

\$1,750 permit fees (10 producers x \$175 permit fee)
\$388,800 label fees (14,400 labels x \$27 fee)
\$390,550 Total collection in FY 22

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

Facilities producing hemp and CBD products for consumption will incur the cost of permits and label registration fees, as detailed in section II above. Additionally, manufacturers and retailers of CBD products are expected to experience an increase in income resulting from the sale of CBD products, which this proposed rule assists in authorizing.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed rule will assist in authorizing the sale of CBD products by manufacturers and retailers. If there is a large public demand for CBD products, manufacturers and retailers may find it necessary to employ additional staff to handle the increased demand.

Alexander Billioux, MD, DPhil
Assistant Secretary
1912#056

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Insurance
Office of the Commissioner**

**Regulation 63—Prohibitions on the Use of Medical
Information and Genetic Test Result
(LAC 37:XIII.Chapter 45)**

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 amend Regulation 63—Prohibitions on the Use of Medical Information and Genetic Test Results.

The proposed regulation is being amended to comport with current law regarding the use of medical information, including pregnancy tests, genetic tests and related genetic test information, through the passage of Acts 2003, No. 129, §1, Acts 2004, No. 325, §1, Acts 2009, No. 419, §1, Acts 2010, No. 919, §1, and Acts 2016, No. 58, §1 of the Regular Sessions of the Louisiana Legislature.

Title 37

INSURANCE

Part XIII. Regulations

**Chapter 45. Regulation 63—Prohibitions on the Use of
Medical Information and Genetic Test
Results**

§4503. Authority

A. This regulation is issued pursuant to the authority vested in the Commissioner of Insurance under R.S. 22:11, 22:971, 22:258, 22:242(7), 22:1964(22) and (23), 22:1022, and 22:1023 of the *Insurance Code*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:971, 22:258, 22:242(7), 22:1964(22) and (23), 22:1022, and 22:1023 of the *Insurance Code*.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 24:1120 (June 1998); amended LR 46:

§4505. Definitions

* * *

Genetic Information—all information about genes, gene products, inherited characteristics, or family history/pedigree that is expressed in common language and

1. *Genetic Information* shall include each of the following:

- a. an individual's genetic test;
- b. the genetic tests of the family members of an individual;
- c. the manifestation of a disease or disorder in family members of an individual;
- d. with respect to an individual or family member of an individual who is a pregnant woman, genetic information of any fetus or embryo carried by such pregnant woman; and with respect to an individual or family member of an individual utilizing an assisted reproductive technology, genetic information of any embryo legally held by the individual or family member.

2. *Genetic Information* does not include the medical history of an individual insured or applicant for health care coverage and shall not mean information about the sex or age of any individual.

Genetic Services—a genetic test, genetic counseling, including obtaining, interpreting, or assessing genetic information, or genetic education.

Genetic Test—any test for determining the presence or absence of genetic characteristics in an individual, including tests of nucleic acids, such as DNA, RNA, and mitochondrial DNA, chromosomes, or proteins in order to diagnose or identify a genetic characteristic or that detects genotypes, mutation, or chromosomal changes. The determination of a genetic characteristic shall not include any diagnosis of the presence of disease, disability, or other existing medical condition. Genetic test shall not mean an analysis of proteins or metabolites that either:

- 1 does not detect genotypes, mutations, or chromosomal changes;
2. is directly related to a manifested disease, disorder, or pathological condition that could be reasonably detected by a health care professional with appropriate training and expertise in the field of medicine involved.

* * *

Insurer—any hospital, health, or medical expense insurance policy, hospital or medical service contract, employee welfare benefit plan, health and accident insurance policy, or any other insurance contract of this type, including a group insurance plan, or any policy of group, family group, blanket, or association health and accident insurance, a self-insurance plan, health maintenance organization, and preferred provider organization, including insurance agents and third-party administrators, which delivers or issues for delivery in this state an insurance policy or plan. The term *insurer* does not include any individual or entity that does not hold a valid certificate of authority to issue, for delivery in this state, an insurance policy or plan. A certificate of authority to issue an insurance policy or plan for delivery shall not include a license or certificate to act as a preferred provider organization, insurance agent, or third-party administrator.

* * *

Underwriting Purposes—rules for or determination of eligibility, including enrollment and continued eligibility, for benefits under the plan or coverage; the computation of premium or contribution amounts under the plan or coverage; and other activities related to the creation, renewal, or replacement of a contract or policy issued by an insurer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:971, 22:258, 22:242(7), 22:1964(22) and (23), 22:1022, and 22:1023 of the *Insurance Code*.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 24:1120 (June 1998); amended LR 46:

§4507. Applicability and Scope

A. Except as otherwise specifically provided, the requirements of this regulation apply to all issuers of health care policies or contracts of insurance, or health maintenance organization subscriber agreements issued for delivery in the state of Louisiana. The requirements of this regulation shall not impinge upon the normal practice of medicine or reasonable medical evaluation of an individual's medical history for the purpose of providing or maintaining health insurance coverage. The requirements of this regulation address the use of medical information, including use of genetic tests, and genetic information for the purpose of issuing, renewing, or establishing premiums for health coverage. The provisions of this regulation do not apply to any actions of an insurer or third parties dealing with an insurer taken in the ordinary course of business in connection with the sale, issuance or administration of a life, disability income, long-term care, or critical illness insurance policy. For the purpose of this Section, "critical illness" insurance policy shall mean health insurance providing a principle sum of benefit following diagnosis of specifically named perils.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:971, 22:258, 22:242(7), 22:1964(22) and (23), 22:1022, and 22:1023 of the *Insurance Code*.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 24:1120 (June 1998); amended LR 46:

§4511. Requirements for Release of Genetic Test and Related Medical Information

A. - A.8. ...

B. A copy of the authorization shall be provided to the individual. An individual may revoke or amend the authorization in whole or in part, at any time. In complying with the provisions of this Section, the record holder is responsible for assuring only authorized information is released to insurers with respect to medical records that contain genetic information. The requirements of this Section shall not act to impede or otherwise impinge upon the ability of the patient's attending physician to provide appropriate and medically necessary treatment or diagnosis of a medical condition. Nothing in this Section shall exempt a covered entity from the requirements of the Health Insurance Portability and Accountability Act of 1996 pertaining to the collection, use, or disclosure of genetic information, which for purposes of the Health Insurance Portability and Accountability Act of 1996, is defined as "health information" under 42 U.S.C. §1320d(4)(b) and 42 U.S.C. §1320d-9.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:971, 22:258, 22:242(7), 22:1964(22) and (23), 22:1022, and 22:1023 of the *Insurance Code*.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 24:1120 (June 1998); amended LR 46:

§4513. Prohibitions on the Use of Medical Information and Genetic Test Results

A. ...

B. All insurers shall, in the application or enrollment information required to be provided by the insurer to each applicant concerning a policy or plan, include a written statement disclosing the rights of the applicant. Such statements shall be printed in 10-point type or greater with a heading in all capital letters that states: your rights regarding the release and use of genetic information. Disclosure statements must be approved by the Department of Insurance as complying with the requirements of R.S. 22:1023 prior to utilization.

C.1. No insurer shall request, require, or purchase genetic information either:

a. of an individual or family member of an individual for underwriting purposes.

b. with respect to any individual or family member of an individual prior to such individual's enrollment under the plan or coverage in connection with such enrollment.

2. If an insurer offering health insurance coverage in the individual or group market obtains genetic information incidental to the requesting, requiring, or purchasing of other information concerning any individual, such request, requirement, or purchase shall not be considered a violation of Subparagraph 1.b. of this Subsection if such request, requirement, or purchase is not in violation of Subparagraph 1.a. of this Subsection.

D.1. No insurer shall request or require that an individual, a family member of such individual, or a group member undergo a genetic test.

2. Paragraph 1 of this Subsection shall not be construed to limit the authority of a health care professional who is providing health care services to an individual to request that such individual undergo a genetic test.

E.1. No insurer shall establish rules for eligibility, including continued eligibility, of any individual or an individual's family member to enroll or continue enrollment based on genetic information.

2. Nothing in Paragraph 1 of this Subsection or in Subparagraphs C.1.a and b of this Section shall be construed to preclude an insurer from establishing rules for eligibility for an individual to enroll in individual health insurance coverage based on the manifestation of a disease or disorder in that individual or in a family member of such individual where such family member is covered under the policy that covers such individual.

F.1. No insurer shall impose any preexisting condition exclusion on the basis of genetic information of an individual, family member of an individual, or group member.

2. Nothing in Paragraph 1 of this Subsection or in Subparagraphs C.1.a. and b. of this Section shall be construed to preclude an insurer offering coverage in the individual market from imposing any preexisting condition

exclusion for an individual with respect to health insurance coverage on the basis of a manifestation of a disease or disorder in that individual.

G.1. No insurer shall adjust premium or contribution amounts for an individual or group health plan on the basis of genetic information concerning the individual or a family member of the individual.

2. Nothing in Paragraph 1 of this Subsection shall be construed to preclude an insurer offering health insurance coverage in the individual market from adjusting premium or contribution amounts for an individual on the basis of a manifestation of a disease or disorder in that individual, or in a family member of such individual where such family member is covered under the policy that covers such individual. In such case, the manifestation of a disease or disorder in one individual cannot also be used as genetic information about other individuals covered under the policy issued to such individual and to further increase premium or contribution amounts.

3. Nothing in Paragraph 1 of this Subsection shall be construed to preclude an insurer offering health insurance coverage in connection with a group health plan from increasing the premium for an employer based upon the manifestation of a disease or disorder of an individual who is enrolled in the plan. In such case, the manifestation of a disease or disorder in one individual cannot also be used as genetic information about other group members and to further increase the premium for the employer.

H.1. Nothing in Paragraph D.1 of this Subsection shall be construed to preclude an insurer offering health insurance coverage in the individual or group market from obtaining and using the results of a genetic test in making a determination regarding payment, as such term is defined for the purposes of applying the regulations promulgated by the secretary of the United States Department of Health and Human Services under Part C of Title XI of the Social Security Act and Section 264 of the Health Insurance Portability and Accountability Act of 1996, consistent with Subsections E and F of this Subsection.

2. For purposes of Paragraph 1 of this Subsection, an insurer offering health insurance coverage in the individual or group market may request only the minimum amount of information necessary to accomplish the intended purpose.

I. Notwithstanding Paragraph D.1 of this Subsection, an insurer offering health insurance coverage in the individual or group market may request, but not require, that an individual, family member of an individual, or a group member undergo a genetic test if each of the following conditions is met.

1. The request is made pursuant to research that complies with Part 46 of Title 45, Code of Federal Regulations, or equivalent federal regulations, and any applicable state or local law or regulations for the protection of human subjects in research.

2. The insurer clearly indicates to each individual, or in the case of a minor child, to the legal guardian of such child, to whom the request is made both that:

a. compliance with the request is voluntary;

b. noncompliance will have no effect on enrollment status or premium, or contribution amounts.

3. No genetic information collected or acquired under this Subsection shall be used for underwriting purposes.

4. The insurer notifies the secretary of the United States Department of Health and Human Services in writing that the issuer is conducting activities pursuant to the exception provided for under this Subsection, including a description of the activities conducted.

5. The insurer complies with such other conditions as the secretary of the United States Department of Health and Human Services may by regulation require for activities conducted under this Subsection.

requirements of R.S. 22:213.7 prior to utilization.

J. The results of any genetic test, including genetic test information, shall not be used as the basis to:

1. terminate, restrict, limit, or otherwise apply conditions to the coverage of an individual or family member under the policy or plan, or restrict the sale of the policy or plan to an individual or family member;

2. cancel or refuse to renew the coverage of an individual or family member under the policy or plan;

3. deny coverage or exclude an individual or family member from coverage under the policy or plan;

4. impose a rider that excludes coverage for certain benefits or services under the policy or plan;

5. establish differentials in premium rates or cost sharing for coverage under the policy or plan;

6. otherwise discriminate against an individual or family member in the provision of insurance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:971, 22:258, 22:242(7), 22:1964(22) and (23), 22:1022, and 22:1023 of the *Insurance Code*.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 24:1120 (June 1998); amended LR 46:

§4515. General Provisions

A. - A.7. ...

8. For treatment, payment, and healthcare operations by an insurer consistent with the federal Health Insurance Portability and Accountability Act and its related regulations.

9. For maintenance of information by an insurer in accordance with record retention requirements.

B. - B.2. ...

C. For purposes of R.S. 22:1023, any person who acts without proper authorization to collect a DNA sample for analysis, or willfully discloses genetic information without obtaining permission from the individual or patient as required under this regulation, shall be liable to the individual for each such violation in an amount equal to:

C.1. - C.2. ...

3. the costs of the action together with reasonable attorney fees as determined by the court, in the case of a successful action to enforce any liability under R.S. 22:1023.

D. Any person who, either through a request, the use of persuasion, under threat, or under a promise of a reward, willfully induces another to collect, store or analyze a DNA sample in violation; or willfully collects, stores, or analyzes a DNA sample; or willfully discloses genetic information in violation of R.S. 22:1023 shall be liable to the individual for each such violation in an amount equal to:

1. ...

2. the costs of the action together with reasonable attorney fees as determined by the court, in the case of a successful action under R.S. 22:1023.

E. The discrimination against an insured in the issuance, payment of benefits, withholding of coverage, cancellation, or nonrenewal of a policy, contract, plan or program based upon the results of a genetic test, receipt of genetic information, or a prenatal test other than one used for the determination of pregnancy shall be treated as an unfair or deceptive act or practice in the business of insurance under R.S. 22:1964.

F. This regulation became effective June 20, 1998; however, the amendments to this regulation will become effective upon final publication in the *Louisiana Register*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:971, 22:258, 22:242(7), 22:1964(22) and (23), 22:1022, and 22:1023 of the *Insurance Code*.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 24:1120 (June 1998); amended LR 46:

Family Impact Statement

1. Describe the effect of the proposed regulation on the stability of the family. The proposed 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 regulation should have no impact upon the rights and authority of parents regarding the education and supervision of their children.

3. Describe the effect of the proposed regulation on the functioning of the family. The proposed 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 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 regulation should have no impact upon the behavior and personal responsibility of children.

6. 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 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 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 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 regulation should have no effect on employment and workforce development.

4. Describe the effect on taxes and tax credits. The proposed 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 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 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 regulation should have no measurable impact upon small businesses.

3. A statement of the probable effect on impacted small businesses. The proposed 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 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 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 regulation will have no effect.

3. The overall effect on the ability of the provider to provide the same level of service. The proposed regulation will have no effect.

Public Comments

Interested persons may submit written comments on the proposed promulgation of Regulation 63. Such comments must be received no later than January 20, 2019 by close of business, 4:30 p.m., and addressed to Carol Fowler-Guidry, Deputy General Counsel, Louisiana Department of Insurance, P.O. Box 94214, Baton Rouge, LA 70804-9214 or faxed to (225) 342-1632.

James J. Donelon
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Regulation 63—Prohibitions on the Use of Medical Information and Genetic Test Result

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

The proposed rule changes will not result in additional costs or savings for state or local governmental units. The

proposed amendments codify the provisions for the prohibitions on the use of medical information and genetic test results. The proposed rule changes codify the provisions of Act 129 of 2003, Act 325 of 2004, Act 419 of 2009, Act 919 of 2010 and Act 58 of 2016 and align the administrative rules with present practice and statute. Included in the proposed rule change are definitions, requirements for release of genetic test and related medical information, and prohibitions on the use of medical information.

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

The proposed rule changes 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 rule changes will have no costs or benefits to directly affected persons or non-governmental groups. The proposed rule changes will benefit individuals undergoing genetic testing by having the prohibitions of medical information and genetic test results align the administrative rule with current statute for clarity.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule changes will not affect competition or employment.

Lance L. Herrin
Deputy Undersecretary
1912#058

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Natural Resources Office of Conservation

Damage Prevention (LAC 43:XI.Chapter 27)

The Department of Natural Resources, Office of Conservation proposes to amend LAC 43:XI in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and pursuant to the power delegated under the laws of the state of Louisiana. The proposed regulations are a result of Act No. 218 of the 2017 Regular Session.

Title 43

NATURAL RESOURCES

Part XI. Office of Conservation—Pipeline Division

Subpart 6. Damage Prevention

Chapter 27. Damage Prevention

§2701. Scope

A. This Chapter applies to the prevention of damage of underground pipelines.

B. It is the public policy of this state to promote the protection of property, workmen, and citizens in the immediate vicinity of an underground pipeline from damage, death, or injury and to promote the health and well-being of the community by preventing the interruption of essential services which may result from the destruction of, or damage to, underground pipelines.

AUTHORITY NOTE: Promulgated in accordance with 40:1749.27.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 46:

§2703. Definitions

A. The following words and terms, when used in this Chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Agricultural Excavator—a person who owns or operates a farm and is directly involved in the cultivation of land or crops or who raises livestock.

Commissioner—the commissioner of conservation.

Damage—any defacing, scraping, gouging, breaking, cutting, or displacement of, impact upon or removal of an underground pipeline or its means of primary support.

Demolisher—any person engaged in the act of demolishing as defined in this Section.

Demolition—the total or partial wrecking, razing, rendering, moving, or removing of any building or structure, movable or immovable.

Emergency—any crisis situation which poses an imminent threat or danger to life, health, or property requires immediate action, and immediate action is taken.

Excavation or *Excavate*—any operation causing movement or removal of earth, rock, or other materials in or on the ground or submerged in a marine environment that could reasonably result in damage to underground or submerged pipelines by the use of powered or mechanical or manual means, including but not limited to pile driving, digging, blasting, augering, boring, back filling, dredging, compaction, plowing-in, trenching, ditching, tunneling, land-leveling, grading, and mechanical probing. *Excavation* or *excavate* shall not include manual probing or any force majeure, act of God, or act of nature.

Excavator—any person who engages in excavation operations.

Inclement Weather—weather that prohibits or impedes a worker's use of his locating equipment or causes undue risk to himself or his equipment such as lightning, heavy rain, tornadoes, hurricanes, floods, sleet, snow, or flooding conditions.

Mark by Time—the date and time provided by the regional notification center by which the pipeline operator is required to mark the location or provide information to enable an excavator or demolisher, using reasonable and prudent means, to determine the specific location of the pipeline as provided for in R.S. 40:1749.14(D). The mark by time may be extended if mutually agreed upon and documented between the excavator and operator.

Operator—any person who owns or operates a pipeline as defined by this Part.

Person—an individual, firm, partnership, association, limited liability company, corporation, joint venture, municipality, governmental agency, political subdivision, or agent of the state or any legal representative thereof.

Pipeline—all intrastate and interstate pipeline facilities defined by 49 CFR 192.3 and 49 CFR 195.2.

Regional Notification Center—any one of the following:

a. an entity designated as nonprofit by the Internal Revenue Service under Section 501(c) of the Internal Revenue Code and which is organized to protect its members from damage and is certified by the Department of Public Safety and Corrections in accordance with this Part;