



LOUISIANA DEPARTMENT OF INSURANCE
JAMES J. DONELON
COMMISSIONER

November 5, 2013

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

HAND DELIVERED

The Honorable Charles E. "Chuck" Kleckley
Speaker of the House
P.O. Box 94062
Baton Rouge, LA 70804

HAND DELIVERED

The Honorable Dan "Blade" Morrish
Senate Committee on Insurance
P.O. Box 94183
Baton Rouge, LA 70804

HAND DELIVERED

The Honorable Greg Cromer
House Committee on Insurance
P.O. Box 94062
Baton Rouge, LA 70804

HAND DELIVERED

RE: Public Hearing—Proposed Amendments to Regulation 43-Companies in Hazardous Financial Condition.

Dear President Alario, Speaker Kleckley, Senator Morrish and Representative Cromer:

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 rule-making by finalizing the September 20, 2013, Notice of Intent (NOI), captioned as "Regulation 43-Companies in Hazardous Financial Condition". The LDI held a public hearing regarding the proposed amendments to Regulation 43 on Wednesday, October 30, 2013 at 10:00 a.m. in the Poydras Hearing Room at the Louisiana Department of Insurance (LDI).

The purpose of this public hearing was to afford all interested persons the reasonable opportunity to submit data, views, comments, or arguments, orally or in writing, regarding the NOI to amend Regulation 43. The public hearing was chaired by

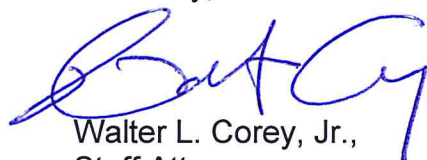
the undersigned, Walter L. Corey, Staff Attorney, LDI. The NOI expressed the LDI's intention to amend Regulation 43, which sets forth the standards that the Commissioner of Insurance (Commissioner) may use for identifying insurers found to be in such condition as to render the continuance of their business hazardous to their policyholders, creditors, or the general public. The purpose of the proposed amendment is to update the current provisions of Regulation 43 to maintain consistency with the National Association of Insurance Commissioners (NAIC) model regulation regarding such standards and to meet the requirements for the accreditation of the LDI under the NAIC's Financial Regulation Standards.

There have been no oral or written comments or submissions received by the LDI regarding the proposed amendments since the NOI was published, nor were any presented at the public hearing. The LDI recommends that the proposed amendments to Regulation 43 should be adopted as presented in the NOI. Subject to legislative oversight by either the House or Senate Insurance Committees, the LDI intends to submit a Rule to the offices *Louisiana Register* for publication.

For your review and consideration, the LDI is attaching a copy of the original Notice of Intent regarding Regulation 43 as it appeared in the *Louisiana Register* on September 20, 2013. All statutory references in the NOI were updated to reflect the re-codification of Title 22 which became effective on January 1, 2009 pursuant to Acts 2008, No. 415, § 1.

If you have any questions, concerns, or need any clarification please contact the undersigned at (225) 342-7276.

Sincerely,

A handwritten signature in blue ink, appearing to read "Walter L. Corey, Jr.", written in a cursive style.

Walter L. Corey, Jr.,
Staff Attorney
Louisiana Department of Insurance

Enclosure:

Notice of Intent to amend Regulation 43
(*Louisiana Register* Vol 39, No. 9; September 20, 2013)

2013-2014 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 not affect revenue collections of state or local governments.

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

Licensed hospitals and ASCs in Louisiana may incur additional costs related to additional personnel, software acquisition, and/or software-vendor contracts, which DHH is unable to determine for each facility.

The healthcare data DHH will collect, analyze, and disseminate as per the proposed rule will assist Louisiana's health care consumers in making informed choices about their health care options as these relate to specific treatments and procedures, cost-efficiency, and quality, among other factors of interest.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this rule will have no effect on competition and employment.

Jerry Phillips
Undersecretary
1309#051

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Insurance
Office of the Commissioner**

**Companies in Hazardous Financial Condition
(LAC 37:XIII.Chapter 13)**

Under the authority of the Louisiana Insurance Code, R.S. 22:1 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., R.S. 22:11, and R.S. 22:2001 et seq., notice is hereby given that the Department of Insurance proposes to amend Regulation 43. The purpose of the amendment is to update the current provisions of Regulation 43 to maintain consistency with the National Association of Insurance Commissioner's (NAIC) model regulation regarding the standards which the Commissioner may use for identifying insurers found to be in such condition as to render the continuance of their business hazardous to their policyholders, creditors, or the general public.

**Title 37
INSURANCE**

Part XIII. Regulations

Chapter 13. Regulation 43—Companies in Hazardous Financial Condition

§1301. Purpose

A. The purpose of Regulation 43 is to set forth the standards which the Commissioner of Insurance ("Commissioner") may use for identifying insurers found to be in such condition as to render the continuance of their business hazardous to their policyholders, creditors, or the general public.

B. Regulation 43 shall not be interpreted to limit the powers granted the commissioner by any laws or parts of laws of this state, nor shall Regulation 43 be interpreted to supersede any laws or parts of laws of this state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11 and 22:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 18:1408 (December 1992), amended LR 39:

§1303. Definitions

A. As used in Regulation 43, the following terms shall have the respective meaning hereinafter set forth:

Control—as defined in R.S. 22:691.2(3)

Person—as defined in R.S. 22:691.2(7)

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11 and 22:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 18:1408 (December 1992), amended LR 39:

§1305. Standards

A. The following standards, either singly or a combination of two or more, may be considered by the commissioner to determine whether the continued operation of any insurer transacting an insurance business in this state might be deemed to be hazardous to their policyholders, creditors, or the general public. The commissioner may consider:

1. adverse findings reported in financial condition and market conduct examination reports, audit reports, and actuarial opinions, reports or summaries;

2. the National Association of Insurance Commissioners Insurance Regulatory Information System and its other financial analysis solvency tools and reports;

3. ...

4. the ability of an assuming reinsurer to perform and whether the insurer's reinsurance program provides sufficient protection for the insurer's remaining surplus after taking into account the insurer's cash flow and the classes of business written as well as the financial condition of the assuming reinsurer;

5. whether the insurer's operating loss in the last twelve-month period or any shorter period of time, including but not limited to net capital gain or loss, change in non-admitted assets, and cash dividends paid to shareholders, is greater than 50 percent of the insurer's remaining surplus as regards policyholders in excess of the minimum required;

6. whether the insurer's operating loss in the last 12-month period or any shorter period of time, excluding net capital gains, is greater than 20 percent of the insurer's remaining surplus as regards policyholders in excess of the minimum required;

7. whether a reinsurer, obligor or any entity within the insurer's insurance holding company system, is insolvent, threatened with insolvency or delinquent in payment of its monetary or other obligations, and which in the opinion of the commissioner may affect the solvency of the insurer;

8. contingent liabilities, pledges or guaranties which either individually or collectively involve a total amount which in the opinion of the commissioner may affect the solvency of the insurer;

9. whether any "person" in "control" of an insurer is delinquent in the transmitting to, or payment of, net premiums to the insurer;

10. - 14. ...

15. whether management has established reserves that do not comply with minimum standards established by state

insurance laws, regulations, statutory accounting standards, sound actuarial principles and standards of practice;

16. whether management persistently engages in material under reserving that results in adverse development;

17. whether transactions among affiliates, subsidiaries or controlling persons for which the insurer receives assets or capital gains, or both, do not provide sufficient value, liquidity or diversity to assure the insurer's ability to meet its outstanding obligations as they mature;

18. whether the insurer has made adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the insurer, when considered in light of the assets held by the insurer with respect to such reserves and related actuarial items including, but not limited to, the investment earnings on such assets, and the considerations anticipated to be received and retained under such policies and contracts;

19. whether the insurer has failed to meet financial and holding company filing requirements in the absence of a reason satisfactory to the commissioner;

20. any other finding determined by the commissioner to be hazardous to the insurer's policyholders, creditors, or the general public.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11 and 22:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 18:1408 (December 1992), amended LR 39:

§1307. Commissioner's Authority

A. - A.1. ...

2. make appropriate adjustments including disallowance to asset values attributable to investments in or transactions with parents, subsidiaries or affiliates consistent with the NAIC Accounting Practices And Procedures Manual, state laws and regulations;

3. ...

4. increase the insurer's liability in an amount equal to any contingent liability, pledge, or guarantee not otherwise included if there is a substantial risk that the insurer will be called upon to meet the obligation undertaken within the next 12 month period.

B. If the commissioner determines that the continued operation of the insurer licensed to transact business in this state may be hazardous to its policyholders, creditors, or the general public, then the commissioner may, upon such determination, issue an order requiring the insurer to:

1. - 9. ...

10. correct corporate governance practice deficiencies, and adopt and utilize governance practices acceptable to the commissioner.

11. provide a business plan to the commissioner in order to continue to transact business in the state.

12. notwithstanding any other provision of law limiting the frequency or amount of premium rate adjustments, adjust rates for any non-life insurance product written by the insurer that the commissioner considers necessary to improve the financial condition of the insurer.

C. If the insurer is a foreign insurer the order issued by the commissioner may be limited to the extent provided by statute.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2(H).

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 18:1408 (December 1992), amended LR 39:

§1309. Administrative Review

A. An insurer subject to an order under Subsection 1307.B may request an administrative hearing to review that order pursuant to R.S. 22:2191.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2(H).

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 39:

§1311. Judicial Review

A. An insurer aggrieved by a final decision pursuant to an administrative hearing under R.S.22:2191 shall be entitled to judicial review in accordance with the applicable provisions of the Louisiana Administrative Procedure Act, R.S. 49:950 et seq.

B. Notwithstanding the provisions of Subsections 1309.A and 1311.A, nothing shall preclude the commissioner from initiating judicial proceedings in conservation, rehabilitation, or liquidation proceedings or any other delinquency proceedings, however designated under the laws of the state, regardless of whether the commissioner has previously initiated any regulatory action against the insurer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2(H).

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 39:

§1313. Severability

A. If any Section or provision of Regulation 43 or the application to any person or circumstance is held invalid, such invalidity or determination shall not affect other Sections or provisions or the application of Regulation 43 to any persons or circumstances that can be given effect without the invalid section or provision or application, and for these purposes the Sections and provisions of Regulation 43 and the application to any persons or circumstances are severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2(H).

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 39:

§1315. Effective Date

A. Regulation 43 shall become effective upon final publication in the Louisiana Register.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2(H).

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 39:

Family Impact Statement

1. Describe the effect of the proposed Rule on the stability of the family. The proposed Rule should have no measurable impact upon the stability of the family.

2. Describe the effect of the proposed Rule on the authority and rights of parents regarding the education and supervision of their children. The proposed Rule 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 Rule on the functioning of the family. The proposed Rule should have no direct impact upon the functioning of the family. Describe the effect of the proposed Rule on family earnings and

budget. The proposed Rule should have no direct impact upon family earnings and budget.

4. Describe the effect of the proposed Rule on the behavior and personal responsibility of children. The proposed Rule should have no impact upon the behavior and personal responsibility of children.

5. Describe the effect of the proposed Rule on the ability of the family or a local government to perform the function as contained in the Rule. The proposed Rule 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

The proposed rulemaking will have no impact on poverty as described in R.S. 49:973.

Small Business Statement

The impact of the amendments to Regulation 43 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 Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

1. Identification and estimate of the number of the small businesses subject to the proposed Rule. The proposed Rule 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 Rule should have no measurable impact upon small businesses.

3. A statement of the probable effect on impacted small businesses. The proposed Rule 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 Rule should have no measurable impact on small businesses; therefore, will have no less intrusive or less cost alternative methods.

Public Comments

Interested persons may submit written comments on the proposed amendments to Regulation 43 until 5 p.m., Wednesday, October 30, 2013, to Walter Corey, Division of Legal Services, Office of the Commissioner, P.O. Box 94214, Baton Rouge, LA 70804.

Public Hearing

A public hearing on the proposed amendments to Regulation 43 will be held Wednesday, October 30, 2013, at 10 a.m., in the Poydras Hearing Room at the Louisiana Department of Insurance, 1702 N. Third Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing.

James J. Donelon
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Companies in Hazardous Financial Condition

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

The proposed administrative rule change will have no anticipated implementation costs or savings to state or local governmental units. Under the authority of the Louisiana Insurance Code, R.S. 49:950 et seq., R.S. 22:11, and R.S. 22:2001 et seq., the Louisiana Department of Insurance proposes to amend Regulation 43 entitled "Companies in Hazardous Financial Condition". The purpose of the amendment is to update the current provisions of Regulation 43 to maintain consistency with the National Association of Insurance Commissioner's (NAIC) model regulation regarding the standards which the Commissioner may use for identifying insurers found to be in such condition as to render the continuance of their business hazardous to their policyholders, creditors, or the general public.

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

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

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

The proposed rule change updates the provisions of Regulation 43 to provide the Commissioner of Insurance with sufficient tools, in line with the NAIC model, to ensure adequate consumer and economic protection to policyholders, creditors and the general public with regard to the financial condition of insurers operating in Louisiana.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

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

Denise Brignac
Deputy Commissioner
1309#105

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Louisiana State University System Louisiana State University Health Sciences Center Louisiana Tumor Registry

Tumor Registry (LAC 48:V.Chapter 85)

Under the authority of Louisiana R.S. 40:1299.80 et seq., and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., as amended, the President of the Louisiana State University System has amended a Rule to require the electronic transmission of all cancer reports as well as remote electronic access to relevant medical records where available; set a two-month deadline for reporting by non-hospital sources; require hospitals to identify new diagnoses among those aged less than twenty years old to the registry within one month; allow the registry to publish its annual report electronically on the LTR website only; update the address of the registry; and provide for related matters by supplanting Chapter 85 of