

RULE

Department of Insurance Office of the Commissioner

Regulation 106—Replacement of Limited Benefit Insurance Policies (LAC 37:XIII.Chapter 149)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, and through the authority granted under R.S. 22:1 et seq., and R.S. 22:1964 the Department of Insurance has adopted Regulation 106 to implement the provisions of Act 844, of the 2014 Regular Session of the Louisiana Legislature, which prohibits deliberate use of misrepresentation or false statements by insurance producers for the purpose of convincing a customer to replace a limited benefit insurance policy and directs the Commissioner of Insurance to promulgate rules and/or regulations addressing the replacement of limited benefit insurance policies as defined in R.S. 22:47(2)(c). This Rule is hereby adopted on the day of promulgation.

Title 37

INSURANCE

Part XIII. Regulations

Chapter 149. Regulation Number 106—Replacement of Limited Benefit Insurance Policies

§14901. Purpose

A. Regulation 106 implements the provisions of Act 844, of the 2014 Regular Session of the Louisiana Legislature, specifically R.S. 22:1964(27) which mandates that the Department of Insurance promulgate rules and/or regulations addressing the replacement of limited benefit insurance policies as defined in R.S. 22:47(2)(c).

B. The purpose of this regulation is:

1. to regulate the activities of insurers and producers with respect to the replacement of limited benefit insurance policies;
2. to protect the interests of limited benefit insurance policy purchasers by establishing minimum standards of conduct to be observed in a replacement transaction. It will:
 - a. assure that purchasers receive information with which a decision can be made in his or her own best interest;
 - b. reduce deliberate use of misrepresentation or false statements in the sale of limited benefit replacement policies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1964 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 44:2009 (November 2018).

§14903. Applicability and Scope

A. Regulation 106 shall apply to transactions in the individual market involving existing limited benefit policies and the new sale of limited benefit insurance policies where it is known or should be known to the producer, or to the insurer if there is no producer that the sale of the limited benefit insurance policy will result in the replacement of an existing policy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1964 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 44:2009 (November 2018).

§14905. Authority

A. Regulation 106 is promulgated by the commissioner pursuant to the authority granted under the Louisiana Insurance Code, R.S. 22:1 et seq., particularly R.S. 22:11, and specifically R.S. 22:1964(27).

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1964 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 44:2009 (November 2018).

§14907. Definitions

A. For the purposes of Regulation 106 the following terms shall have the meaning ascribed herein unless the context clearly indicates otherwise.

Commissioner—the Commissioner of Insurance of the Louisiana Department of Insurance.

Existing Policy—an in-force limited benefit insurance policy or contract of insurance.

Insurer—as defined in R.S. 22:1962(C).

Limited Benefit Policy—any health and accident insurance policy designed, advertised, and marketed to supplement major medical insurance that includes accident-only, the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), dental, disability income, fixed indemnity, long-term care, Medicare supplement, specified disease, vision, and any other health and accident insurance, other than basic hospital expense, basic medical-surgical expense, or other major medical insurance or as defined in R.S. 22:47(2)(c).

Producer—a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance and includes all persons or business entities otherwise referred to in the Title 22 of the Louisiana Revised Statutes as “insurance agent”, “agent”, “insurance broker”, “broker”, “insurance solicitor”, “solicitor”, or “surplus lines broker”.

Replacement—a transaction in which a new policy or contract of insurance is to be purchased, and it is known or should be known to the producer, or to the proposing insurer if there is no producer, that by reason of the transaction, an existing policy or contract of insurance has been or is to be lapsed, forfeited, surrendered or otherwise terminated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1964 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 44:2009 (November 2018).

§14909. Exemptions

A. Unless otherwise specifically included, this regulation shall not apply to transactions involving:

1. group and blanket group limited benefit policies;
2. medicare supplement policies;
3. long term care policies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1964 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 44:2009 (November 2018).

§14911. Duties of Insurers and Producers

A. An application form submitted by an insurer or his producer for a limited benefits policy shall include a question designed to elicit information as to whether the insurance to be issued is intended to replace any other limited benefit insurance policy presently in force.

1. If the applicant indicates that there are no existing policies to be replaced, then the producer's and insurer's duties with respect to replacement are complete.

2. If the applicant indicates that there are existing policies, the producer shall present to the applicant, not later than at the time of taking the application, a notice regarding replacements in the form notice as described in Appendix A or such other form notice provided by the insurer and approved by the Commissioner of Insurance. The notice shall be signed by the applicant attesting that the notice has been received by the applicant and that the applicant understands that he/she is replacing an existing policy.

3. Notwithstanding Paragraph A.2 of this Section, when the sales presentation is conducted by electronic means and all signatures are obtained via electronic signature technology, the meaning of "at the time of taking the application" shall be extended to allow for the producer's submission of electronic information to the insurer. The requirements of Paragraph A.2 of this Section are deemed met when a copy of the required replacement notice electronically signed at the presentation is provided to the applicant within five business days following submission of the policy or contract of insurance to the insurer. The notice may be provided to the applicant by electronic means exclusively only if the applicant has chosen the option to receive it exclusively by electronic means. In no event shall the time for providing the notice exceed seven business days from the date the applicant signed the application.

B. In connection with a replacement transaction, the producer shall submit to the insurer to which an application for a policy is presented, a copy of each document required by this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1964 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 44:2009 (November 2018).

§14913. Duties of Direct Response Insurers

A. Direct response insurers shall deliver to the applicant, upon acceptance of the application and prior to the issuance of the policy, the notice described in Appendix B or other substantially similar form notice approved by the Commissioner of Insurance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1964 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 44:2010 (November 2018).

§14915. Violations and Penalties

A. Any failure to comply with this regulation shall be considered a violation of R.S. 22:1964. Violations of this regulation shall subject the violators to penalties as provided by R.S. 22:1969, 1970 and any other applicable provisions of law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1964 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 44:2010 (November 2018).

§14917. Effective Date

A. Regulation 106 shall become effective upon final publication in the *Louisiana Register* and shall apply to any act or practice committed on or after the effective date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1964 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 44:2010 (November 2018).

§14919. Severability

A. If any Section or provision of Regulation 106 or the application to any person or circumstance is held invalid, such invalidity or determination shall not affect other Sections or provisions or the application of Regulation 106 to any persons or circumstances that can be given effect without the invalid Section or provision or application, and for these purposes the Sections and provisions of Regulation 106 and the application to any persons or circumstances are severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1964 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 44:2010 (November 2018).

§14921. Appendix A—Notice Required by §14911.A.2

Notice to Applicant Regarding Replacement of Limited Benefit Insurance

According to [your application] [information you have furnished], you intend to lapse or otherwise terminate existing limited benefit insurance and replace it with a policy to be issued by [insert company name] Insurance Company. For your own information and protection, you should be aware of and seriously consider certain factors that may affect the insurance protection available to you under the new policy.

1. Health conditions which you may presently have, (preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits present under the new policy, whereas a similar claim might have been payable under your present policy.

2. You may wish to secure the advice of your present insurer or its producer regarding the proposed replacement of your present policy. This is not only your right but it is also in your best interests to make sure you understand all the relevant factors involved in replacing your present coverage.

3. If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical/health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, reread it carefully to be certain that all information has been properly recorded.

4. _____ By checking this blank, I agree to receive this notice exclusively by electronic means only.

The above "Notice to Applicant" was delivered to me on: _____

Applicant's Signature _____

Date _____

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1964 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 44:2010 (November 2018).

§14923. Appendix B—Notice Required by §14913.A

Notice to Applicant Regarding Replacement of Limited Benefit Insurance

According to [your application] [information you have furnished], you intend to lapse or otherwise terminate existing limited benefit insurance and replace it with a policy to be issued by [insert company name] Insurance Company. Your new policy provides thirty days within which you may decide without cost whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider

certain factors that may affect the insurance protection available to you under the new policy.

1. Health conditions which you may presently have, (preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits present under the new policy, whereas a similar claim might have been payable under your present policy.

2. You may wish to secure the advice of your present insurer or its producer regarding the proposed replacement of your present policy. This is not only your right but it is also in your best interests to make sure you understand all the relevant factors involved in replacing your present coverage.

3. If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical/health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, reread it carefully to be certain that all information has been properly recorded.

[Company Name] _____

Date Mailed or Provided to Applicant _____

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1964 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 44:2010 (November 2018).

James J. Donelon
Commissioner

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RULE

**Department of Insurance
Office of the Commissioner**

**Regulation 110—Declaratory Orders
(LAC 37:XIII.Chapter 157)**

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., has adopted Regulation 110—Declaratory Orders.

R.S. 49:962 provides that “each agency shall provide by rule for the filing and prompt disposition of petitions for declaratory orders and rulings as to the applicability of any statutory provision or of any rule or order of the agency.” Additionally, R.S. 22:2(E) provides that “the commissioner of insurance shall have the authority to make reasonable rules and regulations, not inconsistent with law, to enforce, carry out, and make effective the implementation of this Code.” The purpose of Regulation 110 is to define declaratory orders and to provide for the filing and prompt disposition of petitions for declaratory orders. This Rule is hereby adopted on the day of promulgation.

Title 37

INSURANCE

Part XIII. Regulations

Chapter 157. Regulation 110—Declaratory Orders

§15701. Purpose

A. The purpose of Regulation 110 is to define declaratory orders and to provide for the filing and prompt disposition of declaratory orders, as authorized by R.S. 49:962.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2(E) and 49:962.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 44:2011 (November 2018).

§15703. Definitions

A. As used in Regulation 110, the following terms shall have the meanings specified.

Commissioner—the commissioner of the Louisiana Department of Insurance.

Department—the Louisiana Department of Insurance.

Declaratory Order—a written statement issued by the department at the request of a person regulated by the department as to the applicability of any statutory provision or of any rule or order of the agency.

Litigation—involvement in any civil, criminal, administrative, regulatory, or disciplinary proceeding or action.

Person—any individual, company, insurer, association, organization, reciprocal or inter-insurance exchange, partnership, business, trust, limited liability company, or corporation regulated by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2(E) and 49:962.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 44:2011 (November 2018).

§15705. Declaratory Orders, Generally

A. A declaratory order is not an agency rule or regulation but shall have the same status as a final agency decision or an order in an adjudicated case.

B. A declaratory order shall have effect only upon the person requesting it and the commissioner and shall continue in effect unless a subsequent bulletin, advisory letter, directive, rule/regulation, court case, or statute supersedes it, or until the commissioner rescinds it. If a declaratory order is superseded or rescinded, such action shall have effect prospectively only, and the declaratory order shall cease to be effective as of 30 days after the date of the action that superseded or rescinded it.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2(E) and 49:962.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 44:2011 (November 2018).

§15707. Disposal of Petitions; Form; Reasons to Issue or not Issue Declaratory Orders

A. The commissioner shall decide within 60 days after the filing of a petition for a declaratory order whether to accept or reject the petition.

B. A petition for a declaratory order shall be submitted in writing to the commissioner, in the manner specified on the department’s website, by a person regulated by the department or the person’s legal representative. Petitions shall contain the following information:

1. the title of the petition (e.g., “Petition for Declaratory Order”);

2. the name, address, and telephone number of the person regulated by the department requesting the declaratory order;

3. a power of attorney or mandate, if the person is represented by a third party;