

e. individuals, who had at least 18 months of prior coverage under a group plan, have exhausted or are not eligible for state continuation rights or COBRA rights, are guaranteed access to individual health insurance coverage through the Louisiana Health Insurance Association.

2. Any Louisiana resident who has individual health insurance coverage is guaranteed credit for prior individual coverage when replacing coverage if the insurance plan is applying the prior insurance policy's lifetime benefit usage against the replacement policy. Residents can waive credit for prior coverage to avoid any reduction in the lifetime benefit limit of the replacement coverage. However, state law no longer allows the sale of any policy of insurance that excludes coverage in excess of 18 months.

**M. Prohibiting Discrimination against Individuals Based on Health Status—Applies to HMO and Major Medical Insurance Coverage**

1. State and federal law prohibit any group health coverage plan from discriminating against individuals based on their health status. This means that an individual's medical status cannot be used to determine eligibility to join a group health plan with certain exceptions. Plans are specifically prohibited from adopting any rules for eligibility or continued eligibility based on any of the following health status related factors:

- a. health status;
- b. medical condition, including both physical and mental illness;
- c. claims experience;
- d. receipt of health care;
- e. medical history;
- f. genetic information;
- g. evidence of insurability, including conditions arising out of acts of domestic violence; and
- h. disability.

2. A plan's rules for eligibility to enroll under a plan also include rules defining any applicable waiting periods for such enrollment. This means that the plan may only apply exclusionary or waiting period uniformly based on date of hire for all eligible employees. No exclusionary or waiting periods are allowed after coverage begins and premiums are being collected from the insured.

**N. Prohibition on Use of Prenatal and Genetic Tests by Health Insurance Plans—Applies to HMO and Major Medical Insurance Coverage.** State law prohibits health insurance plans from requiring any individual to take genetic tests or prenatal tests prior to being offered coverage. Plans are also prohibited from requesting release of any genetic or prenatal test results or using such information in the determination of benefits or rates for an insured.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 22:3 and R.S. 22:2014.

**HISTORICAL NOTE:** Promulgated by the Department of Insurance, Office of the Commissioner, LR 26:325 (February 2000).

### **§9109. Patient Responsibilities**

A. Under Louisiana law, formal managed care plans operated by health maintenance organizations are held to a higher standard than other health insurance coverage plans that include managed care options. All materials provided by a health insurance coverage plan should be carefully reviewed prior to making a purchasing decision. Managed care requirements under each health insurance coverage plan may vary significantly. For this reason, all patient requirements should be carefully reviewed to assure there is no misunderstanding regarding how medical coverage will be provided.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 22:3 and R.S. 22:2014.

**HISTORICAL NOTE:** Promulgated by the Department of Insurance, Office of the Commissioner, LR 26:327 (February 2000).

## **Chapter 93. Regulation 80—Commercial Lines Insurance Rate Deregulation**

### **§9301. Authority**

A. This regulation is adopted pursuant to R.S. 22:3 and R.S. 22:1401.1(D).

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 22:3 and R.S. 22:1401.1.

**HISTORICAL NOTE:** Promulgated by the Department of Insurance, Office of the Commissioner, LR 30:2834 (December 2004).

### **§9303. Purpose**

A. The purpose of this regulation is to implement the provision of Acts 2004, No. 878 of the Louisiana Legislature, Regular Session, which exempts commercial property and casualty insurers from the rate approval process unless the commissioner determines that the market for a line of insurance is noncompetitive. The regulation specifies the criteria the commissioner will use to determine if there exists a competitive or noncompetitive market.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 22:3 and R.S. 22:1401.1D.

**HISTORICAL NOTE:** Promulgated by the Department of Insurance, Office of the Commissioner, LR 30:2834 (December 2004).

### **§9305. Scope and Applicability**

A. This regulation applies to all authorized insurers engaged in the business of writing commercial property and casualty insurance in this state.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 22:3 and R.S. 22:1401.1D.

**HISTORICAL NOTE:** Promulgated by the Department of Insurance, Office of the Commissioner LR 30:2834 (December 2004).

**§9307. Severability**

A. If any Section or provision of this regulation is held invalid, such invalidity shall not affect other sections of provisions which can be given effect without the invalid Section or provision, and for this purpose the Sections and provisions of this regulation are severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and R.S. 22:1401.1D.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 30:2834 (December 2004).

**§9309. Definitions**

A. For the purposes of this regulation the following terms shall have the meaning ascribed herein unless the context clearly indicates otherwise.

*Affiliated Group*—two or more persons who are owned or controlled directly or indirectly through one or more intermediaries by, or are under common control with, the person specified (i.e., the named insured) and includes a subsidiary.

*Anticompetitive Behavior*—an insurer monopolizing or attempting to monopolize, or combine with or conspire with any person to monopolize, in any territory, the business of insurance of any kind, subdivision or class.

*Authorized Insurer*—shall have the meaning found in R.S. 22:5(3).

*COI*—the Commissioner of Insurance for the state of Louisiana.

*Commercial Risk*—any kind of risk that is not a personal risk.

*Exempt Commercial Policyholder*—a person who has and maintains an annual commercial insurance policy premium, excluding workers compensation and, if applicable, medical malpractice liability insurance premiums, of at least \$10,000 in the preceding fiscal year.

*Insurer*—shall have the meaning found in R.S. 22:5(10).

*LDOI*—the Louisiana Department of Insurance.

*Line of Insurance*—the lines of business included on the Exhibit of Premiums and Losses (Statutory Page 14) of the Annual Statement Blank.

*Noncompetitive Market*—a market in which a reasonable degree of competition for a line of insurance does not exist as specified in §9315; or a market which has been found to exhibit anticompetitive behavior or otherwise be in violation of R.S. 22:1211 et seq.

*Office of Property and Casualty*—the office created by R.S. 36:688.

*Person*—an individual, a corporation, a partnership, an association, a trust, a joint stock company, an unincorporated organization, any similar entity, or any combination of the foregoing acting in concert.

*Personal Risk*—homeowners, tenants, private passenger nonfleet automobile, mobile home and other property and casualty insurance for personal, family or household needs.

*State*—the state of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and R.S. 22:1401.1D.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 30:2834 (December 2004).

**§9311. Types of Insurance Exempt from Rate Filing and Approval Process**

A. All lines of commercial property and casualty insurance, including but not limited to Commercial Property, Boiler and Machinery, Fire and Allied Lines, Commercial Auto, General Liability, Non-Medical Professional Liability, Business Owners and Inland Marine insurance, written on commercial risks are exempt from the filing and approval provisions of R.S. 22:1401 et seq., if the policy is issued to an exempt commercial policyholder as defined in §9309, except for the following kinds:

1. workers compensation; and
2. medical malpractice liability insurance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and R.S. 22:1401.1D.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 30:2835 (December 2004).

**§9313. Exempt Rates**

A. If, after holding a public hearing, the commissioner has declared the market for a line of insurance competitive, then the rates employed for that line are exempt from the filing and approval process. Any such public hearing shall comply with the open meetings law.

B. Exempt rates shall be used only when writing coverage on an exempt commercial policyholder. If exempt rates are used, an informational filing must be submitted to the Office of Property and Casualty.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and R.S. 22:1401.1D.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 30:2835 (December 2004).

**§9315. Noncompetitive Market; Public Notice and Hearing**

A. If the commissioner has reason to believe that a noncompetitive market for a line of insurance exists he shall give public notice in the manner specified in R.S. 22:1354(C) and conduct a public hearing.

B.1 In determining whether a reasonable degree of competition does not exist within a line of insurance, the COI shall consider the following factors:

- a. the number of insurers available to write the coverage;

b. market shares of the leading writers and the changes in market shares over a reasonable period of time;

c. existence of financial or economic barriers that could prevent new firms from entering the market;

d. measures of market concentration and changes of market concentration over time;

e. whether long-term profitability for insurers in the market is reasonable in relation to industries of comparable business risk;

f. the relationship of insurers' cost to revenue over a reasonable period of time;

g. the availability of insurance coverage to consumers in the markets by specific geographical area, by line of insurance and by class of risk;

h. the extent to which any insurer or group of affiliated insurers controls all or a portion of the market; and

i. the opportunities available to consumers in the market to acquire pricing and other consumer information.

2. These factors must indicate that there is a competitive market in order for a determination to be made that the market is competitive for the line of business under review. If it is determined that a line of business is noncompetitive, the rates for that line of business shall be governed by the file and use provisions of R.S. 1401.1(B) until such time as a finding is made that the market is no longer noncompetitive.

C. The commissioner shall hold an investigatory hearing to determine if the market is noncompetitive if he receives a written request from an aggrieved policyholder or any other affected person or organization. The request must specify the grounds relied upon by the complainant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and R.S. 22:1401.1D.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 30:2835 (December 2004).

#### **§9317. Disciplinary Hearings; Fines**

A. If the commissioner has reason to believe that an insurer is engaging in anticompetitive behavior he may hold a hearing pursuant to an Order to Show Cause, ordering the insurer to appear and show cause why it should not be sanctioned. In making a determination as to whether an insurer is engaging in anticompetitive behavior, the commissioner may consider the factors listed in §9315.

B. The commissioner may hold a disciplinary hearing if he has reason to believe that an insurer is using exempt rates with a policyholder who does not qualify as exempt commercial policyholders.

C. If the commissioner finds that an insurer has violated or otherwise failed to comply with the provisions of this regulation he may impose such fines as are authorized by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and R.S. 22:1401.1D.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 30:2835 (December 2004).

#### **§9319. Effective Date**

A. This regulation shall take effect on January 1, 2005.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and R.S. 22:1401.1D.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 30:2836 (December 2004).

## **Chapter 95. Regulation 81—Military Personnel—Automobile Liability Insurance Premium Discount and Insurer Premium Tax Credit Program**

#### **§9501. Authority**

A. This regulation is adopted pursuant to R.S. 22:3 and 22:1425.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and R.S. 22:1425.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:673 (March 2005).

#### **§9503. Purpose**

A. The purpose of this regulation is to implement the provisions of Acts 2004, No. 770 of the Louisiana Legislature, Regular Session, as well as to implement the amendment thereto as set forth in Acts 2005, No. 408 of the Louisiana Legislature, Regular Session. The original law created an insurance premium discount program for active military personnel based in Louisiana. The amendment creates a program whereby an insurer is entitled to a tax credit against the premium taxes imposed under R.S. 22:1061 and 1065 for the amount of the military discount provided to qualified active military personnel for the liability portion of their personal automobile liability policy. Both laws require the commissioner to adopt a regulation to implement the military discount program and to develop procedures for the insurer to follow to claim a tax credit and for other related matters.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and R.S. 22:1425.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:673 (March 20, 2005), amended LR 32:94 (January 2006).

#### **§9505. Scope and Applicability**

A. This regulation applies to all motor vehicle insurers authorized to engage in the business of writing personal automobile liability insurance in this state. It is also applicable to any personal automobile liability insurance policy purchased in this state from an authorized insurer by active military personnel based in Louisiana to cover personal motor vehicles owned and/or insured by such active military personnel.