



LOUISIANA DEPARTMENT OF INSURANCE
JAMES J. DONELON
COMMISSIONER

ADVISORY LETTER 2016-01

TO: ALL HEALTH INSURANCE ISSUERS, HEALTH MAINTENANCE ORGANIZATIONS, THIRD PARTY ADMINISTRATORS AND GROUP SELF INSURERS

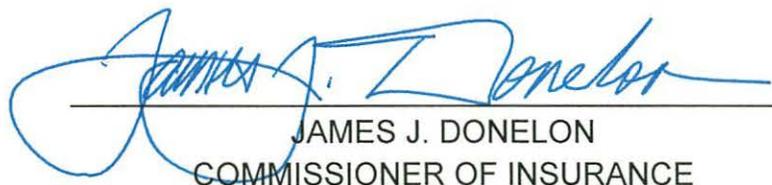
FROM: JAMES J. DONELON, COMMISSIONER OF INSURANCE

RE: APPLICABILITY OF THE PROVIDER FEE AUTHORIZED IN LA. R.S. 46:2625 TO MEDICARE ADVANTAGE PLANS IN RELATION TO DIRECTIVE 208

DATE: July 1, 2016

The Louisiana Department of Insurance (LDI) has received multiple inquiries from both pharmacy benefit managers and other third party administrators regarding whether Directive 208, which was issued on May 9, 2016, relative to the provider fees levied under La. R.S. 46:2625, is applicable to Medicare Advantage Plans. The LDI is of the opinion that Directive 208 and La. R.S. 46:2625 does not affect Medicare Advantage Plans that meet the definitions of a Medicare Choice Organization or Plan pursuant to 42 U.S.C. §1395w-28 due to the broad preemption provisions of federal law governing Medicare. The preemption provision contained within 42 U.S.C. §1395w-26(b)(3) states, "The standards established under this part shall supersede any State law or regulation (other than State licensing laws or State laws relating to plan solvency) with respect to MA plans which are offered by MA organizations under this part." The broad preemption language is reaffirmed in the implementing regulations codified at 42 C.F.R. 422.402. In the absence of any controlling jurisprudence that requires a narrow interpretation of the broad preemption granted by Congress, the LDI does not believe it can require that health insurance issuers, health maintenance organizations, pharmacy benefit managers or third party administrators of Medicare Advantage plans comply with either the levying of the fee under La. R.S. 46:2625 or the provision of the same statute requiring contractual reimbursement.

Baton Rouge, Louisiana, this 1st day of July 2016.



JAMES J. DONELON
COMMISSIONER OF INSURANCE