

304.40-050 Policies issued by association -- Cancellation -- Rate -- Nonprofit group retrospective rating plan -- Deficit -- Contributions by members.

- (1) All policies issued by the association shall be written for the term of one (1) year. The directors of the association may elect to issue policies on an occurrence basis or a claims made basis. No policy form shall be used by the association unless it has been filed with the commissioner and either (a) the commissioner has approved it, or (b) thirty (30) days has lapsed and the commissioner has not disapproved it in accordance with KRS Chapter 304, Subtitle 14.
- (2) Cancellation of the association's policies shall be governed by the laws and regulations governing the cancellation of other policies of casualty insurance, except that the association may also cancel any of its policies in the event of nonpayment of any stabilization reserve fund charged, by mailing or delivering to the insured at the address shown on the policy, written notice stating when not less than ten (10) days thereafter cancellation shall be effective.
- (3) The rates, rating plans, rating rules, rating classifications and territories applicable to the insurance written by the association and statistics relating thereto shall be subject to Chapter 304, Subtitle 13 of the Kentucky Revised Statutes, giving due consideration to the past and prospective loss and expense experience for medical malpractice insurance written and to be written in this state, trends in the frequency and severity of losses, the investment income of the association, and such other information as the commissioner may require. All rates shall be on an actuarially sound basis, giving due consideration to the group retrospective rating plan and the stabilization reserve fund, and shall be calculated to be self-supporting. The commissioner shall make available to the association the loss and expense experience of insurers previously writing medical malpractice insurance in this state.
- (4) All policies issued by the association shall be subject to a nonprofit group retrospective rating plan to be approved by the commissioner, under which the final premium for all policyholders of the association as a group will be equal to the administrative expenses, loss and loss adjustment expenses and taxes, plus a reasonable allowance for contingencies and servicing. Policyholders shall be given full credit for all investment income, net of expenses and a reasonable management fee on policyholder supplied funds. The standard premium before retrospective adjustment for each policy issued by the association shall be established on the basis of the association's rates, rating plans, rating rules, rating classifications, and territories then in effect. The maximum final premium for all policyholders of the association as a group shall be limited as provided in KRS 304.40-060(4). Since the business of the association is subject to the nonprofit group retrospective rating plan required by this subsection, there shall be a presumption that the rates filed and premiums for the business of the association are not excessive.
- (5) The commissioner shall examine the business of the association as often as he or she deems appropriate to assure that the group retrospective rating plan is being operated in a manner consistent with this section. If he or she finds that it is not being so operated, he or she shall issue an order to the association, specifying in

what respects its operation is deficient and stating what corrective action shall be taken.

- (6) The association shall certify to the commissioner the estimated amount of any deficit remaining after the stabilization reserve fund has been exhausted in payment of the maximum final premium for all policyholders of the association. Within sixty (60) days after such certification, the commissioner shall authorize the members of the association to commence recoupment of their respective shares of the deficit by applying a surcharge to be determined by the association at a rate not to exceed two percent (2%) of the annual premiums on future policies affording those kinds of insurance which form the basis for their participation in the association under procedures established by the association. The association shall amend the amount of its certification of deficit to the commissioner as the values of its incurred losses become finalized, and the members of the association shall amend their recoupment procedure accordingly.
- (7) In the event that sufficient funds are not available for the sound financial operation of the association, pending recoupment as provided in subsection (6) of this section, all members shall, on a temporary basis, contribute to the financial requirements of the association in the manner provided for in KRS 304.40-080. Any such contribution shall be reimbursed to the members by recoupment as provided in subsection (6) of this section.

Effective: July 15, 2010

History: Amended 2010 Ky. Acts ch. 24, sec. 1537, effective July 15, 2010. -- Created 1976 Ky. Acts ch. 164, sec. 5, effective June 19, 1976.