

**KENTUCKY ASSIGNED CLAIMS PLAN**  
**Plan of Operation**

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## **KENTUCKY ASSIGNED CLAIMS PLAN**

Pursuant to the authority contained in Chapter 304 of the Kentucky Revised Statutes and the duty contained in Subtitle 39, Section 170 thereof, the Commissioner of the Department of Insurance has promulgated and adopted this Assigned Claims Plan hereinafter referred to as the Plan.

### **MEMBERSHIP**

Every reparations obligor which qualifies with the Kentucky Department of Insurance to provide basic reparations insurance as security pursuant to KRS Chapter 304, Subtitle 39, shall become and remain a participating member in the Assigned Claims Plan as a condition of its continued approval by the Commissioner of Insurance as an authorized provider of security for basic reparations insurance in compliance with KRS Chapter 304, Subtitle 39.

Any member whose membership in the Plan has been terminated shall continue to be governed by the rules and regulations in order to complete its obligation with regard to any assessments, losses, expenses, obligations or contracts under the Plan.

### **ADMINISTRATION OF PLAN**

The Plan shall be administered by a Governing Committee composed of not less than three (3) or more than eleven (11) persons appointed by the Commissioner of the Department of Insurance to serve at the pleasure of the Commissioner. The Governing Committee shall adopt such rules and regulations as are reasonable and necessary for the operation of the Plan and for an equitable system of assessing member participants to finance the operation of the Plan and provide payment of all benefits or other liabilities incurred under the Plan.

The Governing Committee shall elect such officers and committees, as it deems necessary. Any officer, or other person, authorized to receive, invest, borrow or disburse funds shall be bonded. The bond limit will be reviewed and adjusted by the Governing Committee as required.

The Governing Committee shall establish or contract with others for the establishment of an office to be known as the Assigned Claims Plan for the receipt and handling of reports of potential claims under the Plan, through servicing insurers, under the supervision of the Governing Committee.

The Governing Committee shall be subject to regulation by the Commissioner of the Department of Insurance and shall make an annual report to the Commissioner and to the participating members of the Plan as to the condition and operation of the Plan during the preceding calendar year.

The Governing Committee may, from time to time, amend the rules and regulations. Subject to the approval by the Commissioner of the Department of Insurance, the Governing Committee may amend the Plan.

### **ASSIGNED CLAIMS PLAN**

The Assigned Claims Plan authorized by this Plan shall operate under the direction and control of the Governing Committee. It shall receive reports of all potential claims under the Plan, from persons claiming an entitlement to benefits therefrom pursuant to KRS Chapter 304, Subtitle 39, and shall promptly make assignment of such claims for handling to servicing insurers. The Assigned Claims Plan shall have obligations and duties, including, but not limited to, the following:

- (a) The Plan shall be open during normal business hours to receive and process applications.
- (b) The Plan shall review each application for eligibility and promptly advise the person if it is clear that the person is not eligible for benefits under the Plan.
- (c) The Plan shall promptly assign to a servicing insurer, on an equitable basis, each application not immediately found ineligible.
- (d) The Plan shall maintain a record of each application received and the identity of the servicing insurer receiving the assignment.
- (e) The Plan, under authority from the Governing Committee, shall advise each member of the assessment dues, receive payment of the assessment, hold funds of the Plan, make disbursements to pay expenses of operation of the Plan and reimburse servicing insurers for benefits paid and handling fees earned.
- (f) The Plan shall operate under the supervision and control of the Governing Committee. The Plan shall make periodic reports on the operation and financial condition of the Plan to the Governing Committee.

### **SERVICING INSURERS**

All claims received by the Plan shall be handled through Servicing Insurers. The Governing Committee shall enter into a servicing agreement with at least five (5) insurers authorized to write automobile liability insurance business in the Commonwealth of Kentucky. They shall be selected on the basis of ability to provide quality claim service and selection shall be subject to the approval of the Commissioner of the Department of Insurance. In the event the Governing Committee is unable to enter into agreement with the required Servicing Insurers on the terms and conditions required by this Plan, the Commissioner shall designate such Servicing Insurers, as he/she deems necessary to effectuate and continue the operation of the Plan.

Upon receipt of notice of a potential claim under the Plan, the servicing insurer receiving the assignment shall act promptly to determine the eligibility of benefits claimed. If the person is found ineligible, notice of ineligibility and the reasons shall be promptly communicated to such person or the legal guardian of that person, with copy to the Assigned Claims Plan. If the person is determined eligible, benefits required by KRS Chapter 304, Subtitle 39 shall be paid promptly.

The servicing insurer shall have the same rights and obligations in the handling of any assigned claim as if it had issued a policy of basic reparation insurance complying with KRS Chapter 304, Subtitle 39. Each servicing insurer shall be entitled to full reimbursement from the Plan for all amounts paid as benefits pursuant to the Plan, and in addition thereto, shall be paid a handling fee to be set forth in the rules and regulations developed by the Governing Committee.

In addition to reimbursement for benefits paid and the handling fee earned, the servicing insurer shall be entitled to receive an additional fee for amounts recovered by it through subrogation, arbitration, or indemnity proceedings. This fee shall be set forth in the rules and regulations developed by the Governing Committee. It shall be the duty of such servicing insurer to pursue all such subrogation rights when, in its best judgment, or in the judgment of the Assigned Claims Plan or the Governing Committee, recovery by the way of subrogation should be sought.

The Governing Committee shall have the right to control all undertakings by a servicing insurer on any assigned claim, and the Committee shall reimburse such servicing insurer for all necessary expenses incurred therein.

Each servicing insurer shall promptly report to the Assigned Claims Plan the disposition of all claims assigned to it for handling and shall make such other reports, records and information available upon request to the Plan or the Governing Committee.

## **PERSONS ENTITLED TO BENEFITS UNDER PLAN**

A person suffering accrued economic loss as the result of accidental bodily injury occurring in Kentucky and arising out of the operation, maintenance or use of a motor vehicle subject to the provisions of KRS Chapter 304, Subtitle 39 shall be eligible for benefits as provided therein, unless:

- (a) Such person is not entitled to benefits because:
  - 1. he intentionally caused or attempted to cause injury to himself or another person, or
  - 2. he was injured while maintaining or using a converted vehicle unless used in the good faith belief that he is legally entitled to do so, or
  - 3. he has rejected or is deemed to have rejected the limitations on his tort rights pursuant to the No-Fault Act;

- (b) Such person was the owner occupant of the motor vehicle subject to the Kentucky No-Fault Act which was not insured in accordance with that Act.
- (c) Such person qualifies for benefits under a policy of insurance or plan of self insurance that provides benefits required by the Kentucky No-Fault Act, and such benefits have not been denied such person.

All persons making application for benefits under the Plan shall do so on forms prescribed by the Governing Committee and shall do so within the time limitations prescribed by KRS Chapter 304, Subtitle 39. All applications shall be directed to the Assigned Claims Plan. Applicants for benefits shall cooperate with the Plan or the servicing insurer to which the claim is assigned and shall among other things, provide upon request:

- (a) Full information regarding the accident in which the person was injured.
- (b) Full information relevant to the eligibility of the person to claim benefits under the Plan.
- (c) Full information establishing the necessity and reasonableness of medical expense incurred and for which claim is made.
- (d) Full information establishing the necessity and reasonableness of earnings lost.
- (e) Full information which would establish the identity and, except for immunity granted by KRS 304 Chapter 304, Subtitle 39, probable legal liability of any person or persons alleged to have been the proximate cause of the accident in which the applicant was injured.

The benefits to which any injured applicant under the Plan is entitled shall be those contained in KRS Chapter 304, Subtitle 39 subject to all applicable deductions, offsets, limitations, or reductions contained therein.

#### **ASSESSMENT OF PARTICIPATING MEMBERS**

Each participating member shall be subject to a membership fee in the sum of \$100.00 on the effective date of this Plan, or upon becoming a member of the Plan. Thereafter, each participating member shall be subject to assessment pursuant to rules and regulations adopted by the Governing Committee. The amounts of all such assessments levied shall be payable by the participating members to the Governing Committee within sixty (60) days of the assessment date.

## INDEMNIFICATION

The Plan shall indemnify each individual, insurer, or servicing insurer against any and all losses, damages, judgments, interest, settlements, fines, court costs, and other reasonable cost and expenses, including attorney's fees, and any other liabilities (hereafter "liability") incurred by, imposed upon, or suffered by such individual, insurer, or servicing insurer in connection with or resulting from any claim, action, suit or proceeding, actual or threatened (hereafter "claim") arising out of and in connection with the performance of duties on any committee or on the Governing Committee of the Plan or predecessor organization or arising out of and in connection with the performance of duties as an officer or employee of the Plan or predecessor organization, insurer or, servicing insurer of the Plan or predecessor organization, provided such individual, insurer, or servicing insurer:

- A. Acted in good faith;
- B. Reasonably believed the performance of duties was in accordance with the objectives of the Plan;
- C. Had no reasonable cause to believe the performance of duties was improper or illegal; and
- D. Shall have promptly notified the Plan of any claim in writing at its main office.

Indemnification as described in this Section shall be provided whether or not the individual, insurer, or servicing insurer is still acting for the Plan, or still serving on the Governing Committee or on any committee of the Plan or is still an officer or employee of the Plan at the time of the commencement of any claim, and whether or not any possible liability is incurred through the performance of duties prior to the adoption of this Section.

Whenever an individual, insurer, or servicing insurer seeks indemnification under this section, entitlement to indemnification shall be determined by the Governing Committee which shall also determine the time and manner of indemnification including reimbursement with interest.

The Plan may elect to defend, pay or otherwise dispose of any claims, at its own cost, and will promptly advise the individual, insurer, or servicing insurer seeking indemnification whether it so elects.

Indemnification hereunder shall not be exclusive of the rights to which such individual, insurer, or servicing insurer may be entitled as a matter of law.

The cost of fulfilling the Plan's obligations under this Section shall be a cost of administration.