



LOUISIANA DEPARTMENT OF INSURANCE

JAMES J. DONELON
COMMISSIONER

DIRECTIVE 175 (REVISED AND REISSUED)

TO: ALL INSURERS AND RATING ORGANIZATIONS LICENSED OR DOING BUSINESS IN LOUISIANA

FROM: JAMES J. DONELON, COMMISSIONER OF INSURANCE

RE: POLICY FORMS-SUBROGATION PROVISIONS

DATE: JULY 28, 2020

Acts 2008, No.415, § 1, effective January 1, 2009, redesignated the provisions of Title 22, formerly comprised of La. R.S. 22:1 to 22:3311, into a new format and numbering scheme comprised of La. R.S. 22:1 to 22:2371, without changing the substance of the provisions. Directive 175, originally issued on January 8, 2003, is being amended to update the cited statutory provisions.

Regulation 78, which took effect on January 1, 2003, was promulgated in order to streamline and expedite the policy forms review process.¹ The purpose of this Directive is to further the accomplishment of that goal.

While insurers are free to include whatever provisions they choose in their policies, the provisions must be consistent with the laws and public policy of Louisiana. It has long been the public policy of this state, as expressed in Louisiana jurisprudence, that subrogation provisions in insurance contracts cannot harm the insured. This same rule of public policy applies to reimbursement provisions in insurance contracts. Further, an insurer invoking a subrogation or reimbursement provision is required by the public policy of this state to contribute to the attorney's fees incurred in obtaining a recovery from the third party.

If, in accordance with Regulation 78, an authorized insurer certifies compliance and it is later discovered that the policy form contains language that conflicts with the public policy of this state, the insurer will be subject to sanctions including but not limited to the imposition of such fines as are authorized by law. The Commissioner will consider for approval language that clearly conveys to the insured that any right of recovery from

¹ As used herein, the term policy(s) has the same meaning as ascribed in La. R.S. 22:861(A)(2) and includes any certificate of coverage or any other evidence of coverage, or a subscriber agreement.

third parties on the part of the insurer, whether by subrogation or reimbursement, is subordinate to the insured's right to be fully compensated for his damages and that the insurer is obligated to share in the legal expenses incurred. The Commissioner will not approve policy language that excludes and/or reduces coverage for expenses incurred as a result of the treatment of injury or sickness caused by the fault of a third party. See La. R.S. 22:862(3). To expedite the review process and reduce the possibility that corrective action will be needed, insurers may wish to consider using the language found in Appendix A or language substantially similar thereto.

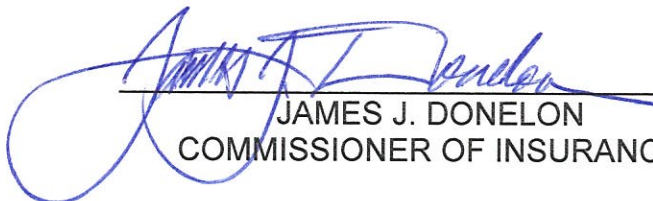
Authorized insurers should review their policy forms that are on file with the Louisiana Department of Insurance (LDI) to determine if any policy forms contain subrogation or reimbursement provisions that do not conform to the public policy of this state. If so, such policy forms should be revised and re-filed with the LDI in accordance with Regulation 78 §§10107.H, 10109.H and 10113.H.

Surplus lines insurers are hereby reminded that the use of policy provisions that are contrary to the public policy of this state constitutes sufficient grounds for removal from the list of approved unauthorized insurers pursuant to La. R.S. 22:436.

If there are any questions regarding this Directive, please contact the Deputy Commissioner for the Office of Property and Casualty, electronically at public@ldi.la.gov.

Please be governed accordingly.

Baton Rouge, Louisiana, this 28th day of July, 2020.



JAMES J. DONELON
COMMISSIONER OF INSURANCE

Appendix A

SUBROGATION

To the extent that benefits are provided or paid under this Policy, we shall be subrogated to all rights of recovery which any Covered Insured may acquire against any other party for the recovery of the amount paid under this Policy, however our right of subrogation is secondary to the right of the Covered Insured to be fully compensated for his damages. The Covered Insured agrees to deliver all necessary documents or papers, to execute and deliver all necessary instruments, to furnish information and assistance, and to take any action We may require to facilitate enforcement of our right of subrogation. We agree to pay our portion of the Insured Person's attorneys' fee or other costs associated with a claim or lawsuit to the extent that we recover any portion of the benefits paid under this policy pursuant to our right of subrogation.

RIGHT OF REIMBURSEMENT

To the extent that benefits are provided or paid under this Policy [Benefit Plan] the Covered Insured [Member] agrees that if he fully recovers his damages from a third party, then he will reimburse Us the portion of the damages recovered for the expenses incurred by the Covered Insured that were provided or paid by Us. We agree to pay our portion of the Insured Person's attorneys' fee or other costs associated with a claim or lawsuit to the extent that we recover any portion of the benefits paid under this policy pursuant to our right of reimbursement.