult day care" means a program for four (4) or more individuals, of social or health-related, or both, services provided during the day in a community group setting for

the purpose of supporting frail, impaired elderly or other disabled adults who can benefit from care in a group setting outside the home.

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 3. Policy Practices and Provisions.

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

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

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

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

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

(2)

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

1. Preexisting conditions or diseases as defined in Section 5(7) through (9) of this administrative regulation;
2. Mental or nervous disorders, but this shall not permit exclusion or limitation of benefits on the basis of Alzheimer's disease;
3. Alcoholism and drug addiction;
4. Illness, treatment, or medical condition arising out of:
 - a. War or act of war (whether declared or undeclared);
 - b. Participation in a felony, riot, or insurrection;
 - c. Service in the armed forces or auxiliary units;
 - d. Suicide (sane or insane), attempted suicide, or intentionally self-inflicted injury; or
 - e. Aviation (this exclusion shall apply only to nonfare-paying passengers);
5. Treatment provided in a government facility (unless otherwise required by law), services for which benefits are available under Medicare or other governmental program (except Medicaid), any state or federal workers' compensation, employer's liability, or occupational disease law, services provided by a member of the covered person's immediate family, and services for which no charge is normally made in the absence of insurance;

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

(3) Continuation or conversion.

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

1. A covered individual with a basis for continuation or conversion of coverage without underwriting upon termination of coverage; and
2. A converted policy or continued coverage including benefits identical to or benefits determined by the executive director to be substantially similar to or in excess of those provided under the group policy from which conversion or continued coverage is made.

(b) Written application for the converted policy or continued coverage shall be made and the first premium due, if any, shall be paid as directed by the insurer not later than thirty-one (31) days following notice of continuation or conversion rights under the group policy.

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

- (a) The increasing age of the insured at ages beyond sixty-five (65); or
- (b) The duration the insured has been covered under the policy.

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

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

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

or

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

(2) Lapse or termination for nonpayment of premium:

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

(b) Notice shall:

1. Be given by first class United States mail, postage prepaid;
2. Not be given until thirty (30) days after a premium is due and unpaid; and
3. Be deemed to have been given as of five (5) days after the date of mailing.

Section 5. Required Information and Disclosure Provisions.

(1) Renewability.

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

(b) The provision shall:

1. Be appropriately captioned;
2. Appear on the first page of the policy; and
3. State clearly that the coverage is guaranteed renewable or noncancellable.

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

(2) Riders and endorsements.

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

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

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

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

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

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

(6) A provider of service shall be defined in relation to the services and facilities required to be available and the licensure or degree status of those providing or supervising the

services. The definition may require that the provider be appropriately licensed or certified.

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

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

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

(10) Insurers shall disclose whether or not inflation protection is offered with any short-term nursing home policy or certificate.

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

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

Section 6. Prohibition Against Postclaims Underwriting.

(1)

(a) If an application for short-term nursing home insurance contains a question which asks whether the applicant has had medication prescribed by a physician, it shall also ask the applicant to list all medication that has been prescribed.

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

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

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

Section 7. Reserve Standards.

(1)

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

- (b) Claim reserves shall also be established if the policy or rider is in claim status.
 - (c) In the development and calculation of reserves for policies and riders subject to the requirements of this subsection, due regard shall be given to the applicable policy provisions, marketing methods, administrative procedures, and all other considerations which have an impact on projected claim costs.
 - (d) Any applicable valuation morbidity table shall be certified as appropriate as a statutory valuation table by a member of the American Academy of Actuaries.
- (2) If short-term nursing home benefits are provided other than as in subsection (1) of this section, reserves shall be determined in accordance with KRS 304.6-070.

Section 8. Loss Ratio.

- (1) Rate filings shall follow the filing procedures contained in 806 KAR 14:007 and 806 KAR 17:070.
- (2) Initial premium rate schedules shall be calculated such that the present value of future projected incurred claims, without the inclusion of active life reserves, will not be less than the present value of future projected earned premiums times sixty (60) percent.
- (3) Premium rate schedule increases shall be calculated such that the sum of the accumulated value of incurred claims, without the inclusion of active life reserves, and the present value of future projected incurred claims, without the inclusion of active life reserves, will not be less than the sum of the following:
- (a) The accumulated value of the initial earned premiums times sixty (60) percent;
 - (b) Eighty-five (85) percent of the accumulated value of prior premium rate schedule increases on an earned basis;
 - (c) The present value of future projected initial earned premiums times sixty (60) percent; and
 - (d) Eighty-five (85) percent of the present value of future projected premiums not in paragraph (c) of this subsection on an earned basis.
- (4) All present and accumulated values used to determine rates shall use the maximum valuation interest rate for contract reserves as specified in 806 KAR 6:080. The actuary shall disclose as part of the actuarial memorandum required by 806 KAR 17:070, Section 3, the use of any appropriate averages.

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

(29 Ky.R. 1441; 1797; eff. 1-16-2003; TAm eff. 8-9-2007; Crt eff. 2-26-2020.)