

**304.40-075 Medical malpractice insurance for charitable health care providers -- Scope of coverage -- Premiums -- Registration of providers -- Review -- Availability of information.**

- (1) As used in this section, unless the context requires otherwise:
  - (a) "Charitable health care provider" means any person, agency, clinic, or facility licensed or certified by the Commonwealth, or under a comparable provision of law of another state, territory, district, or possession of the United States, engaged in the rendering of medical care or dentistry without compensation or charge, and without expectation of compensation or charge, to the individual, without payment or reimbursement by any governmental agency or insurer. "Charitable health care provider" means those persons, agencies, clinics, or facilities providing primary care medicine and performing no invasive or surgical procedures, and those persons, agencies, clinics, or facilities providing services within the dentist's scope of practice under KRS Chapter 313;
  - (b) "Medical malpractice insurer" means every person or entity engaged as principal and as indemnitor, surety, or contractor in the business of entering into contracts to provide medical professional liability insurance, except an entity in the business of providing such medical professional liability insurance only to itself or its affiliated subsidiary, or parent corporation, or subsidiaries of its parent corporations; and
  - (c) "Medical professional liability insurance" means insurance to cover liability incurred as a result of the hands-on providing of medical professional services directly to patients by an insured in the treatment, diagnosis, or prevention of patient illness, disease, or injury.
- (2) Insurers offering medical professional liability insurance in the Commonwealth shall make available, as a condition of doing business in the Commonwealth pursuant to this chapter, medical professional liability insurance for charitable health care providers and persons volunteering to perform medical services for charitable health care providers, with the same coverage limits made available to its other insureds.
- (3)
  - (a) Premiums for policies issued under subsection (2) of this section shall be paid by the Commonwealth from the general fund upon written application for payment of the premium by the health care provider wishing to offer charitable services. A health care provider shall submit an application for payment of premium to the Department of Insurance no later than one (1) year from the expiration of the policy for which payment is being requested.
  - (b) The Department of Insurance shall, through promulgation of administrative regulations pursuant to KRS Chapter 13A, establish reasonable guidelines for the registration of charitable health care providers. The guidelines shall require the provider to supply, at a minimum, the following information:
    1. Name and address of the charitable health care provider;
    2. Number of employees of the charitable health care provider who will be

rendering medical care without compensation or charge and without expectation of compensation or charge, and who will be covered under the policy issued under subsection (2) of this section;

3. The expected number of patients to be provided charitable health care services in the year for which the insurer will offer malpractice coverage;
  4. The charitable health care provider's acknowledgment that the insurer's risk management and loss prevention policies shall be followed;
  5. A copy of the registration filed with the Cabinet for Health and Family Services under KRS 216.941; and
  6. A copy of the medical malpractice policy, declaration page, and any other documentation the commissioner may deem necessary to determine the proper amount of premiums and taxes to be reimbursed.
- (c) Persons insured under this section shall be required to comply with the same risk management and loss prevention policies which the insurer imposes upon its other insureds.
- (d) Any premium refund for medical professional liability insurance issued under subsection (2) of this section received for any reason by the charitable health care provider shall be promptly remitted to the department for transmittal to the general fund.
- (4) This section shall only apply to charitable health care providers and persons volunteering to perform medical services for charitable health care providers who are not otherwise covered by any policy of medical professional liability insurance for the charitable health care services provided, and that meet the terms for eligibility established pursuant to this section.
- (5) Coverage offered to charitable health care providers and persons volunteering at charitable health care providers shall be at least as broad as the coverage offered by the insurer to other noncharitable health care providers or facilities and to medical professionals working at noncharitable health care facilities.
- (6) The Department of Insurance shall retrospectively review on an annual basis the premiums paid pursuant to this section as opposed to the expenses incurred by the insurers covering risks under this section to determine if the profits made for those risks were consistent with reasonable loss ratio guidelines. If the determination is made that the profits were not consistent with reasonable loss ratio guidelines, the Department of Insurance shall determine the amount of the premiums to be refunded to the Commonwealth.
- (7) The Cabinet for Health and Family Services shall make available to the Department of Insurance information on its registration of charitable health care providers for the purpose of obtaining medical malpractice insurance.
- (8) The Department of Insurance shall not provide medical malpractice insurance as specified in subsection (3)(a) of this section to a charitable health care provider who has not registered with the Cabinet for Health and Family Services under KRS 216.941.

**Effective:** July 15, 2010

**History:** Amended 2010 Ky. Acts ch. 24, sec. 1539, effective July 15, 2010; and ch. 166, sec. 12, effective July 15, 2010. -- Amended 2005 Ky. Acts ch. 99, sec. 580, effective June 20, 2005. -- Amended 2004 Ky. Acts ch. 62, sec. 2, effective July 13, 2004. -- Amended 2002 Ky. Acts ch. 351, sec. 13, effective July 15, 2002. -- Amended 2000 Ky. Acts ch. 64, sec. 3, effective July 14, 2000. -- Amended 1998 Ky. Acts ch. 505, sec. 6, effective July 15, 1998. -- Created 1996 Ky. Acts ch. 348, sec. 1, effective July 15, 1996.

**Legislative Research Commission Note (7/15/2010).** This section was amended by 2010 Ky. Acts chs. 24 and 166, which do not appear to be in conflict and have been codified together.

**Legislative Research Commission Note (7/15/2010).** A reference to the "Office of Insurance" in subsection (3) of this section, as amended by 2010 Ky. Acts ch. 166, sec. 12, has been changed in codification to the "Department of Insurance" to reflect the reorganization of certain parts of the Executive Branch, as set forth in Executive Order 2010-535 and confirmed by the General Assembly in 2010 Ky. Acts ch. 24. This change was made by the Reviser of Statutes pursuant to 2010 Ky. Acts ch. 24, sec. 1938.