



LOUISIANA DEPARTMENT OF INSURANCE

JAMES J. DONELON  
COMMISSIONER

September 30, 2016

The Honorable John A. Alario  
President of the Senate  
P.O. Box 94183  
Baton Rouge, LA 70804

Via email  
[apa.senatepresident@legis.la.gov](mailto:apa.senatepresident@legis.la.gov)

The Honorable Taylor F. Darras  
Speaker of the House  
P.O. Box 94062  
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The Honorable John R. Smith  
Senate Committee on Insurance  
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The Honorable Kirk Talbot  
House Committee on Insurance  
P.O. Box 94062  
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Via email  
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RE: Rule Summary Report – Notice of Intent to Promulgate Regulation  
106—Replacement of Limited Benefit Insurance Policies

Dear Gentlemen:

The Louisiana Department of Insurance (LDI) hereby submits the following report required by La. R.S. 49:968(D)(1)(b) and announces its intention to proceed with rulemaking by finalizing the promulgation of Regulation 106 as presented in the Notice of Intent (NOI) published in the Louisiana Register on August 20, 2016, (Regulation Number 106 – Replacement of Limited Benefit Insurance Policies, Vol. 42, No. 08). A copy of this report has been placed on the LDI website in accordance with R.S. 49:968(D)(1)(c).

The purpose of Regulation 106 is 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.

As noticed in the NOI, the public and all interested persons were provided an opportunity to submit comments to the LDI on the proposed regulation. The LDI has received a total of seven comment submissions. All submissions refer to Regulation 106 in relation to the NAIC model act, Accident and Sickness Insurance Minimum Standards Model Act (MDL 171). The comments of each submission and the response of the LDI

are summarized below. A copy of each comment submission from each interested person or entity is attached for your review.

**LETTER DATED SEPTEMBER 19, 2016 FROM JEFF DROZDA, LOUISIANA ASSOCIATION OF HEALTH PLANS (LAHP)**

COMMENTS: LAHP urges that Regulation 106 is based upon Louisiana's life insurance replacement regulation rather than NAIC MDL 171, and as such, contains requirements that are unnecessarily burdensome when applied to the replacement of limited benefit policies. LAHP points out that the life insurance product provides longer-term financial protection and is part of a consumer's long-term planning while limited benefit plans supplement other coverage and other financial protection that may change from year to year. Their stance is that there should therefore be more consumer protections in place for replacing a life insurance policy than for replacing a limited benefit policy. LAHP suggests that the main requirement of MDL 171 is that an application form ask whether the policy being sold is a replacement and, if so, the insurer or producer must furnish the applicant with a replacement notice to be signed by the applicant and retained by the insurer. They propose that this approach is sufficient and is all that is required and that the requirements of Regulation 106 are therefore unnecessary to assure that the consumer is protected and fully aware of his or her actions.

RESPONSE: MDL 171 requires that an application form include a question designed to elicit information as to whether the insurance to be issued is intended to replace accident and sickness insurance presently in force. If there is no replacement, the inquiry under this regulation is satisfied. However, should it be determined that the sale will involve replacement, an insurer, other than a direct response insurer, is required to furnish the applicant, prior to issuance or delivery of the policy, a notice that informs him or her of certain factors that may affect the insurance protection available under the new policy and are important to make an informed decision. Under MDL 171, a direct response insurer is required to deliver to the applicant the notice described above upon issuance of the policy.

One of the main purposes of Regulation 106 is to assure that the applicant receives information that is vitally necessary to make a decision that is in his or her best interest. It should be noted that Regulation 106 does not mandate unnecessary requirements, but instead puts forth those standards that are necessary to protect consumers and address the technology available in today's society. MDL 171 was drafted in 1999. Regulation 106 provides for those situations such as electronic signatures and electronic dissemination of material that were not a common everyday practice in 1999. Section 9 of MDL addresses the requirements for replacement of a policy in general terms as they relate to the insurer and the producer. However, La. R.S. 22:1964(27), which grants the LDI the authority to promulgate Regulation 106, is contained in that section of the Insurance Code that addresses unfair trade practices. Due to the serious nature and elevated penalties provided for in the unfair practices provisions, the violations need to be specific and not overly broad when enumerated in law. Violations and penalties for those violations are clearly spelled out in La. R.S. 22:1969. Therefore, Regulation 106,

unlike MDL 171, addresses the necessary requirements by separating and stipulating what is required of the producer and the insurer. This does not make the process more burdensome, instead it serves to clarify the duties of each. This provides clarity and protection for all parties involved. It is therefore the position of the LDI that Regulation 106 is not unnecessarily burdensome as suggested by LAHP.

**LETTER DATED SEPTEMBER 19, 2016 FROM CHARLES P. PIACENTINI, JR., UNUM GROUP AND COLONIAL LIFE & ACCIDENT INSURANCE COMPANY (UNUM)**

COMMENTS: The comments of UNUM are identical in nature to those previously identified and stated by LAHP.

RESPONSE: The LDI adopts the same response as previously identified and stated in response to LAHP.

**LETTER DATED SEPTEMBER 20, 2016 FROM ERICH STERNBERG, STARMOUNT LIFE INSURANCE CO. AND ALWAYS CARE BENEFITS, INC.**

COMMENTS: The comments of Starmount Life Insurance Co. and AlwaysCare Benefits, Inc. are identical in nature to those previously identified and stated by LAHP.

RESPONSE: The LDI adopts the same response as previously identified and stated in response to LAHP.

**LETTER DATED SEPTEMBER 20, 2016 FROM JEFF ALBUM, DELTA DENTAL INSURANCE COMPANY**

COMMENTS: The comments of Delta Dental Insurance Company are identical in nature to those previously identified and stated by LAHP.

RESPONSE: The LDI adopts the same response as previously identified and stated in response to LAHP.

**LETTER DATED SEPTEMBER 20, 2016 FROM DEBRA WEST-WEIRES, AMERICAN COUNCIL OF LIFE INSURERS (ACLI)**

COMMENTS: As noted in the above comments, ACLI also urges that Regulation 106 is based upon Louisiana's life insurance replacement regulation. ACLI points out that life insurance replacements may have tax consequences and cash surrender issues that do not exist for limited benefit policies. For this reason, once again, as intimated in the above comments, ACLI acknowledges that there may be more extensive life insurance replacement requirements than requirements for limited benefit policies. ACLI further

points out that Section 9 of MDL 171 contains two basic requirements: an application form must ask whether the new policy being applied for is intended to replace a limited benefit policy already in force and, if so, the insurer or producer must furnish the applicant with a specified replacement notice also included in the section. They suggest that the record retention requirement of Regulation 106, which is currently applicable to individual life insurance replacements, implies that replacement activity for life insurance and limited benefit policies are considered equal, to which they strongly disagree. It is their position that the requirements of Regulation 106 constitute an onerous administrative replacement process considering the low incidence of replacements and replacement related complaints for such plans. They also state that no other state has proposed or enacted such onerous requirements.

**RESPONSE:** Relative to the record retention requirement of Regulation 106, the LDI notes that ACLI fails to acknowledge that Section 9 of MDL 171 does in fact require the insurer to retain a copy of the required notice. While MDL does not specify the length of retention, Regulation 106 requires that the insurer retain the notice for a period of 3 years after termination or expiration of the policy that is being replaced. This does not place an additional requirement on the insurer as that obligation is already provided for at La. R.S. 22:68(B). La R.S. 22:68(B) states in pertinent part: "All such original books, records, documents, accounts, and vouchers, or such reproductions thereof, of the home office of any domestic company or of any principal United States office of a foreign or alien company located in this state shall be preserved and kept available in this state for the purpose of examination. At a minimum all such original records shall be maintained for the period commencing on the first day following the last period examined by the commissioner through the subsequent examination period, or five years, whichever is greater." Therefore, the three year record retention requirement of Regulation 106 places no additional requirement as the insurer is already mandated by statute to retain such records for a period in excess of this three year period.

Further to imply that the replacement procedure for limited benefit policies is not equal or as important as that of life replacement is to say that the rights that an applicant may lose in coverage for a catastrophic illness are not as important because the policies only affect a small number of individuals or may be for smaller amounts. The purpose of the regulation is to protect consumers who can lose important benefits and rights with the cancellation or replacement of a limited benefit policy.

#### **LETTER DATED SEPTEMBER 20, 2016 FROM MARA C. OSMAN, AMERICA'S HEALTH INSURANCE PLANS (AHIP)**

**COMMENTS:** As in the previous comments, AHIP notes that Regulation 106 closely follows the life insurance replacement regulation and therefore contains more stringent consumer protections than those proposed by MDL 171. AHIP states that Regulation 106 requires submission of "illustrations" and statements with respect to financing and replacement." They further suggest that the requirement of Regulation 106 relative to

delivery of the electronically signed notice to the applicant will have a significant increase in costs and disrupt the way producers currently enroll accounts.

RESPONSE: Please note that Regulation 106 does not require that insurers use illustrations. It only provides for submission if illustrations or sales materials are used. If no sales material or illustrations are used, then there is no duty on the part of the producer or insurer. Relative to the delivery of the electronically signed notice to the applicant, it is again noted that MDL 171 does not have a provision that addresses this issue simply because electronic transmission was not commonplace in 1999 when the model act was adopted. The LDI notes that Regulation 106 does provide that this notice may be delivered to the applicant electronically, thereby alleviating the burden of the company to provide a hard copy.

**LETTER DATED SEPTEMBER 20, 2016 FROM THOMAS L. MCDANIEL, AMERICAN FAMILY LIFE ASSURANCE COMPANY OF COLUMBUS (AFLAC)**

COMMENTS: As in the previous comments, AFLAC urges that Regulation 106 is based upon Louisiana's life insurance replacement regulation rather than NAIC MDL 171 and will unnecessarily burden producers and insurers. AFLAC specifically takes issue with the requirement of Regulation 106 relative to electronically signed notices and electronically presented sales material. Further noted is the requirement of insurers to provide producers with guidance and a written statement relative to the requirements for replacement of limited benefit policies. AFLAC provides a definition of "illustrations" and states that these illustrations are not applicable to limited benefit insurance.

RESPONSE: As stated in the prior response, MDL 171 does not have a provision that addresses electronically transmitted material simply because electronic transmission was not as commonplace at the adoption of the model act. The time period for delivering the electronically signed notice to the applicant is, at the most, within five business days of the applicant's signature, not two days as suggested by AFLAC. Further, Regulation 106 does not provide a definition of "illustrations." Instead, it only requires submission of illustrations that are related to the specific policy or contract of insurance. Those illustrations that are not related to the specific policy are not required to be submitted. Also, if no sales material or illustrations are used, then there is no duty on the part of the producer or insurer. Finally, as it relates to the guidance provided to producers and a written statement relative to the requirements for replacement of limited benefit policies, Regulation 106 has left this clearly at the discretion of the insurer and has placed no formal requirements on the insurer.

The LDI has taken into consideration all of the above comment submissions and rejects the comments for the foregoing reasons. It is the position of the LDI that Regulation 106 in no way places an unnecessary burden on the producers or insurers of this state. One of the main purposes of Regulation 106 is to assure that the applicant receives information that is vitally necessary to make a decision that is in his or her own best interest. The

applicant should not be afforded less protections simply because the type of policy in question does not have the same economic value in the marketplace or because it is not as widely purchased or replaced as another policy type. Therefore, subject to legislative oversight, the LDI intends to submit Regulation 106 to the Office of the State Register for publication. For your review and consideration, a copy of the NOI regarding Regulation 106 as it appeared in the Louisiana Register on August 20, 2016, is attached.

If you have any questions or need any clarification please contact Zata W. Ard, Attorney with the LDI who assisted the Commissioner in the preparation of Regulation 106. Ms. Ard can be reached at (225) 342-6621, or electronically at [zard@ldi.la.gov](mailto:zard@ldi.la.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read 'Zata W. Ard', is positioned above the typed name.

Claire Lemoine  
Zata W. Ard  
Staff Attorney  
Louisiana Department of Insurance

Enclosure: Notice of Intent (Regulation 106 – Replacement of Limited Benefit Insurance Policies, Vol. 42, No. 08). A copy of this report has been placed on the LDI website in accordance with R.S. 49:968(D)(1)(c).