

**304.17B-021 Assessment of insurers -- Kentucky Access fund -- Reimbursement of GAP losses -- Examination of insurers and stop-loss carriers to determine accuracy of information provided.**

- (1) In addition to the other powers enumerated in KRS 304.17B-001 to 304.17B-031, the Office of Health Data and Analytics shall assess insurers in the amounts specified in this section. The assessment shall be used for the purpose of funding GAP losses and Kentucky Access.
  - (a) The amount of the assessment for each calendar year shall be as follows:
    1. From each stop-loss carrier, an amount that is equal to two dollars (\$2) upon each one hundred dollars (\$100) of health insurance stop-loss premiums;
    2. From all insurers, an amount based on the total amount of all health benefit plan premiums earned during the prior assessment period and paid by all insurers who received any of the health benefit plan premiums on which the annual assessment is based. The percentage rate used for the annual assessment shall be the same percentage rate as calculated in the GAP risk adjustment process for the six (6) month period of July 1, 1998, through December 31, 1998;
    3. If determined necessary by the office, a second assessment may be assessed in the same manner as the annual assessment in subparagraph 2. of this paragraph; and
    4. In no event shall the sum of the first assessment provided for in subparagraph 2. of this paragraph and the second assessment provided for in subparagraph 3. of this paragraph be greater than one percent (1%) of the total amount of all assessable health benefit plan premiums earned during the prior assessment period.
  - (b) The first assessment shall be for the period from January 1, 2000, through December 31, 2000, and shall be paid on or before March 31, 2001. Subsequent annual assessments shall be paid on or before March 31 of the year following the assessment period.
- (2) Every supporting insurer shall report to the office, in a form and at the time as the office may specify, the following information for the specified period:
  - (a) The insurer's total stop-loss premiums and health benefit plan premiums in the individual, small group, large group, and association markets; and
  - (b) Other information as the office may require.
- (3) As part of the assessment process, the office shall establish and maintain the Kentucky Access fund. All funds shall be held at interest, in a single depository designated in accordance with KRS 304.8-090(1) under a written trust agreement in accordance with KRS 304.8-095. All expense and revenue transactions of the fund shall be posted to the Management Administrative Reporting System (MARS) and its successors.
- (4) The Kentucky Access fund shall be funded from the following sources:

- (a) Premiums paid by Kentucky Access enrollees;
  - (b) The funds designated for Kentucky Access in the Kentucky Health Care Improvement fund;
  - (c) Appropriations from the General Assembly;
  - (d) All premium taxes collected under KRS Chapter 136 from any insurer, and any retaliatory taxes collected under KRS 304.3-270 from any insurer, for accident and health premiums that are in excess of the amount of the premium taxes and retaliatory taxes collected for the calendar year 1997;
  - (e) Annual assessments from supporting insurers;
  - (f) A second assessment from supporting insurers;
  - (g) Gifts, grants, or other voluntary contributions;
  - (h) Interest or other earnings on the investment of the moneys held in the account; and
  - (i) Any funds remaining on January 1, 2001, in the guaranteed acceptance program account may be transferred to the Kentucky Access fund.
- (5) The office shall determine on behalf of Kentucky Access the premiums, the expenses for administration, the incurred losses, taking into account investment income and other amounts needed to satisfy reserves, estimated claim liabilities, and other obligations for each calendar year. The office shall also determine the amount of the actual guaranteed acceptance program plan losses for each calendar year. The office shall assess insurers as follows:
- (a) On or before March 31 of each year, the amount set forth in subsection (1)(a)1. and (1)(a)2. of this section.
  - (b) If the amount of actual guaranteed acceptance program plan losses exceeds the assessment provided for in paragraph (a) of this subsection, a second assessment shall be authorized under subsection (1)(a)3. of this section. If the amount of GAP losses exceeds the assessments provided under subsection (1)(a)1., subsection (1)(a)2., and subsection (1)(a)3. of this section, moneys received and available from the Kentucky Health Care Improvement Fund after the office determines available funding for Kentucky Access for the current calendar year pursuant to subsection (6) of this section, shall be used to reimburse GAP participating insurers for any actual guaranteed acceptance program losses. If the amount of GAP losses exceeds the amount in the Kentucky Health Care Improvement Fund after reserving sufficient funds for Kentucky Access for the current year, each GAP participating insurer shall be reimbursed up to the amount of its proportional share of actual guaranteed acceptance program plan losses from the fund. Effective for any assessment on or after January 1, 2001, in calculating GAP losses, total premiums and total claims of the GAP participating insurer shall be used. Actual guaranteed acceptance program losses shall be calculated as the difference between the total GAP claims and the total GAP premiums on an aggregate basis.
  - (c) If GAP losses are fully covered by the assessment process provided for in subsection (1)(a)1. and (1)(a)2. of this section and the second assessment

provided for in subsection (1)(a)3. of this section is not necessary to cover GAP losses, and as determined by the office using reasonable actuarial principles Kentucky Access funding is needed, a second assessment provided for in subsection (1)(a)3. of this section shall be completed.

- (6) After the end of each calendar year, GAP losses shall be reimbursed only after the office determines that appropriate funding is available for Kentucky Access for the current calendar year. GAP losses shall be reimbursed after reserving sufficient funds for Kentucky Access.
- (7) With respect to a GAP participating insurer who reasonably will be expected both to pay assessments and to receive payments from the assessment fund, the office shall calculate the net amount owed to or to be received from the fund, and the office shall only collect assessments for or make payments from the fund based upon net amounts.
- (8) Insurers paying an assessment may include in any health insurance rate filing the amount of these assessments as provided for in Subtitle 17A of this chapter.
- (9) Insurers shall pay any assessment amounts authorized in KRS 304.17B-001 to 304.17B-031 within thirty (30) days of receiving notice from the office of the assessment amount.
- (10) Any surpluses remaining in the Kentucky Access fund after completion of the assessment process for a calendar year shall be maintained for use in the assessment process for future calendar years and such funds shall not lapse. The general fund appropriations to the Kentucky Access fund shall not lapse.
- (11) Assessments on health benefit plan premiums that are required under KRS 304.17B-001 to 304.17B-031 shall not be applied to premiums received by an insurer for state employees, Medicaid recipients, Medicare beneficiaries, and CHAMPUS insureds.
- (12) The office shall direct that receipts of Kentucky Access be held at interest, and may be used to offset future losses or to reduce plan premiums in accordance with the terms of KRS 304.17B-001 to 304.17B-031. As used in this subsection, "future losses" may include reserves for incurred but not reported claims.
- (13) The office shall conduct examinations of insurers and stop-loss carriers reasonably necessary to determine if the information provided by the insurers or stop-loss carriers is accurate.
- (14) The insurer, as a condition of conducting health insurance business in Kentucky, shall pay the assessments specified in KRS 304.17B-001 to 304.17B-031.
- (15) The stop-loss carrier, as a condition of doing health insurance business in Kentucky, shall pay the assessments specified in KRS 304.17B-001 to 304.17B-031.

**Effective:** June 27, 2019

**History:** Amended 2019 Ky. Acts ch. 90, sec. 21, effective June 27, 2019. -- Amended 2010 Ky. Acts ch. 24, sec. 1283, effective July 15, 2010. -- Created 2000 Ky. Acts ch. 476, sec. 11, effective July 14, 2000.

**2018-2020 Budget Reference.** See State/Executive Branch Budget, 2018 Ky. Acts ch. 169, Pt. I, G, 11, (1) at 1325.