



## LOUISIANA DEPARTMENT OF INSURANCE

JAMES J. DONELON  
COMMISSIONER

September 24, 2018

The Honorable John A. Alario  
President of the Senate  
P.O. Box 94183  
Baton Rouge, LA 70804

Via email

[apa.senatepresident@legis.la.gov](mailto:apa.senatepresident@legis.la.gov)

The Honorable Taylor F. Barras  
Speaker of the House  
P.O. Box 94062  
Baton Rouge, LA 70804

Via email

[apa.housespeaker@legis.la.gov](mailto:apa.housespeaker@legis.la.gov)

The Honorable John R. Smith  
Chairman  
Senate Committee on Insurance  
P.O. Box 94183  
Baton Rouge, LA 70804

Via email

[apa.s-ins@legis.la.gov](mailto:apa.s-ins@legis.la.gov)

The Honorable Kirk Talbot  
Chairman  
House Committee on Insurance  
P.O. Box 94062  
Baton Rouge, LA 70804

Via email

[apa.h-ins@legis.la.gov](mailto:apa.h-ins@legis.la.gov)

RE: Summary Report - Regulation 78, Policy Form Filing Requirements

Dear President Alario, Speaker Barras, Senator Smith, and Representative Talbot:

The Louisiana Department of Insurance (LDI) hereby submits the following summary report required by La. R.S. 49:968(D)(1)(b), and announces its intention to proceed with final rulemaking of Regulation 78, which was published as a Notice of Intent in the March, 2018 edition of the *Louisiana Register*. The Notice of Intent was amended via Potpourri, which was published on August 20, 2018. The Potpourri was necessitated by the passage of Act 171 of the 2018 Regular Session of the Legislature, which requires that a demand for a hearing be filed only with the Commissioner of Insurance. Act 171 takes effect January 1, 2019.

President Alario, Speaker Barras, Senator Smith, and Representative Talbot:

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Interested persons were provided an opportunity to submit comments to the LDI on the proposed regulation. The LDI received comments from the National Association of Mutual Insurance Companies (NAMIC) in response to the Notice of Intent and responded accordingly. NAMIC's comments and the LDI's responses are summarized below and enclosed for your review. The LDI did not receive any comments at the public hearing, or by the expiration of the commentary period, to the Potpourri.

Letter Dated April 18, 2018 FROM NAMIC

Comment No. 1: NAMIC stated that insurers are concerned that the proposal does not provide reassurance after a form is filed that it can be used and incorporated into an insurance policy.

Response to Comment No. 1: The Commissioner of Insurance responded that under Louisiana law insurers are required to file their policy forms for review and approval by the Louisiana Department of Insurance before such forms can be used in our state. Upon approval, an insurer can then use the policy form as long as it is compliant with the Louisiana Insurance Code and any rules or regulations promulgated thereunder. The filing and subsequent approval of a policy form does not last forever. Pursuant to La. R.S. 22:862 and §10113(I) of Regulation 78, any form filing found to be noncompliant is subject to disapproval or withdrawal of a previously approved policy form. The proposed amendments to Regulation 78 delineate when and under what circumstances a policy form can be used up to its disapproval and lay out the process for compliance with the withdrawal of a previously approved policy form. Therefore, no change to the proposed regulation is necessary based on this comment.

Comment No. 2: NAMIC further stated that its members have also raised concerns that insurers lack the agility to stop using forms on a short notice and they could be put in a position to need to file an appeal of a decision to withdraw a form's approval simply to negotiate a timeframe for the insurer to comply with said withdrawal. NAMIC also stated that in the Fiscal and Economic Impact Statement to the amended Regulation 78 it noted that "withdrawal of approval for a previously approved filing is a rare occurrence (approximately three times in the last decade)," and was uncertain why such a rare occurrence requires a rule change.

Response to Comment No. 2: The Commissioner of Insurance responded that contrary to NAMIC's assertion that an insurer has a short notice to stop using forms, the proposed amendment to Regulation 78 grants the insurer at least an additional fifteen days written notice, that must be given in advance of the thirty days currently existing in Regulation 78. The Commissioner further stated that he simply wanted to give the insurer notice to show compliance and the opportunity to address non-compliance before issuing an official Notice of Withdrawal of Approval. Therefore, no change to the proposed regulation is necessary based on this comment.

President Alario, Speaker Barras, Senator Smith, and Representative Talbot:  
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Comment No. 3: NAMIC raised a concern regarding the lack of clarity as to how a policyholder would be affected if a form's approval is withdrawn mid-policy period. NAMIC further asked if a form previously approved is withdrawn, does the coverage provided by that form evaporate at the expiration of the thirty days provided in §10113(I)(1)(c) of Regulation 78 and would any claims pending under that withdrawn form still be covered?

Response to Comment No. 3: The Commissioner responded that he cannot predict when coverage would end or if any pending claims are to be covered by the insurer at the expiration of the thirty days provided in §10113(I)(1)(c) of Regulation 78 as that matter would be resolved in the judicial system as is the case under current law. The Commissioner stated that NAMIC's comments concerning §10113(I)(1)(c) refer to language that was included in Regulation 78 at the time it was originally promulgated in 2002, that he had not proposed any amendments to that original language, and that it was not part of the Fiscal and Economic Impact Statement that accompanies Regulation 78 at this time. The Commissioner clarified that subparagraph §10113(I)(1)(c) of Regulation 78 was simply repromulgated to show its recodification from subparagraph "b" to "c" - nothing more, nothing less. Therefore, no change to the proposed regulation is necessary based on this comment.

Subject to legislative oversight, the LDI would like to adopt Regulation 78 as amended, along with the changes reflected in the Potpourri, and submit it to the Office of the State Register for publication in the November edition of the *Louisiana Register*. In order to meet the November publication deadline, it will be necessary to submit it on or before November 9, 2018. A copy of the summary report will be placed on the LDI's website in accordance with La. R.S. 49:968(D)(1)(c). If you have any questions or need additional information, please contact me at (225) 342-4673 or via email at [cguidry@ldi.la.gov](mailto:cguidry@ldi.la.gov).

Sincerely,



Carol Fowler-Guidry  
Deputy General Counsel  
Division of Legal Services  
Louisiana Department of Insurance

Enclosures: Notice of Intent published March 20, 2018  
Potpourri published August 20, 2018  
Copy of NAMIC's Letter dated April 18, 2018  
Copy of LDI's Response Letter to NAMIC dated May 31, 2018

## Public Hearing

A public hearing on this proposed Rule is scheduled for Thursday, April 26, 2018 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing.

Rebekah E. Gee MD, MPH  
Secretary

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

### RULE TITLE: Pharmacy Benefits Management Program—Physician-Administered Drugs Reimbursement Methodology

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that implementation of this proposed rule will result in no programmatic fiscal impact to the state in FY 17-18 other than the cost of promulgation. This proposed rule is anticipated to result in estimated state general fund programmatic costs of approximately \$62,000 for FY 18-19 and \$95,827 for FY 19-20. It is anticipated that \$540 (\$270 SGF and \$270 FED) will be expended in FY 17-18 for the state's administrative expense for promulgation of this proposed rule and the final rule.

#### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that implementation of this proposed rule will not affect revenue collections in FY 17-18 other than the federal share of the promulgation costs. This proposed rule is anticipated to result in increased federal revenue collections of approximately \$204,154 for FY 18-19 and \$296,400 for FY 19-20. It is anticipated that \$270 will be collected in FY 17-18 for the federal share of the administrative expense for promulgation of this proposed rule and the final rule.

#### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

In compliance with U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services mandates, this proposed rule amends the provisions governing the Pharmacy Benefits Management Program to revise the reimbursement methodology for physician-administered drugs in a physician office setting in order to bring the rates into alignment with the 2018 Louisiana Medicare rate, and to incorporate a mechanism for periodic updates to the rates. This proposed Rule will impact payments to providers due to the adjustment to current pricing for some physician-administered drugs. It is anticipated that implementation of this proposed rule will increase programmatic expenditures in the Pharmacy Benefits Management Program by approximately \$266,154 for FY 18-19 and \$392,227 for FY 19-20.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Jen Steele  
Medicaid Director  
1803#043

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Insurance Office of the Commissioner

#### Regulation 78—Policy Form Filing Requirements (LAC 37:XIII.Chapter 101)

The Department of Insurance, pursuant to the authority of the *Louisiana Insurance Code*, R.S. 22:1 et seq., and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., hereby gives notice of its intent to amend Regulation 78—Policy Form Filing Requirements.

The proposed regulation is being amended to provide uniform and consistent procedures regarding the withdrawal of a previously approved policy form filing and the filing fee associated with the change of a company's name, logo, address or officers.

### Title 37 INSURANCE

#### Part XIII. Regulations

#### Chapter 101. Regulation 78—Policy Form Filing Requirements

#### §10109. Filing and Review of Life and Annuity Insurance Policy Forms and Related Matters

##### A. - I.1 ...

a. Prior to withdrawing approval of a filing previously granted, the department will notify the affected insurer in writing of the alleged violation or irregularity. That insurer will then have 15 days to show that the disputed forms are in compliance with the *Louisiana Insurance Code*. If the affected insurer is unable to show compliance, the department will then proceed with issuing the notice of withdrawal of approval.

b. The affected insurer may request a hearing on the withdrawal of approval, in accordance with the provisions of Subsection J of this Chapter. The request for hearing must be made to the Division of Administrative Law and to the Department of Insurance, pursuant to R.S. 22:2191.

c. Upon receipt by the department of a timely request for a hearing, the 30-day notice period precedent to withdrawal of approval being effective shall be suspended for the duration of the hearing process, and shall recommence upon the date of a ruling adverse to the insurer requesting the hearing, unless injunctive relief has been requested and granted to the department by a court of competent jurisdiction. Such suspension of the notice of withdrawal of approval shall be applicable to Paragraphs I.2, 3, 4 and 5 hereof.

##### I.2. - K.2 ...

3. A change of company name or logo, a change of address, and changes in listed officers do not require a new filing of forms when the department is otherwise properly notified of such change, and a copy of such notification is maintained on file by the insurer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, Directive 169, R.S.22:861 and R.S. 22:862.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:2544 (December 2002), amended LR 33:105 (January 2007), LR 42:1947 (November 2016), amended LR 44:

**§10113. Filing and Review of Property and Casualty Insurance Policy Forms and Related Matters**

A. - I.1. ...

a. Prior to withdrawing approval of a filing previously granted, the department will notify the affected insurer in writing of the alleged violation or irregularity. That insurer will then have 15 days to show that the disputed forms are in compliance with the *Louisiana Insurance Code*. If the affected insurer is unable to show compliance, the department will then proceed with issuing the notice of withdrawal of approval.

b. The affected insurer may request a hearing on the withdrawal of approval, in accordance with the provisions of Subsection J of this Chapter. The request for hearing must be made to the Division of Administrative Law and to the Department of Insurance, pursuant to R.S. 22:2191.

c. Upon receipt by the department of a timely request for a hearing, the 30-day notice period precedent to withdrawal of approval being effective shall be suspended for the duration of the hearing process, and shall recommence upon the date of a ruling adverse to the insurer requesting the hearing, unless injunctive relief has been requested and granted to the department by a court of competent jurisdiction. Such suspension of the notice of withdrawal of approval shall be applicable to Paragraphs I.2, 3, 4, and 5 hereof.

I.2. - K.3 ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, Directive 169, R.S. 22:861 and R.S. 22:862.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:2548 (December 2002), amended LR 33:108 (January 2007), LR 42:1952 (November 2016), amended LR 44:

**§10119. Effective Date**

[Formerly §10117]

A. This regulation became effective January 1, 2003; however, the amendments to this regulation will become effective upon final publication in the *Louisiana Register*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, Directive 169, R.S. 22:861, R.S. 22:862 and R.S. 22:974.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:2552 (December 2002), amended LR 33:111 (January 2007), LR 42:1957 (November 2016), repromulgated LR 44:

**Family Impact Statement**

1. Describe the Effect of the Proposed Regulation on the Stability of the Family. The proposed amended regulation should have no measurable impact upon the stability of the family.

2. Describe the Effect of the Proposed Regulation on the Authority and Rights of Parents Regarding the Education and Supervision of their Children. The proposed amended regulation should have no impact upon the rights and authority of children regarding the education and supervision of their children.

3. Describe the Effect of the Proposed Regulation on the Functioning of the Family. The proposed amended regulation should have no direct impact upon the functioning of the family.

4. Describe the Effect of the Proposed Regulation on Family Earnings and Budget. The proposed amended regulation should have no direct impact upon family earnings and budget.

5. Describe the Effect of the Proposed Regulation on the Behavior and Personal Responsibility of Children. The proposed amended regulation should have no impact upon the behavior and personal responsibility of children.

6. Describe the Effect of the Proposed Regulation on the Ability of the Family or a Local Government to Perform the Function as Contained in the Rule. The proposed amended regulation should have no impact upon the ability of the family or a local governmental unit to perform the function as contained in the Rule.

**Poverty Impact Statement**

1. Describe the Effect on Household Income, Assets, and Financial Security. The proposed amended regulation should have no effect on household income assets and financial security.

2. Describe the Effect on Early Childhood Development and Preschool through Postsecondary Education Development. The proposed amended regulation should have no effect on early childhood development and preschool through postsecondary education development.

3. Describe the Effect on Employment and Workforce Development. The proposed amended regulation should have no effect on employment and workforce development.

4. Describe the Effect on Taxes and Tax Credits. The proposed amended regulation should have no effect on taxes and tax credits.

5. Describe the Effect on Child and Dependent Care, Housing, Health Care, Nutrition, Transportation and Utilities Assistance. The proposed amended regulation should have no effect on child and dependent care, housing, health care, nutrition, transportation and utilities assistance.

**Small Business Analysis**

The impact of the proposed regulation on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed regulation that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed regulation on small businesses.

1. Identification and Estimate of the Number of the Small Businesses Subject to the Proposed Rule. The proposed amended regulation should have no measurable impact upon small businesses.

2. The Projected Reporting, Record Keeping, and other Administrative Costs Required for Compliance with the Proposed Rule, Including the Type of Professional Skills Necessary for Preparation of the Report or Record. The proposed amended regulation should have no measurable impact upon small businesses.

3. A Statement of the Probable Effect on Impacted Small Businesses. The proposed amended regulation should have no measurable impact upon small businesses.

4. Describe any Less Intrusive or Less Costly Alternative Methods of Achieving the Purpose of the Proposed Rule. The proposed amended regulation should have no measurable impact on small businesses; therefore, will have no less intrusive or less cost alternative methods.

#### Provider Impact Statement

1. Describe the Effect on the Staffing Level Requirements or Qualifications Required to Provide the Same Level of Service. The proposed amended regulation will have no effect.

2. The Total Direct and Indirect Effect on the Cost to the Provider to Provide the Same Level of Service. The proposed amended regulation will have no effect.

3. The Overall Effect on the Ability of the Provider to Provide the Same Level of Service. The proposed amended regulation will have no effect.

#### Public Comments

Interested persons may submit written comments on the proposed promulgation of Regulation 78. Such comments must be received no later than April 19, 2018 by close of business, 4:30 p.m., and addressed to Carol Fowler-Guidry, Louisiana Department of Insurance, P.O. Box 94214, Baton Rouge, LA 70804-9214 or faxed to (225) 342-1632.

James J. Donelon  
Commissioner

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Regulation 78 Policy Form Filing Requirements

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule changes are not anticipated to result in any additional costs for the LA Dept. of Insurance. Provisions within the proposed rule changes require LDI to notify insurers of its intent to withdraw approval of a previously approved filing 15 days prior to withdrawing approval. According to LDI staff, withdrawal of approval for a previously approved filing is a rare occurrence (approximately 3 times in the last decade), and any increase in mailings to notify insurers of LDI's intent to withdraw approval of a previously approved filing will be absorbed utilizing existing resources and budget authority.

The proposed rule changes will not affect expenditures of local governmental units.

#### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule changes will result in a marginal reduction of self-generated revenues for LDI. The proposed rule changes remove the filing fee of \$100 associated with the endorsement or rider noting a change of a company's name, logo, address or officers. The revenue loss associated with removal of this fee is dependent upon the number of companies changing names, logos, addresses, and/or officers, and is therefore indeterminable. However, based upon historical revenues derived from this fee, the impact is likely marginal. For reference, LDI received \$4,200 from the aforementioned fee in FY 17.

#### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule changes may benefit life and annuity insurance companies by removing the \$100 filing fee associated with the change of a company's name, logo, address or officers.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule changes will not affect competition or employment.

Mary E. Butler  
Chief of Staff  
1803#029

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

### NOTICE OF INTENT

#### Department of Insurance Office of the Commissioner

#### Regulation 99—Certificates of Insurance (LAC 37:XIII.Chapter 139)

The Department of Insurance, pursuant to the authority of the Louisiana Insurance Code, R.S. 22:1 et seq., and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., hereby gives notice of its intent to repeal Regulation 99—Certificates of Insurance. The Louisiana Department of Insurance is repealing Regulation 99 to comply with Acts 2016, No. 278 of the Regular Session of the Louisiana Legislature that removed the commissioner of insurance from the approval process for certificates of insurance.

The purpose of Regulation 99 was to implement the provisions of Acts 2010, No. 1017 of the Regular Session of the Louisiana Legislature, concerning the issuance, effect and approval of certificates of insurance.

#### Title 37

#### INSURANCE

#### Part XIII. Regulations

#### Chapter 139. Regulation 99—Certificates of Insurance Subchapter A. General Provisions

#### §13901. Authority

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:881.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 36:2869 (December 2010), repealed LR 44:

#### §13903. Purpose

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:881.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 36:2869 (December 2010), repealed LR 44:

#### §13905. Scope and Applicability

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:881.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner LR 36:2869 (December 2010), repealed LR 44:

**§13907. Exemptions**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:881.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 36:2869 (December 2010), repealed LR 44:

**§13909. Definitions**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:881.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 36:2869 (December 2010), repealed LR 44:

**§13911. Effect and Use of Certificates of Insurance**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:881.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 36:2870 (December 2010), repealed LR 44:

**§13913. Filing Requirements**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:881.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 36:2870 (December 2010), repealed LR 44:

**§13915. Certificates of Insurance Approved Prior to Promulgation of Regulation 99**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:881.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 36:2871 (December 2010), repealed LR 44:

**§13917. Use of ACORD, AAIS and ISO Forms**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:881.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 36:2871 (December 2010), repealed LR 44:

**§13919. Notice of Cancellation**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:881.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 36:2871 (December 2010), repealed LR 44:

**§13921. Investigations and Examinations of Complaints and Violations**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:881.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 36:2871 (December 2010), repealed LR 44:

**§13923. Severability**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:881.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 36:2871 (December 2010), repealed LR 44:

**§13925. Effective Date**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:881.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 36:2871 (December 2010), repealed LR 44:

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6. Describe the Effect of the Proposed Regulation on the Ability of the Family or a Local Government to Perform the Function as Contained in the Rule. The proposed amended regulation should have no impact upon the ability of the family or a local governmental unit to perform the function as contained in the rule.

**Poverty Impact Statement**

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3. Describe the Effect on Employment and Workforce Development. The proposed amended regulation should have no effect on employment and workforce development.

4. Describe the Effect on Taxes and Tax Credits. The proposed amended regulation should have no effect on taxes and tax credits.

5. Describe the Effect on Child and Dependent Care, Housing, Health Care, Nutrition, Transportation and Utilities Assistance. The proposed amended regulation should have no effect on child and dependent care, housing, health care, nutrition, transportation and utilities assistance.

**Small Business Analysis**

The impact of the proposed regulation on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not

**POTPOURRI**

**Department of Environmental Quality  
Office of the Secretary  
Legal Affairs and Criminal Investigations Division**

2015 Ozone National Ambient Air Quality Standards  
(NAAQS)—State Implementation Plan (SIP) Revisions

Under the authority of the Louisiana Environmental Quality Act, LA R.S. 30:2051 et seq., the secretary gives notice that the Office of Environmental Assessment, Air Analysis and Assessment Division will submit to the Environmental Protection Agency (EPA) a revision to the infrastructure, as required by section 110(a)(1) and (2) of the Clean Air Act (CAA). (1808Pot2)

On October 1, 2015, the EPA strengthened the NAAQS for ground-level ozone to 70 parts per billion (ppb). Pursuant to sections 110(a)(1) and (2) of the CAA, each state is required to submit a plan to provide for the implementation, maintenance, and enforcement of a newly promulgated or revised NAAQS.

The draft SIP will be submitted in two parts: Part I will cover all elements except sec 110(a)(2)(D); Part II will cover the good neighbor provisions in sec 110(a)(2)(D). Both Part I and Part II are covered by this notice.

If any party wishes to have a public hearing on this matter, one will be scheduled and the comments gathered at such hearing will be submitted as an addendum to the original submittal. All interested persons are invited to submit written comments concerning the revisions no later than 4:30 p.m., September 20, 2018, to Vivian H. Aucoin, Office of Environmental Assessment, P.O. Box 4314, Baton Rouge, LA. 70821-4314, or by email to vivian.aucoin@la.gov.

A copy of the SIP may be viewed online at the LDEQ Electronic Document Management System (EDMS) AI # 174156 or the LDEQ headquarters at 602 North Fifth Street, Room 530, Baton Rouge, LA.

Herman Robinson  
General Counsel

1808#019

**POTPOURRI**

**Department of Environmental Quality  
Office of the Secretary  
Legal Affairs and Criminal Investigations Division**

Risk Evaluation/Corrective Action Program (RECAP)  
Revisions (LAC 33:I.1307 and the RECAP Document)

The department has made revisions to the Risk Evaluation/Corrective Action Program (RECAP). The draft revisions amend and update the program to be consistent with the current scientific methods and recommendations. In the near future, LDEQ will begin the rulemaking process to revise LAC 33:I.1307 and the RECAP document. (1808Pot1)

The draft revision of the RECAP document is available on the department's website for review by interested parties. The URL is <http://deq.louisiana.gov/page/proposed-recap>.

Herman Robinson  
General Counsel

1808#020

**POTPOURRI**

**Department of Insurance  
Office of the Commissioner**

Public Hearing—Substantive Changes to Notice of Intent  
Regulation 78—Policy Form Filing Requirements  
(LAC 37:XIII.Chapter 101)

The Department of Insurance published a Notice of Intent to amend Regulation 78, in the March 20, 2018, Volume 44, No. 3 edition of the *Louisiana Register*. The Department of Insurance proposes to amend §§10109.I.1.b, 10113.I.1.b, and 10119 of the Notice of Intent, along with §§10107.I.1.b and J.1, 10109.J.1, and 10113.J.1 of the current version of Regulation 78, to comport with the passage of Act 171 of the 2018 Regular Session of the Louisiana Legislature, which requires that a demand for a hearing be filed with the Commissioner of Insurance.

**Title 37  
INSURANCE**

**Part XIII. Regulations**

**Chapter 101. Regulation 78—Policy Form Filing  
Requirements**

**§10107. Filing and Review of Health Insurance Policy  
Forms and Related Matters**

A. - I.1.a. ...

b. The affected insurer may request a hearing on the withdrawal of approval, in accordance with the provisions of Subsection J of this Chapter. The request for hearing must be made to the Department of Insurance, pursuant to R.S. 22:2191.

I.1.c. - J. ...

1. Any person aggrieved by a failure to approve any filing, or the disapproval of any filing, or the withdrawal of approval of any filing, or any related action taken by the department pursuant to this Section, may request an administrative hearing in accordance with the provisions of Chapter 12 of title 22 of the *Louisiana Revised Statutes*. Pursuant to R.S. 22:2191, any demand must be in writing, must specify in what respects the person is aggrieved and the grounds upon which relief should be granted at the hearing, and must be made within 30 days after the failure to approve any filing, notice of disapproval of any filing, or the notice of withdrawal of approval of any filing when such notice is mailed to the aggrieved party at his last known address or delivered to the aggrieved party.

K. - K.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, Directive 169, R.S.22:861, R.S. 22:862, and R.S. 22:974.



HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:2539 (December 2002), amended LR 33:101 (January 2007), LR 42:1940 (November 2016), LR 44:

**§10109. Filing and Review of Life and Annuity Insurance Policy Forms and Related Matters**

A. - I.1.a. ...

b. The affected insurer may request a hearing on the withdrawal of approval, in accordance with the provisions of Subsection J of this Chapter. The request for hearing must be made to the Department of Insurance, pursuant to R.S. 22:2191.

I.1.c. - J. ...

1. Any person aggrieved by a failure to approve any filing, or the disapproval of any filing, or the withdrawal of approval of any filing, or any related action taken by the department pursuant to this Section, may request an administrative hearing in accordance with the provisions of Chapter 12 of title 22 of the *Louisiana Revised Statutes*. Pursuant to R.S. 22:2191, any demand must be in writing, must specify in what respects the person is aggrieved and the grounds upon which relief should be granted at the hearing, and must be made within 30 days after the failure to approve any filing, notice of disapproval of any filing, or the notice of withdrawal of approval of any filing when such notice is mailed to the aggrieved party at his last known address or delivered to the aggrieved party.

K. - K.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, Directive 169, R.S.22:861 and R.S. 22:862.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:2544 (December 2002), amended LR 33:105 (January 2007), LR 42:1947 (November 2016), LR 44:

**§10113. Filing and Review of Property and Casualty Insurance Policy Forms and Related Matters**

A. - I.1.a. ...

b. The affected insurer may request a hearing on the withdrawal of approval, in accordance with the provisions of Subsection J of this Chapter. The request for hearing must be made to the Department of Insurance, pursuant to R.S. 22:2191.

I.1.c. - J. ...

1. Any person aggrieved by a failure to approve any filing, or the disapproval of any filing, or the withdrawal of approval of any filing, or any related action taken by the department pursuant to this Section, may request an administrative hearing in accordance with the provisions of Chapter 12 of title 22 of the *Louisiana Revised Statutes*. Pursuant to R.S. 22:2191, any demand must be in writing, must specify in what respects the person is aggrieved and the grounds upon which relief should be granted at the hearing, and must be made within 30 days after the failure to approve any filing, notice of disapproval of any filing, or the notice of withdrawal of approval of any filing when such notice is mailed to the aggrieved party at his last known address or delivered to the aggrieved party.

K. - K.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, Directive 169, R.S. 22:861 and R.S. 22:862.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:2548 (December 2002), amended LR 33:108 (January 2007), LR 42:1952 (November 2016), LR 44:

**§10119. Effective Date  
[Formerly §10117]**

A. This regulation became effective January 1, 2003; however, the amendments to this regulation will become effective January 1, 2019.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, Directive 169, R.S. 22:861, R.S. 22:862 and R.S. 22:974.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:2552 (December 2002), amended LR 33:111 (January 2007), LR 42:1957 (November 2016), repromulgated LR 44:

**Public Hearing**

A public hearing on the proposed substantive changes will be held by the Louisiana Department of Insurance on September 19, 2018, at 9:30 a.m. in the Poydras Hearing Room, Poydras Building, 1702 North Third Street, Baton Rouge, LA. Interested persons who wish to make comments may do so at the public hearing or by writing to Carol Fowler-Guidry, Deputy General Counsel, Louisiana Department of Insurance, P.O. Box 94214, Baton Rouge, LA 70804-9214. Comments will be accepted no later than September 19, 2018 by close of business, 4:30 p.m.

James J. Donelon  
Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Regulation 78  
Policy Form Filing Requirements**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)  
The proposed rule changes are not anticipated to result in any additional costs or savings for the LA Dept. of Insurance (LDI). The proposed rule changes conform to Act 171 of the 2018 Regular Session, which requires that a request for hearing be filed with the Commissioner of Insurance.  
The proposed rule changes will not affect expenditures of local governmental units.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
The proposed rule changes will not affect revenue collections for state or local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
The proposed rule changes will benefit affected insurers, as they must only file a request for hearing with the LDI, rather than filing a request for a hearing with both the LDI and the Division of Administrative Law.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
The proposed rule changes will not affect competition or employment.

Nicholas Lorusso  
Chief Deputy  
1808#088

Evan Brasseaux  
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April 18, 2018

Commissioner Jim Donelon  
Louisiana Department of Insurance  
Baton Rouge, LA

*Via email and fax to (225) 342-1632*

**RE: NAMIC opposition to Proposed Regulation 78**

Commissioner Donelon:

The National Association of Mutual Insurance Companies (NAMIC) appreciates the opportunity to register its opposition to Proposed Regulation 78. Our comments are limited to the proposed §10113.

We understand LDI's intent with this proposal is to provide insurers with additional notice prior to a form's approval being withdrawn. However, our membership has raised a series of questions about this proposal. We have received feedback from carriers indicating there is much uncertainty among insurers as to the true impact of this rule.

Many insurers are concerned proposal does not provide reinsurance after a form is filed that it can be used and incorporated into an insurance policy. Without that reinsurance, insurers would likely be hesitant to rely upon the coverage provided, the rating associated or the effectiveness of a form previously approved.

Our members have also raised concerns that insurers lack the agility to stop using forms on a short notice. Under this proposal, insurers could be put in a position to appeal a decision to withdraw a form's approval simply to negotiate a timeframe for the insurer to comply. In the Fiscal and Economic Impact Statement to the proposed regulation, we note "withdrawal of approval for a previously approved filing is a rare occurrence (approximately 3 times in the last decade.)" NAMIC remains uncertain why such a rare occurrence requires a rule change.

Another concern stems from the lack of clarity as to how a policyholder would be affected if a form's approval is withdrawn mid-policy period. If the form in question grants coverage, does that coverage evaporate at the expiration of the 30 days provided in §10113 I.1(c)? Would any claims pending under that withdrawn form still be covered? The proposal does not appear to contemplate this situation.



www.namic.org

We gather from our conversations with LDI staff this proposal is designed to help insurers. We can attest that is creating confusion instead. **We urge the LDI to withdraw the proposal and hold a stakeholder meeting to further vet this to clear up any misunderstandings.**

Please let me know if you would like to discuss our position.

Sincerely,

Paul Martin  
Regional Vice President  
Southwest Region



LOUISIANA DEPARTMENT OF INSURANCE

JAMES J. DONELON  
COMMISSIONER

May 31, 2018

Mr. Paul T. Martin  
Regional Vice President  
Southwestern Region  
National Association of Mutual Insurance Companies  
4301 City Park Road  
Austin, Texas 78730

*Re: NAMIC Comments on Regulation 78 Amendments*

Dear Paul:

This letter is in response to your correspondence dated April 18, 2018 wherein you expressed the following comments about proposed amendments to Regulation 78 of the Louisiana Department of Insurance.

**Comment No. 1:** You stated that insurers are concerned that the proposal does not provide reassurance after a form is filed that it can be used and incorporated into an insurance policy.

**Response to Comment No. 1:** Under Louisiana law insurers are required to file their policy forms for review and approval by the Louisiana Department of Insurance before such forms can be used in our state. Upon approval, an insurer can then use the policy form as long as it is compliant with the Louisiana Insurance Code and any rules or regulations promulgated thereunder. The filing and subsequent approval of a policy form does not last forever. Pursuant to La. R.S. 22:862 and §10113(I) of Regulation 78, any form filing found to be noncompliant is subject to disapproval or withdrawal of a previously approved policy form. The proposed amendments to Regulation 78 delineates when and under what circumstances a policy form can be used up to its disapproval and lays out the process for compliance with the withdrawal of a previously approved policy form. Therefore, no change to the proposed regulation is necessary based on this comment.

**Comment No. 2:** You further stated that members have also raised concerns that insurers lack the agility to stop using forms on a short notice and they could be put in a position to need to file an appeal of a decision to withdraw a form's approval simply to negotiate a timeframe for the insurer to comply with said withdrawal. You also stated that in the Fiscal and Economic Impact Statement to the amended Regulation 78 we note that "withdrawal of approval for a previously approved filing is a rare occurrence (approximately three times in the last decade)." NAMIC remains uncertain why such a rare occurrence requires a rule change.

Mr. Paul T. Martin  
Page 2  
May 31, 2018

**Response to Comment No. 2:** Contrary to your assertion that an insurer has a short notice to stop using forms, the proposed amendment to Regulation 78 grants the insurer at least an additional fifteen days written notice, that must be given in advance of the thirty days currently existing in Regulation 78. To be clear, I simply want to give the insurer notice to show compliance and the opportunity to address non-compliance before issuing an official Notice of Withdrawal of Approval. Therefore, no change to the proposed regulation is necessary based on this comment.

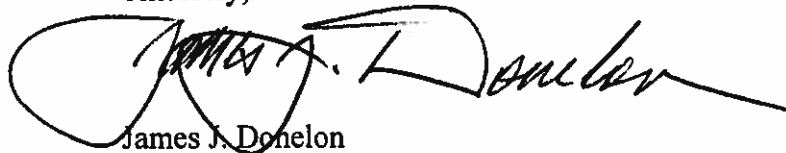
**Comment No. 3:** Finally, you raised a concern regarding the lack of clarity as to how a policyholder would be affected if a form's approval is withdrawn mid-policy period. You further asked if a form previously approved is withdrawn, does the coverage provided by that form evaporate at the expiration of the thirty days provided in §10113(I)(1)(c) of Regulation 78 and would any claims pending under that withdrawn form still be covered?

**Response to Comment No. 3:** I cannot predict when coverage would end or if any pending claims are to be covered by the insurer at the expiration of the thirty days provided in §10113(I)(1)(c) of Regulation 78 as that matter would be resolved in the judicial system as is the case under current law. Moreover, your comments concerning §10113(I)(1)(c) refer to language that was included in Regulation 78 at the time it was originally promulgated in 2002. I have not proposed any amendments to that original language. Nor is it part of the Fiscal and Economic Impact Statement that accompanies Regulation 78 at this time. Subparagraph §10113(I)(1)(c) of Regulation 78 was simply repromulgated to show its recodification from subparagraph "b" to "c" - nothing more, nothing less. Therefore, no change to the proposed regulation is necessary based on this comment.

Thank you for your comments and I hope this response sufficiently relieves any concerns you may have relative to the proposed amendments to Regulation 78. If you have any additional questions or comments, I will be happy to meet with you at a mutually convenient time or to discuss same in a telephone conference with any staff members you desire.

With best wishes and warmest personal regards, I remain

Sincerely,



James J. Donelon

cc: Warren Byrd, Deputy Commissioner, Property and Casualty  
Carol Fowler-Guidry, Deputy General Counsel, Division of Legal Services