



## LOUISIANA DEPARTMENT OF INSURANCE

JAMES J. DONELON  
COMMISSIONER

### **BULLETIN 2013-03 (REVISED AND REISSUED)**

**TO: ALL HEALTH INSURANCE ISSUERS AND HEALTH MAINTENANCE ORGANIZATIONS**

**FROM: JAMES J. DONELON, COMMISSIONER OF INSURANCE**

**RE: ENFORCEMENT AUTHORITY OF THE COMMISSIONER REGARDING THE ACA AND MHPAEA**

**DATE: NOVEMBER 9, 2023**

Bulletin No. 2013-03 is being revised and reissued to inform all health insurance issuers and health maintenance organizations (collectively referred to as "issuers") of the extent of the enforcement authority of the Louisiana Department of Insurance ("LDI") with respect to federal law, and to inform all issuers of requirements relating to the time and manner of form filings and ancillary matters.

No policy of health and accident insurance, nor any endorsements, riders or applications appertaining thereto, may be delivered or issued for delivery in this state unless it is filed with the LDI for approval pursuant to La. R.S. 22:972. Qualified Health Plans (QHPs) constitute policies of health and accident insurance that are delivered or issued for delivery in Louisiana. Consequently, all health and accident policies or plans submitted for certification as a QHP must also be filed with the LDI for approval and shall be reviewed for compliance with the Louisiana Insurance Code, La. R.S. 22:1, et. seq. and for compliance with federal law as explained herein.

The enforcement authority detailed in Bulletin No. 2013-03 (Revised and Reissued) is exercised by the LDI through a collaborative arrangement with the Centers for Medicare and Medicaid Services (CMS), and is generally inclusive of the market reforms of the Patient Protection and Affordable Care Act, Pub. L. 111-148, 124 Stat. 119 through 124 Stat. 1024, as amended by the Health Care and Education Reconciliation Act, Pub. L. 111- 152, 124 Stat. 1029 through 124 Stat. 10843 (collectively referred to as the Affordable Care Act (ACA)) and the Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA), as enacted by Pub. L. 110-343, 122 Stat. 3765 through 122 Stat. 3933.

Additionally, Bulletin No. 2013-03 (Revised and Reissued) contains information for issuers on how to facilitate the timely filings of non-grandfathered health and accident insurance products and plans, and also addresses concerns and questions from issuers regarding the filing requirements for non-grandfathered health benefit plans. Louisiana is a Federally-Facilitated Exchange or Marketplace (FFE) state. Therefore, CMS will be

responsible for certification of plans being offered via the Exchange/Marketplace in Louisiana. However, the LDI has adopted the Plan Management functionality in SERFF and will continue to use the Filings Functionality in SERFF which will allow the LDI to review form filings at the product and plan level that are delivered or issued for delivery in Louisiana.

## **I. Enforcement Functions**

### **A. Policy Form Review**

The LDI will review all policy forms and related materials in the individual and group markets for compliance with the market reforms of the ACA, as well as the provisions of the MHPAEA. If, during its review of policy forms or through other means, the LDI determines that an issuer has delivered or issued for delivery in Louisiana a plan or policy that is not in compliance with the market reforms of the ACA or provisions of the MHPAEA, the LDI will issue a notice of non-compliance to the issuer and request that the issuer amend the policy form(s) to be consistent with the market reforms of the ACA, the provisions of the MHPAEA, or any regulations promulgated pursuant thereto and re-file compliant policy forms. The LDI will subsequently review the revised forms for compliance.

If an issuer fails to amend the policy form(s) for compliance, the LDI will refer the matter to CMS along with the noncompliant policy form(s). Thereafter, CMS will determine what formal enforcement action may be appropriate.

### **B. Regulation and Review of Rates**

CMS will continue to review all rates for new and existing products submitted to CMS by issuers in both the individual and small group markets for compliance with the ACA. If CMS, during its review, discovers that an issuer is not in compliance with the rating requirements of the ACA, CMS will request that the issuer amend the rate(s) to be consistent with the market reform rating requirements of the ACA. If an issuer fails to amend the rate(s) for compliance, CMS will determine what enforcement action is appropriate, and will notify the LDI of any action taken.

### **C. Complaints and Inquiries**

The LDI will respond to consumer inquiries and complaints related to the ACA and the MHPAEA and any regulations promulgated pursuant thereto. In the event that the LDI discovers that an issuer has acted in a manner that is inconsistent with the ACA or the MHPAEA, the LDI will request that the issuer address and resolve the inquiry or complaint. In the event that the issuer refuses to take corrective action to resolve an inquiry or complaint in a manner consistent with the ACA or the MHPAEA, the LDI will forward to CMS a copy of the inquiry and complaint. Thereafter, CMS will determine what formal enforcement action may be appropriate. The LDI will be advised of all enforcement action undertaken by CMS.

In the event that a consumer complaint has been resolved, but the investigation reveals that there may be a pattern or practice of noncompliance by the issuer, the LDI will discuss the case with CMS. The LDI will determine whether it will pursue further investigation or perform a targeted market conduct examination related to any underlying issue(s). In all cases, CMS has the independent right to conduct a targeted market conduct examination pursuant to 45 C.F.R. §150.313. CMS will consult with the LDI before initiating any market conduct examinations of an issuer in this state.

#### **D. Market Conduct Examinations & Targeted Market Conduct Examinations**

Whenever the LDI performs a market conduct examination for compliance with the provisions of the Louisiana Insurance Code, La. RS. 22:1, et. seq., the LDI may include an assessment of compliance with the ACA and the MHPAEA. The LDI may also perform targeted market conduct examinations when it has evidence or information suggesting a pattern or practice of noncompliance with the ACA or the MHPAEA by an issuer. The results of market conduct examinations conducted by the LDI will be reported to CMS. The report to CMS will include copies of all findings and draft reports for market conduct examinations. CMS will treat information as confidential to the extent it is protected from disclosure under Louisiana law if such protection is not preempted by federal law. Based on the findings of these market conduct examinations and any other information the LDI provides, CMS may, after consultation with the LDI, undertake further investigation and formal enforcement actions as may be appropriate.

### **II. Requirements Relating to the Filing of Policy or Plan Forms**

All policy or plan forms prepared for certification as a QHP must be filed for review and approval with the LDI in the manner prescribed in Part II, A-D, of Bulletin 2013-03 (Revised and Reissued).

#### **A. Filings of Products Using SERFF Filings Functionality**

##### **1. Product Filing Procedure- Status Quo**

Filings of products for the large group market, small group market, individual market, limited benefit or excepted benefit filings, etc., will continue to be made using SERFF functionality just as they were prior to the passage and enactment of the ACA. There are no changes with respect to the procedural requirements of such filings or the review procedure conducted by the LDI for such filings.

##### **2. Compliance with ACA Reforms, Including EHB Requirements**

**a.** Though there are no differences with the procedure for filing products for review, those products offered for sale must meet the requirements set forth in the ACA. Both grandfathered and non-grandfathered plans will have to meet the applicable requirements contained in the Public Health Service Act, as amended by the ACA, and the applicable federal regulations and guidance issued subsequently thereto.

b. The State Essential Health Benefits and Mandates are provided at: <https://www.cms.gov/marketplace/resources/data/essential-health-benefits#Louisiana> and are also set forth in the Statement of Compliance for Non-Grandfathered Major Medical filings available on the LDI Product Filing Matrix under the "Required Forms & Related Documents" tab at the following link: <http://ia.lda.state.la.us/productmatrix/>.

### 3. New Product Codes for Non-Grandfathered Products

a. The following new product codes have been established to allow for the filing of, tracking of, and review of non-grandfathered products. There is not an option to file "any-size" non-grandfathered filings.

Product Name	Product Code
NON-GRANDFATHERED - CATASTROPHIC PLAN	NG-CAT PLAN
NON-GRANDFATHERED - CONTRACEPTIVE ONLY	NG-CONT ONLY
NON-GRANDFATHERED- STAND-ALONE PEDIATRIC DENTAL	NG-SA.P.DENTAL
NON-GRANDFATHERED HMO - ASSOC GROUP - EMPLOYER MEMBERS - L	NG.HMO-AG-EMP-L
NON-GRANDFATHERED HMO - ASSOC GROUP - EMPLOYER MEMBERS - S	NG.HMO-AG-EMP-S
NON-GRANDFATHERED HMO - ASSOC GROUP - INDIVIDUAL MEMBERS	NG.HMO-AG-IND
NON-GRANDFATHERED HMO - ASSOC GROUP - MIXED	NG.HMO-AG-MIXED
NON-GRANDFATHERED HMO - IND - STUDENT ONLY	NG.HMO-IND-ST
NON-GRANDFATHERED HMO- INDIVIDUAL	NG.HMO-IND
NON-GRANDFATHERED HMO - LARGE GROUP	NG.HMO-LG GRP
NON-GRANDFATHERED HMO - SMALL GROUP	NG.HMO-SMALLGRP
NON-GRANDFATHERED MM - ASSOC GROUP - MIXED	NG.MM-AG-MIXED
NON-GRANDFATHERED MM - ASSOC. GROUP - EMP. MEMBERS - LARGE GRP	NG.MM-AG-EMP-L
NON-GRANDFATHERED MM - ASSOC. GROUP - EMP. MEMBERS - SMALL GRP	NG.MM-AG-EMP-S
NON-GRANDFATHERED MM -ASSOC. GROUP - IND. MEMBERS	NG.MM-AG-IND
NON-GRANDFATHERED MM - INDIVIDUAL	NG.MM-Ind
NON-GRANDFATHERED <b>MM</b> - INDIVIDUAL - STUDENT ONLY	<b>NG-MM-IND-ST</b>

NON-GRANDFATHERED MM - LARGE GROUP	NG.MM-LRG GRP
NON-GRANDFATHERED MM - SMALL GROUP	NG.MM-SMALL GRP

b. A statement of compliance for each of the new product codes will be required to be submitted with any product filing. The statements of compliance for the new product codes are located on the LDI Product Filing Matrix under the "Required Forms & Related Documents" tab at: <http://ia.lda.state.la.us/productmatrix/>.

## B. Qualified Health Plan Certification

QHP Certification will be conducted by CMS. Issuers that wish to have plans certified for sale on the Exchange/Marketplace must submit a QHP application to CMS via the Health Insurance Oversight System (HIOS). CMS will be reviewing and approving QHPs for Louisiana's Federally-facilitated Exchange/Marketplace. In a Letter to Issuers on Federally-facilitated and State Partnership Exchanges released by CMS on April 5, 2013, CMS provided issuers seeking to offer QHPs on a FFE with operational and technical guidance on participation in the Exchange/Marketplace. A link to the page where the Letter to the Issuers is located at: <http://cciio.cms.gov/resources/regulations/index.html#hie>. Additional regulatory guidance and materials from CMS can be reviewed online at: <http://cciio.cms.gov/resources/regulations/index.html>.

## C. Filing of Plans in Binders Using SERFF Plan Management Functionality

### 1. Filings of Plans Offered on the Exchange/Marketplace

a. All submissions of QHP applications must be made using HIOS because CMS will be reviewing and approving QHPs that will be offered on the Exchange/Marketplace.

b. (i) The LDI has obtained the Plan Management functionality offered in SERFF in order to be able to monitor the health insurance plans delivered or issued for delivery in Louisiana. Thus, in addition to filing QHP applications using HIOS, a duplicate filing for each QHP must be submitted to the LDI through the SERFF Plan Management functionality using the binder process. (ii) Additionally, all templates, attestations, and other information submitted via HIOS must be submitted using the SERFF Plan Management functionality. (iii) Also, each submission of a plan using the Binder process should include a reference or identifier to the plan submitted via HIOS to allow a reviewer to determine which plan submitted in SERFF is the corresponding plan submitted via HIOS.

c. Each health insurance issuer should submit one binder for the individual market and one binder for the small group market, whether offered on or off the Exchange/Marketplace.

d. The deadline for filing binders for plans offered on the Exchange/Marketplace with the LDI via the SERFF Plan Management functionality is the date as set by CMS/CCIIO unless otherwise notified by the LDI. This deadline for submission to the LDI does not affect or alter the deadline for submission of QHP applications to CMS via HIOS.

## **2. Filings of Plans Offered Off the Exchange/Marketplace**

a. (i) All submissions of plans that will be offered off the Exchange/Marketplace must be made utilizing the Plan Management functionality offered in SERFF using the Binder process. (ii) Additionally, this means that all templates, attestations, and other information that would be submitted via HIOS for QHPs must be submitted for all plans offered off the Exchange/Marketplace using the SERFF Plan Management functionality.

b. Each health insurance issuer should submit one binder for the individual market and one binder for the small group market, whether offered on or off the Exchange/Marketplace.

c. The deadline for filing binders for plans in the individual market that are offered off the Exchange/Marketplace is the date as set by CMS/CCIIO unless otherwise notified by the LDI. Issuers are encouraged to submit these filings as early as practicable. The deadline is necessitated by the limitations placed on the open enrollment period in the individual market.

## **III. Additional Guidance and Instructions**

### **A. Schedule of Benefits for Plans Submitted Using SERFF Plan Management Functionality**

A plan-specific schedule of benefits for each plan offered on or off the Exchange/Marketplace must be submitted to the LDI using the SERFF Plan Management Functionality.

### **B. Habilitative Services**

Each issuer submitting a form filing shall indicate by a narrative description or listing and reference to the applicable form, section/page reference the manner or method in which it is meeting the requirement to offer the habilitative services category of Essential Health Benefits.

### **C. Stand-Alone Dental Plans**

No deadline is currently in place for the filing of stand-alone dental plans. Upon release of the SERFF functionality related to such dental plans, the LDI will establish

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a deadline. The release of such SERFF Plan Management functionality is the date as set by CMS/CCIIO unless otherwise notified by the LDI.

**D. Summary of Benefits Coverage (SBC)**

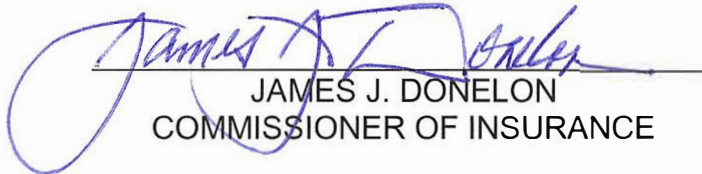
A Summary of Benefits Coverage for each plan filed using the SERFF Plan Management functionality, whether offered on or off the Exchange/Marketplace, must be submitted.

**IV. Effective Date**

All health insurance issuers and HMOs are directed to conduct themselves accordingly, bringing business practices into compliance with the purpose and intent of Bulletin 2013-03 (Revised and Reissued). Any policy or plan form that has been previously submitted for certification as a QHP, but which has not been filed with the LDI in the manner and form prescribed herein, must be filed as soon as practicable in the manner and form specified in Parts II and III of Bulletin 2013- 03 (Revised and Reissued).

If there are any questions or concerns regarding Bulletin 2013-03 (Revised and Reissued), please contact the Deputy Commissioner, Office of Health, Life and Annuity at (225) 342-1355, or electronically at [public@ldi.la.gov](mailto:public@ldi.la.gov).

Baton Rouge, Louisiana, the 9th day of November 2023.

  
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COMMISSIONER OF INSURANCE