



LOUISIANA DEPARTMENT OF INSURANCE
JAMES J. DONELON
COMMISSIONER

March 14, 2023

The Honorable Patrick Page Cortez
President, Louisiana State Senate
P.O. Box 94183
Baton Rouge, LA 70804

ELECTRONIC TRANSMISSION
apa.senatepresident@legis.la.gov

The Honorable Clay Schexnayder
Speaker, Louisiana House of Representatives
P.O. Box 94062
Baton Rouge, LA 70804

ELECTRONIC TRANSMISSION
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The Honorable Kirk Talbot
Chairman of the Senate Insurance Committee
P.O. Box 94183
Baton Rouge, LA 70804

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The Honorable Mike Huval
Chairman of the House Insurance Committee
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Baton Rouge, LA 70804

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RE: Summary Report – Regulation 103 — Utilization Review
Organizations and Independent Review Organizations

Dear President Cortez, Speaker Schexnayder, Senator Talbot, and Representative Huval:

The Louisiana Department of Insurance (LDI) hereby submits the following summary report required by La. R.S. 49:968(D)(1)(b), and announces its intention to finalize the amendment to Regulation 103, which was published as a Notice of Intent in the January 2023 edition of the *Louisiana Register*.

Interested persons were provided an opportunity to submit comments to the LDI on the proposed regulation. The LDI received comments in response to the Notice of Intent and the LDI responded accordingly. These comments and the LDI's responses are summarized below and enclosed for your review.

Comment 1: Andrew Linkhart requested to be unsubscribed from the LDI Industry Portal Notification System.

LDI Response to Comment 1: The request is not relevant to Regulation 103. However, the request to be unsubscribed was routed to the proper division within the LDI to be processed accordingly.

Comment 2: Jennifer Moen requested to be unsubscribed from the LDI Industry Portal Notification System.

LDI Response to Comment 2: The request is not relevant to Regulation 103. However, the request to be unsubscribed was routed to the proper division within the LDI to be processed accordingly.

Comment 3: Hannah Strok requested to be unsubscribed from the LDI Industry Portal Notification System.

LDI Response to Comment 3: The request is not relevant to Regulation 103. However, the request to be unsubscribed was routed to the proper division within the LDI to be processed accordingly.

Comment 4: David Lavergne of Blue Cross and Blue Shield of Louisiana made the following comment:

In response to the Louisiana Department of Insurance's (DOI) proposed changes to Regulation 103 pertaining to Utilization Review and Independent Review Organizations, Louisiana Health Service & Indemnity Company d/b/a Blue Cross and Blue Shield of Louisiana (BCBSLA) has the following comments:

We are concerned with the wording in Subsections (D), (E)(1), and (F) of Section 6209 requiring health insurance issuers to potentially provide Protected Health Information (PHI) of its members to DOI even in cases where the issuer has not received a request from its member to institute an appeal and/or written authorization for a representative to appeal on the member's behalf. Specifically –

- Subsection D requires the issuer to provide any additional information upon request of the commissioner.
- Subsection (E)(1) requires the issuer to upload a copy of the adverse determination letter when external review requests have been deemed ineligible.
- Subsection (F) allows the commissioner to overturn the determination that the matter was ineligible for external review and requires the issuer to submit the matter for assignment to an Independent Review Organization.

All of these actions require the issuer to provide member PHI to DOI and potentially to the IRO. In many cases, providing such information is not an issue. However, in cases where the member (or their authorized representative) has not signed a form authorizing the release of their PHI for an external review, BCBSLA has concerns that it may run

afoul of privacy laws by providing that information to DOI and/or the IRO. Subsection (C) of the proposed rule seemingly recognizes this privacy concern by stating that no medical or protected health information should be provided by the issuer unless determinative of the issue on appeal.

Based on the above, we request that the department add some clarifying language to the regulation stating that when a member (or their authorized representative) has not signed a form authorizing the release of their PHI, the health insurance issuer is not required to provide any protected health information to the department or to the IRO.

LDI Response to Comment 4:

The LDI rejects the recommendation to add clarifying language to the regulation stating that when a member or their authorized representative has not signed a form authorizing the release of their protected health information, the health insurance issuer is not required to provide any protected health information to the LDI or to the IRO as this is an inaccurate statement. Both state and federal law authorizes the release of protected health information to the LDI and the IRO.

Subject to legislative oversight, the LDI intends to submit Regulation 103 to the Office of the State Register for final publication in the May 2023 edition of the Louisiana Register. A copy of the summary report will be placed on the LDI's website in accordance with La. R.S. 49:968(D)(1)(c).

3. the overall effect on the ability of the provider to provide the same level of service.

Public Comments

Interested persons may submit written comments on the proposed Rule. Such comments must be received no later than Friday, February 10, 2023 at COB, 4:30 p.m., and should be addressed to Susan Bailey, Director of the Bureau of Emergency Medical Services, 7273 Florida Blvd., Baton Rouge, LA 70806.

Public Hearing

Interested persons may submit a written request to conduct a public hearing by U.S. mail to the Office of the Secretary ATTN: LDH Rulemaking Coordinator, Post Office Box 629, Baton Rouge, LA 70821-0629; however, such request must be received no later than 4:30 p.m. on Friday, February 10, 2023. If the criteria set forth in R.S. 49:961(B)(1) are satisfied, LDH will conduct a public hearing at 2:00 p.m. on Thursday, February 23, 2023 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 Friday, February 10, 2023. 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 the Bienville Building’s front security desk.

Dr. Courtney N. Phillips
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Emergency Medical Transportation
Services—Licensing Standards**

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

In compliance with Act 789 of the 2012 Regular Session, Act 106 of the 2017 Regular Session, and Act 557 of the 2018 Regular Session of Louisiana Legislature, the Louisiana Department of Health, Office of Public Health, Bureau of Emergency Medical Services proposes to repeal and replace the provisions governing the licensing standards for emergency medical transportation services in order to: 1) clarify and align these provisions with the corresponding legislative authorities governing emergency medical services; 2) ensure that the provisions are consistent with the standard language used in other healthcare licensing regulations; 3) promulgate the provisions clearly and concisely in the Louisiana Administrative Code.

The proposed rule change is anticipated to increase expenditures LDH Office of Public Health by approximately \$143,457 in FY 23 associated with publication costs (\$6,207) and software modifications (\$137,250).

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

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

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

It is anticipated that this proposed rule change will have no direct cost to persons, small businesses or non-governmental groups. The cost of an Emergency Medical Transportation License is not changed. The fee is \$100 per license and \$75 per vehicle.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)**

The proposed rule will not impact competition or employment.

Doris Brown
Assistant Secretary
2301#074

Alan M. Boxberger
Interim Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Insurance
Office of the Commissioner**

**Regulation 103—Utilization Review Organizations and
Independent Review Organizations
(LAC 37:XIII.Chapter 62)**

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 103—Utilization Review Organizations and Independent Review Organizations. The purpose of the amendment to Regulation 103 is to provide the requirements for incomplete requests for external review as provided in Act 81 of the 2022 Regular Session of the Louisiana Legislature and to make technical changes.

Title 37

INSURANCE

Part XIII. Regulations

**Chapter 62. Regulation Number 103—Utilization
Review Organizations and Independent
Review Organizations**

§6209. Requesting an External Review

A. All requests for external review must be made by the health insurance issuer through the IRO review request module, which can be accessed via the industry access link on the LDI’s website: www.lds.la.gov. When a covered person or his authorized representative requests an external review, the health insurance issuer shall notify the LDI by entering this request via the link. The request must be entered even if the health insurance issuer determines the request is ineligible for review.

B. If the covered person or his authorized representative requests an external review, but the health insurance issuer determines that the request is not complete, the health insurance issuer shall notify the LDI through the IRO review request module described in §6209.A by completing the field indicating that the covered person’s or his authorized representative’s request is incomplete and stating with specificity the information or materials needed to make the request complete. Such notice shall be provided to the LDI within five business days following the date of receipt of the external review request from the covered person or his authorized representative pursuant to R.S. 22:2436.

C. If the covered person or his authorized representative requests an external review, but the health insurance issuer denies the request as being ineligible pursuant to R.S. 22:2436(B), the covered person or his authorized representative may appeal in writing to the commissioner. The health insurance issuer and the covered person or his authorized representative both may submit additional documentation, such as the policy to verify coverage limitations as well as dates of coverage, documentation of service dates, etc., to help establish why the denial should be upheld or reversed. However, no medical or protected health information should be submitted to the commissioner for this review, unless such information is determinative of the issue in the appeal.

D. Upon receipt of an appeal of a health insurance issuer's eligibility determination, the LDI may contact the health insurance issuer's designated contact to request additional information, if necessary. Therefore, all health insurance issuers should ensure that the designated contact's information is regularly updated in the industry access portal, as all electronic communications, including assignment of a case to an IRO, reporting of an IRO's external review results, reporting of the commissioner's decision on eligibility for an external review, etc., will be sent automatically to the designated contact of record that is on file with the LDI.

E. To facilitate notice of the right to appeal a determination of ineligibility to the commissioner, the health insurance issuer shall include the reason for ineligibility, as well as the following language (or language that is substantially similar), in its notice to the covered person:

“[Name of health insurance issuer] has determined that your request for an independent external review of your adverse determination does not meet the eligibility requirements for independent external reviews because [reason]. However, [name of health insurance issuer]'s determination that you are ineligible for an external review may be appealed to the Commissioner of Insurance, who has the authority to reverse [name of health insurance issuer]'s decision and order an independent external review of your adverse determination. If you wish to appeal this decision, you should go to the following website: <https://ldi.la.gov/OnlineServices/IROConsumerAppeals>.

Once you access the website, enter your last name and case number where instructed. Following verification of your name and case number, you will be able to enter the reasons you believe your adverse determination should be eligible for an independent external review. If you have questions or if you or your authorized representative is unable to access the website, you may contact the Louisiana Department of Insurance by email at ConsumerAppeals@ldi.la.gov or by telephone at (225) 342-1355. Your case number is _____.”

1. Health insurance issuers must also upload a copy of the adverse determination letter when reporting external review requests that have been deemed ineligible.

F. If the covered person or his authorized representative requests an external review and the health insurance issuer does not deny the request as being ineligible or if the commissioner reverses a request that the health insurance issuer had deemed ineligible for external review, the health insurance issuer must submit the request to the LDI for assignment of an external review by using the IRO review request form which can be located on the LDI website, www.ldi.la.gov via the industry access portal.

G. When completing the IRO review request form, the health insurance issuer must enter the following information:

1. covered person's name;
2. covered person's contact information (address, telephone, email address, fax);
3. name of covered person's authorized representative (if applicable);
4. authorized representative's contact information (if applicable);
5. policy/contract number;
6. name of primary care doctor or specialist;
7. type of specialty;
8. type of appeal requested: medical, rescission or experimental;
9. type of appeal requested: standard or expedited;
10. result of request: eligible or ineligible.

H. Once the case has been assigned, neither the covered person nor the health insurance issuer may request the case be reassigned to another IRO, as all IRO assignments are final, unless reassignment is necessary pursuant to §6211.E.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2436 and R.S. 22:2452.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 41:2174 (October 2015), amended LR 49:

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, there is no less intrusive or less costly alternative method of achieving the purpose of the proposed regulation.

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 who wish to make comments may do so by writing to Jennifer Land, Staff Attorney, Louisiana Department of Insurance, P.O. Box 94214, Baton Rouge, LA

70804-9214, by faxing comments to (225) 342-1632, or electronically at regulations@ldi.la.gov. Comments will be accepted through the close of business, 4:30 p.m., February 9, 2023.

James J. Donelon
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Regulation 103—Utilization Review Organizations and Independent Review Organizations

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

The proposed rule is not anticipated to result in implementation costs or savings to the state or local governmental units. The proposed rule is being promulgated to amend the requirements for incomplete requests for external review as provided in Act 81 of the 2022 Regular Session of the Louisiana Legislature.

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

The proposed rule will have no impact on state or local governmental revenues.

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

The proposed rule is being amended to provide for the requirements for incomplete requests for external review as provided for in Act 81 of the 2022 Regular Legislative Session. This will better clarify the process of requesting an external review of Utilization and Independent Review Organizations.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule will have no impact upon competition and employment in the state.

S. Denise Gardner
Chief of Staff
2301#069

Alan M. Boxberger
Interim Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Insurance Office of the Commissioner

Regulation 126—Louisiana Fortify Homes Program
(LAC 37:XIII.Chapter 182)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and pursuant to the authority of the Louisiana Insurance Code, R.S. 22:1 et seq., and specifically R.S. 22:11, the Department of Insurance hereby gives notice of its intent to promulgate Regulation 126 to set forth rules and requirements governing the administration of the Louisiana Fortify Homes Program (LFHP) and eligibility criteria for LFHP grants as set forth in Act No. 554 of the 2022 Regular Session.