



LOUISIANA DEPARTMENT OF INSURANCE

JAMES J. DONELON
COMMISSIONER

May 18, 2022

Honorable Patrick Page Cortez
President of the Senate
P.O. Box 94183
Baton Rouge, LA 70804

Via Email
apa.senatepresident@legis.la.gov

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

Via Email
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Honorable Kirk Talbot
Senate Insurance Committee, Chair
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Honorable Mike Huval
House Insurance Committee, Chair
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Notice of Intent to Amend Regulation 100 – Coverage of Prescription Drugs Through a Drug Formulary

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

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.*, the Louisiana Department of Insurance gives notice of its intent to amend Regulation 100 – Coverage of Prescription Drugs Through a Drug Formulary. Enclosed is a PDF file containing the Insertion Order, Notice of Intent, and Fiscal and Economic Impact Statement. The purpose of this amendment is to update Regulation 100 to account for notice requirements that were added to R.S. 22:1068(D)(3) and R.S. 22:1074(D)(3) by Act 217 of the 2021 Regular Session that health insurance issuers in the small, large, and individual markets must follow when modifying certain drug coverages.

Enclosure: Notice of Intent to Amend Regulation 100

NOTICE OF INTENT

**Department of Insurance
Office of the Commissioner**

Regulation 100—Coverage of Prescription Drugs Through a Drug Formulary
(LAC 37:XIII.Chapter 41)

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 amend Regulation 100 to provide updates in regard to the specific notice requirements a health insurance issuer must follow when implementing a modification of certain drug coverages in accordance with Act No. 217 of the 2021 Regular Session.

**Title 37
INSURANCE
Part XIII. Regulations**

Chapter 41. Regulation Number 100—Coverage of Prescription Drugs Through a Drug Formulary

§14101. Purpose

A. ...

B. The purpose of the amendment to Regulation 100 is to update the Regulation to account for the notice requirements that were added to R.S. 22:1068(D)(3) and R.S. 22:1074(D)(3) by Act No. 217 of the 2021 Regular Session that a health insurance issuer must follow when modifying certain drug coverages offered in the group and individual markets.

AUTHORITY NOTE: Promulgated in accordance with R.S.22:11, R.S. 1068(D) and R.S. 22:1074(D).

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:1028 (April 2012), amended LR ___:___

§14111. Requirements for the Modification Affecting Drug Coverage

A. ...

B. ...

C. A modification of drug coverage for any drug increasing over \$300.00 per prescription or refill with an increase in the wholesale acquisition cost of at least 25% in the prior 365 days may occur at any time provided that 30-day notice of the modification of coverage is given. The 30-day notice of the modification of coverage shall include information on the health insurance issuer's process for an enrollee's physician to request an exception from the health insurance issuer's modification of drug coverage for purposes of continuity of care of the patient.

AUTHORITY NOTE: Promulgated in accordance with R.S.22:11, R.S. 1068(D) and R.S. 22:1074(D).

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:1028 (April 2012), amended LR ___:___

§14115. Requirements for Modifying a Group Insurance Product

A. Pursuant to R.S. 22:1068, a health insurance issuer may modify its drug coverage offered to a group health plan if each of the following conditions is met.

1-5. ...

6. As an exception to the requirement that a modification must occur at the time of coverage renewal, modification of drug coverage for any drug increasing over \$300.00 per prescription or refill with an increase in the wholesale acquisition cost of at least 25% in the prior 365 days may occur at any time provided that 30-day notice of the modification of coverage is given. The 30-day notice of the modification of coverage shall include information on the health insurance issuer’s process for an enrollee’s physician to request an exception from the health insurance issuer’s modification of drug coverage for purposes of continuity of care of the patient.

AUTHORITY NOTE: Promulgated in accordance with R.S.22:11, R.S. 1068(D) and R.S. 22:1074(D).

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:1028 (April 2012), amended LR ___:___

§14117. Requirements for Modifying an Individual Insurance Product

A. Pursuant to R.S. 22:1074, a health insurance issuer may modify its drug coverage offered to individuals if each of the following conditions is met.

1-5. ...

6. As an exception to the requirement that a modification must occur at the time of coverage renewal, modification of drug coverage for any drug increasing over \$300.00 per prescription or refill with an increase in the wholesale acquisition cost of at least 25% in the prior 365 days may occur at any time provided that 30-day notice of the modification of coverage is given. The 30-day notice of the modification of coverage shall include information on the health insurance issuer’s process for an enrollee’s physician to request an exception from the health insurance issuer’s modification of drug coverage for purposes of continuity of care of the patient.

AUTHORITY NOTE: Promulgated in accordance with R.S.22:11, R.S. 1068(D) and R.S. 22:1074(D).

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:1028 (April 2012), amended LR ___:___

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 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 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.

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 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.

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.

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.

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

Interested persons who wish to make comments may do so by writing to John Piccione, Staff Attorney, Louisiana Department of Insurance, P.O. Box 94214, Baton Rouge, LA 70804-9214, or 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., July 11, 2022.

James J. Donelon
Commissioner

Fiscal and Economic Impact Statement

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

The proposed rule will not result in implementation costs or savings to state or local governmental units. The rule is being amended to comply with changes made to R.S. 22:1068(D)(3) and R.S. 22:1074(D)(3) implemented by Act No. 217 of the 2021 Louisiana Regular Legislative Session. These changes add notice requirements a health insurer must follow when implementing a modification of certain drug coverages.

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 NON-GOVERNMENTAL GROUPS (SUMMARY)

The proposed rule change will not result in any costs and/or economic benefits to directly affected persons or non-governmental groups. The amendments add notice requirements a health insurance issuer must follow when implementing a modification of certain drug coverages.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (SUMMARY)

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