

December 10, 2019. If the criteria set forth in R.S. 49:953(A)(2)(a) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on December 26, 2019 in Room 118 of the Bienville Building, which is located at 628 North Fourth Street, Baton Rouge, LA. To confirm whether or not a public hearing will be held, interested persons should first call Allen Enger at (225) 342-1342 after December 10, 2019. If a public hearing is to be held, all interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing. In the event of a hearing, parking is available to the public in the Galvez Parking Garage which is located between North Sixth and North Fifth/North and Main Streets (cater-corner from the Bienville Building). Validated parking for the Galvez Garage may be available to public hearing attendees when the parking ticket is presented to LDH staff at the hearing.

Rebekah E. Gee MD, MPH
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: School-Based Health Services School-Based Applied Behavior Analysis-Based Therapy Services

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 19-20. It is anticipated that \$1,188 (\$594 SGF and \$594 FED) will be expended in FY 19-20 for the state's administrative expense for promulgation of this proposed rule and the final rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed rule will have no effect on revenue collections other than the federal share of the promulgation costs for FY 19-20. It is anticipated that \$594 will be collected in FY 19-20 for the federal share of the expense for promulgation of this proposed rule and the final rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed rule amends the provisions governing school-based services in order to remove applied behavior analysis-based (ABA) therapy services as school-based behavioral health services and add ABA to the school-based health services covered in the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program. This action is being taken to ensure that these provisions are accurately promulgated in the Louisiana Administrative Code (LAC). It is anticipated that implementation of this proposed rule will not result in costs or benefits to ABA providers in FY 19-20, FY 20-21 and FY 21-22 as this is a technical change to the LAC to correct the placement of school-based ABA provisions.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Jen Steele
Medicaid Director
1911#039

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Insurance Office of the Commissioner

Regulation 116—Stop-Loss or Excess Policies of Insurance (LAC 37:XIII.Chapter 169)

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., hereby gives notice of its intent to promulgate Regulation 116, Stop-Loss or Excess Policies of Insurance. This regulation has been proposed in order to codify the types of stop-loss or excess policies that can be used by employers sponsoring group health plans and in order to codify the requirements for disclosures under R.S. 22:883.

Title 37 INSURANCE

Part XIII. Regulations

Chapter 169. Regulation 116—Stop-Loss or Excess Policies of Insurance

§16901. Purpose

A. The purpose of this regulation is to implement the provisions of Acts 2001, No. 273 of the Louisiana Legislature, Regular Session, as well as to implement the amendments thereto as set forth in Acts 2003, No. 140 of the Louisiana Legislature, Regular Session, Acts 2007, No. 80 of the Louisiana Legislature, Regular Session, and Acts 2010, No. 375 of the Louisiana Legislature, Regular Session.

AUTHORITY NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, in accordance with R.S. 22:2 and 22:883.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 46:

§16903. Applicability and Scope

A. This regulation shall apply to employers that sponsor group health plans.

AUTHORITY NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, in accordance with R.S. 22:2 and 22:883.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 46:

§16905. Definitions

Group Health Plan—an employee welfare benefit plan as defined in Section 3(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(1)) to the extent that the plan provides medical care as defined in this regulation and including items and services paid for as medical care for employees or their dependents, as defined under the terms of the plan, directly or through insurance, reimbursement, or otherwise, or only to a multiple employer welfare arrangement that is a self-insurer and does not include those multiple employer welfare arrangements that meet the definition in 29 U.S.C. 1002(40).

Medical Care—amounts paid for the diagnosis, cure, mitigation, treatment, or prevention of disease, or amounts paid for the purpose of affecting any stricture or function of the body; transportation primarily for and essential to such medical care; and amounts paid for insurance covering such medical care, as defined in R.S. 22:1061(1)(b).

Paid Contract Basis—allows claims incurred under a “group health plan” during the contract period of a stop-loss or excess policy to be paid during the policy’s twelve-month contract period.

Run-In Contract Basis—allows for reimbursement of claims incurred under a group health plan during a stated period prior to the effective date of the twelve-month contract period of a stop-loss or excess policy and paid during the twelve-month contract period.

Run-Out Contract Basis—allows for reimbursement of claims incurred under a group health plan during the stated twelve-month contract period and paid within a stated period extending at least 90 days after expiration of the twelve-month contract period.

Self-Insurance Plan—any contract, plan, trust, arrangement, or other agreement which is established or maintained to offer or provide health care services, indemnification, or payment for health care services, or health and accident benefits to employees of two or more employers, but which is not fully insured. Any such contract, plan, trust, arrangement, or agreement shall be deemed fully insured only if said services, indemnification, payment, or benefits are guaranteed under a contract or policy of health insurance issued by an insurer authorized to transact business in this state. The term *self-insurance plan* shall not include any arrangement or trust formed under Subpart J of Part I of Chapter 10 of Title 23 of the Louisiana Revised Statutes of 1950 (R.S. 23:1191 et seq.), single employer plans, plans exempt from the state insurance laws under the provisions of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.), except as provided in R.S. 22:463, the Office of Group Benefits, plans of political subdivisions, health maintenance organizations regulated under the Health Management Organization Act, R.S. 22:241 et seq., plans regulated under R.S. 33:1342, 1343, 1346, or 1349, and plans otherwise regulated as insured plans under this Title. A plan of a fraternal benefit society or a labor organization shall not be considered a self-insurance plan for the purposes of this Subpart to the extent that such plan provides health and accident benefits to its members and any of their dependents that are supplemental to those of an employer-provided plan.

Self-Insured Multiple Employer Welfare Arrangement—a multiple employer welfare arrangement as defined in 29 U.S.C. § 1002(40).

Self-Insurer—any entity that makes, provides, or issues a self-insurance plan and is licensed by the LDI.

Stop-Loss or Excess Policy/Policies—insurance covering the losses of an insured above a specific amount or a self-insurer for losses over a stated amount.

Terminal Liability—group health plan that provides an extra ninety days of protection upon termination of the Run-out contract period.

AUTHORITY NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, in accordance with R.S. 22:2 and 22:883.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 46:

§16907. Eligible Claims

A. Stop-loss or excess policies are required to contain a provision that eligible claims incurred under the group health plan during the initial contract period shall be covered, provided that proof of payment of the eligible

claims by the group health plan is furnished to the stop-loss or excess insurer within ninety days after the expiration of the stop-loss or excess policy or any later period that is provided in the contract or stop-loss or excess policy.

AUTHORITY NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, in accordance with R.S. 22:2 and 22:883.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 46:

§16909. Available Claims Incurred and Paid Contract

Bases

A. The following claims incurred and paid contract bases are available to suit the needs of diverse employers sponsoring group health plans:

1. paid as defined in Section 16903;
2. run-in as defined in Section 16903;
3. run-out as defined in Section 16903;
4. terminal liability as defined in Section 16903.

AUTHORITY NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, in accordance with R.S. 22:2 and 22:883.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 46:

§16911 Policy Form Requirements

A. Stop loss or excess policy forms intended to cover the losses of a group health plan must include the following requirements.

1. Eligible claims incurred under the group health plan during the initial contract period will be covered, as long as the “group health plan” submits to the stop loss or excess insurer proof of payment of the eligible claim within 90 days after the expiration of the policy, or within any longer period that is provided in the contract or policy.

2. All applications for stop-loss or excess coverage must include the option to purchase a policy providing coverage on a run-out contract basis. A run-out contract basis extends the claims paid period for at least 90 days beyond expiration of the twelve-month contract term, the period within which claims incurred during the contract term must be submitted and paid.

3. All applications for stop-loss or excess insurance coverage that include the option to purchase a policy providing coverage restricted to claims both incurred and paid during the contract term must contain a form for acceptance or rejection of the ninety-day extension for claims to be submitted and paid, i.e., run-out coverage. To reject such offer, the applicant and the writing producer must both sign and date the application or a supplemental application form containing disclosures such as the following.

a. “It is hereby agreed and understood that the stop-loss [excess] insurance contract selected does not provide reimbursement to the plan sponsor for any expenses incurred under the “group health plan” prior to the beginning of the contract period for stop-loss [excess] insurance or for any expenses paid after expiration of the contract period. Only eligible expenses that are both incurred under the group health plan and paid by the group health plan within the twelve-month contract period for stop-loss [excess] insurance are reimbursable under the contract selected.”

4. All applications for stop-loss or excess insurance including options to purchase a policy providing coverage on a run-in or a paid contract basis must contain a form for

acceptance or rejection. To reject such offer, the applicant and the writing producer must both sign and date the application or a supplemental application containing a disclosure such as the following.

a. "It is hereby agreed and understood that the stop-loss [excess] insurance contract selected does not provide reimbursement to the plan sponsor for any expenses that are not paid by the group health plan within the current contract period, unless the policy is subsequently renewed. Only eligible expenses that are both incurred and paid by the group health plan within the stated contract period are reimbursable under the contract selected."

5. If offered, provisions for terminal liability coverage must extend the period for payment of claims under the group health plan by at least an additional 90 days from termination of the run-out coverage period allowed for incurred claims.

AUTHORITY NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, in accordance with R.S. 22:2 and 22:883.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 46:

§16913. Reinsurance/Health Insurance

A. Stop-loss or excess insurance shall not be equivalent to reinsurance, nor shall it be referred to as a contract or policy of health insurance under R.S. 22:452(1)(a).

AUTHORITY NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, in accordance with R.S. 22:2 and 22:883.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 46:

§16915. Due Diligence

A. Stop loss or excess insurers shall exercise due diligence in ascertaining the legitimacy or authority of the underlying group health plan before issuing coverage. This shall include but not be limited to ensuring that the underlying plan is not a self-insured multiple employer welfare arrangement pursuant to 29 U.S.C. §1002(40), unless the underlying plan is authorized to do business in this state as a self-insurer and meets the requirements of R.S. 22:452.

AUTHORITY NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, in accordance with R.S. 22:2 and 22:883.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 46:

§16917. Additional Requirements for Stop-Loss or Excess Insurance

A. Stop loss or excess insurance issued to a self-insurance plan must meet the following requirements.

1. The plan must include a provision stating that aggregate stop-loss or excess coverage and specific stop-loss or excess coverage may only be provided by an insurer licensed to do business in the state of Louisiana.

2. The stop-loss or excess policies must contain provisions to cover incurred, unpaid claims liability in the event of plan termination.

3. The stop-loss or excess insurer shall bear the risk of coverage for any employer participating in the self-insurance plan that becomes insolvent with outstanding contributions due.

4. The stop-loss or excess insurer shall provide coverage with rates not subject to adjustment by the stop-loss or excess insurer during the first 12 months of coverage, unless:

a. there is a change in the benefits provided under the group health plan; and/or

b. enrollment under the group health plan changes by at least 10 percent.

5. A stop loss or excess insurer must submit its proposed stop-loss or excess policy to the Commissioner of the Department of Insurance for review at least 30 days prior to the proposed self-insurance plan's effective date and at least 30 days prior to any subsequent renewal date.

AUTHORITY NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, in accordance with R.S. 22:2 and 22:883.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 46:

§16919. Severability

A. If any provision of this regulation, or the applicability thereof, is held invalid, such invalidity shall not affect other provisions, items, or applications of the regulation which can be given effect without the invalid provision, item, or application.

AUTHORITY NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, in accordance with R.S. 22:2 and 22:883.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 46:

§16921. Effective Date

A. Regulation 116 shall become effective upon final promulgation in the *Louisiana Register*.

AUTHORITY NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, in accordance with R.S. 22:2 and 22:883.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 46:

Family Impact Statement

1. Describe the Effect of the Proposed Regulation on the Stability of the Family. The proposed amended regulation should have no measurable impact upon the stability of the family.

2. Describe the Effect of the Proposed Regulation on the Authority and Rights of Parents Regarding the Education and Supervision of their Children. The proposed amended regulation should have no impact upon the rights and authority of children regarding the education and supervision of their children.

3. Describe the Effect of the Proposed Regulation on the Functioning of the Family. The proposed amended regulation should have no direct impact upon the functioning of the family.

4. Describe the Effect of the Proposed Regulation on Family Earnings and Budget. The proposed amended regulation should have no direct impact upon family earnings and budget.

5. Describe the Effect of the Proposed Regulation on the Behavior and Personal Responsibility of Children. The proposed amended regulation should have no impact upon the behavior and personal responsibility of children.

5. Describe the Effect of the Proposed Regulation on the Ability of the Family or a Local Government to Perform the Function as Contained in the Rule. The proposed amended regulation should have no impact upon the ability of the family or a local governmental unit to perform the function as contained in the rule.

Poverty Impact Statement

1. Describe the Effect on Household Income, Assets, and Financial Security. The proposed amended regulation should have no effect on household income assets and financial security.

2. Describe the Effect on Early Childhood Development and Preschool through Postsecondary Education Development. The proposed amended regulation should have no effect on early childhood development and preschool through postsecondary education development.

3. Describe the Effect on Employment and Workforce Development. The proposed amended regulation should have no effect on employment and workforce development.

4. Describe the Effect on Taxes and Tax Credits. The proposed amended regulation should have no effect on taxes and tax credits.

5. Describe the Effect on Child and Dependent Care, Housing, Health Care, Nutrition, Transportation and Utilities Assistance. The proposed amended regulation should have no effect on child and dependent care, housing, health care, nutrition, transportation and utilities assistance.

Small Business Analysis

The impact of the proposed regulation on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed regulation that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed regulation on small businesses.

1. Identification and Estimate of the Number of the Small Businesses Subject to the Proposed Rule. The proposed amended regulation should have no measurable impact upon small businesses.

2. The Projected Reporting, Record Keeping, and Other Administrative Costs Required for Compliance with the Proposed Rule, Including the Type of Professional Skills Necessary for Preparation of the Report or Record. The proposed amended regulation should have no measurable impact upon small businesses.

3. A Statement of the Probable Effect on Impacted Small Businesses. The proposed amended regulation should have no measurable impact upon small businesses.

4. Describe any Less Intrusive or Less Costly Alternative Methods of Achieving the Purpose of the Proposed Rule. The proposed amended regulation should have no measurable impact on small businesses; therefore, will have no less intrusive or less cost alternative methods.

Provider Impact Statement

1. Describe the Effect on the Staffing Level Requirements or Qualifications Required to Provide the Same Level of Service. The proposed amended regulation will have no effect.

2. The Total Direct and Indirect Effect on the Cost to the Provider to Provide the Same Level of Service. The proposed amended regulation will have no effect.

3. The Overall Effect on the Ability of the Provider to Provide the Same Level of Service. The proposed amended regulation will have no effect.

Public Comments

All interested persons are invited to submit written comments on the proposed regulation. Such comments must be received no later than December 20, 2019 by close of business or by 4:30 p.m. and should be addressed to Monica Derbes Gibson, Louisiana Department of Insurance, and may be mailed to P.O. Box 94214, Baton Rouge, LA 70804-9214 or faxed to (225) 342-1632. If comments are to be shipped or hand-delivered, please deliver to Poydras Building, 1702 North Third Street, Baton Rouge, LA 70802.

James J. Donelon
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Regulation 116—Stop-loss or Excess Policies of Insurance

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rules will not result in additional costs or savings for state or local governmental units. The proposed regulations codify the provisions for stop-loss or excess policies of insurance that can be used by employers sponsoring group health plans and to codify the requirements for disclosures under R.S. 22:883 that are presently in effect for the LA Dept. of Insurance. The proposed rules codify the provisions of Act 273 of 2001, Act 140 of 2003, Act 80 of 2007, and Act 375 of 2010 of the Louisiana Legislature. Included in the proposed rules are relevant definitions, requirements for stop-loss/excess policies, a definition of eligible claims, policy form requirements, and the types of stop-loss/excess policy contracts available in Louisiana.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rules will not affect revenue collections for state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rules will have no cost to directly affected persons or non-governmental groups. The proposed rule will benefit employers sponsoring "group health plans" in the claim processing of stop-loss or excess policies by having the specific requirements for claim processing align the administrative rules with current statute for clarity. Included in the proposed rules are relevant definitions, requirements for stop-loss/excess policies, a definition of eligible claims, policy form requirements, and the types of stop-loss/excess policy contracts available in Louisiana.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rules will not affect competition or employment.

Nicholas Lorusso
Chief Deputy Commissioner
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Evan Brasseaux
Staff Director
Legislative Fiscal Office