

Emergency Rules

DECLARATION OF EMERGENCY

Department of Economic Development Office of the Secretary

Economic Development Award Program
(LAC 13:I.Chapter 60)

The Department of Economic Development, Office of the Secretary is exercising the emergency provision of the Administrative Procedure Act, R.S. 49:953(B), to promulgate emergency rules of the Louisiana Economic Development Award Program effective immediately. These rules will prescribe in accordance with LAC 13:I.Chapter 60. These emergency rules shall remain in effect for a period of 120 days or until a final rule is promulgated, whichever occurs first.

The Department of Economic Development is exercising the emergency provision of the Administrative Procedure Act, R.S. 49:953(B), in order to publish these rules because of a recognized immediate need to assist businesses with infrastructure improvements necessary for economic growth and the enhancement of the public's safety in Louisiana.

The emergency action is deemed necessary to prevent delays in the awarding of grants for economic development related infrastructure improvements under the provisions of the Economic Development Award Program, inasmuch as such delays could result in the loss of industry and jobs to other states. Such disruption would likely result in diminished job creation and increased risk of higher unemployment.

The proposed emergency rules are intended to mitigate the disruptions described above.

Title 13

ECONOMIC DEVELOPMENT

Part I. Commerce and Industry

Subpart 3. Financial Incentives

Chapter 60. Economic Development Award Program

§6017. Public Safety Provision

The Secretary may approve a request for funding for less than \$25,000 if the request involves the protection and enhancement of the safety of the public.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:36 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1638 (December 1997), LR 25:237 (February 1999), LR 25:

Kevin P. Reilly, Sr.
Secretary

9903#056

DECLARATION OF EMERGENCY

Department of Health and Hospitals Office of the Secretary Bureau of Health Services Financing

CommunityCARE Emergency Services

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following emergency rule in the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This rule is in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq. and shall be in effect for the maximum period allowed under the Administrative Procedure Act, or until adoption of the rule, whichever occurs first.

The Bureau of Health Services Financing operates the primary care case management program for Medicaid recipients known as CommunityCARE, which was originally established by Emergency Rule published in the *Louisiana Register*, Volume 18, Number 10, renewed in Volume 19, Number 2, and adopted as a final rule in Volume 19, Number 5. The Bureau is amending the procedures for emergency care provided to CommunityCARE recipients by adopting the prudent layperson criteria and emergency medical services definition contained in Section 4704 of the Balanced Budget Act of 1997 (BBA '97) in order to comply with increased protections required for Medicaid managed care enrollees.

This rule establishes a definition for emergency medical services that may be provided in a hospital emergency room for defined emergency medical conditions. These services are reimbursable by Medicaid without a referral by the primary care physician before the service is provided. Authorization for care subsequent to stabilization requires prior authorization by the CommunityCARE enrollee's primary care physician. The rule also stipulates that the provider of emergency services must be a Medicaid enrolled provider, and prohibits reimbursement for emergency room services when the condition of the CommunityCARE recipient does not meet the definition of emergency medical condition. This subsequent emergency rule was published establishing provisions for emergency medical services to Medicaid recipients enrolled in the CommunityCARE Program in accordance with the Balanced Budget Act of 1997, (*Louisiana Register*, Volume 24, Number 10.) The following emergency rule shall continue the provisions of the October 1998 emergency rule.

Emergency Rule

Effective for dates of service March 8, 1999 and after, the Department of Health and Hospitals, Office of the Secretary,

Bureau of Health Services Financing adopts the provisions of Section 4704 of the Balanced Budget Act of 1997 concerning provision of emergency medical services to Medicaid recipients enrolled in the Medicaid program known as the CommunityCARE Program.

Reimbursement for emergency room services which meet the definition of emergency medical services below will be made by Medicaid when provided to CommunityCARE recipients whose condition meets the definition of an emergency medical condition below. The primary care physician will approve such services whether the recipient contacted the primary care physician prior to receipt of emergency services or not. Treatment at the emergency room provided to a CommunityCARE enrollee whose condition does not meet the definition of an emergency medical condition specified below will not be authorized by the primary care physician or reimbursed by Medicaid. Authorization for care subsequent to stabilization requires prior authorization by the CommunityCARE enrollee's primary care physician.

Emergency medical services with respect to a CommunityCARE enrollee must be furnished by a provider that is qualified to provide such services under Medicaid, and consist of covered inpatient and outpatient services that are needed to evaluate or stabilize an emergency medical condition. The CommunityCARE enrollees who present themselves for emergency medical services shall receive an appropriate medical screening to determine if an emergency medical condition exists. A triage protocol is not sufficient to be an appropriate medical screening. If the medical screening does not indicate an emergency medical condition exists, the treating hospital/physician shall refer the CommunityCARE enrollee back to his/her primary care physician for treatment.

An emergency medical condition is defined as a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson who possesses an average knowledge of health and medicine could reasonably expect the absence of immediate medical attention to result in placing the health of the individual (or with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy, serious impairment to bodily functions or serious dysfunction of any bodily organ or part.

David W. Hood
Secretary

9903#060

DECLARATION OF EMERGENCY

Department of Health and Hospitals Office of the Secretary Bureau of Health Services Financing

Private Hospitals—Reimbursement Methodology

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following rule in the Medical Assistance Program as authorized by LA R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This rule is in accordance with the Administrative Procedure Act, R.S. 49:950 et seq. and shall be in effect for the maximum period allowed under the Act or until adoption of the rule whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a rule on June 20, 1994 which established the prospective reimbursement methodology for private hospitals (*Louisiana Register*, Volume 20, Number 6). The reimbursement methodology provides for the application of an inflationary adjustment to the current reimbursement rates for non-fixed costs in those years when the rates are not rebased. The Department determined that it was necessary to amend the reimbursement methodology for private hospitals contained in the June 20, 1994 rule to discontinue the practice of automatically applying an inflationary adjustment to the current reimbursement rates for non-fixed costs in those years when the rates are not rebased. The subsequent application of the inflationary adjustment to the reimbursement rates for private hospitals shall be contingent on the allocation of funds by the Legislature in the Appropriation Bill. Notwithstanding the elimination of the inflation adjustment for fiscal year 1999, the Department has carefully reviewed the current rates and is satisfied that they are consistent with efficiency, economy and quality of care and are sufficient to enlist enough providers so that private hospital care and services under the state plan are available at least to the extent that they are available to the general population in the state. A subsequent emergency rule was previously adopted amending the reimbursement methodology for private hospitals (*Louisiana Register*, Volume 24, No. 10). The following emergency rule continues the provisions of the October 1998 emergency rule in force.

Emergency Rule

Effective for dates of service on or after March 8, 1999, the Department of Health and Hospitals, Bureau of Health

Services Financing amends the reimbursement methodology for private hospitals contained in the June 20, 1994 rule to discontinue the practice of automatically applying an inflationary adjustment to the current reimbursement rates for non-fixed costs in those years when the rates are not rebased. The subsequent application of the inflationary adjustment to the reimbursement rates for private hospitals shall be contingent on the allocation of funds by the Legislature in the Appropriation Bill.

David W. Hood
Secretary

9903#061

DECLARATION OF EMERGENCY

Department of Health and Hospitals Office of the Secretary Bureau of Health Services Financing

Private Intermediate Care Facilities for Mentally Retarded—Reimbursement Methodology

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following rule in the Medical Assistance Program as authorized by LA R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This rule is in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a rule on October 20, 1989 which established the reimbursement methodology for private intermediate care facilities for the mentally retarded (*Louisiana Register*, Volume 15, Number 10). The reimbursement methodology provides for the application of an inflationary adjustment to the current reimbursement rates for non-fixed costs in those years when the rates are not rebased. The department determined that it was necessary to amend the reimbursement methodology contained in the October 20, 1989 rule to discontinue the practice of automatically applying an inflationary adjustment to the current reimbursement rates for non-fixed costs in those years when the rates are not rebased. The subsequent application of an inflationary adjustment to the reimbursement rates for private intermediate facilities for the mentally retarded shall be contingent on the allocation of funds by the Legislature in the Appropriation Bill. Notwithstanding the elimination of the inflation adjustment for fiscal year 1999, the department has carefully reviewed the current rates and is satisfied that they are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that private intermediate care facility care and services for the mentally retarded under the state plan are available at least to the extent that they are available to the general population in the state. A subsequent emergency rule was previously adopted amending the reimbursement methodology for private intermediate care

facilities for the mentally retarded (*Louisiana Register*, Volume 24, Number 10). The following emergency rule continues the provisions of the October 1998 emergency rule in force.

Emergency Rule

Effective for dates of service on or after March 8, 1999, the Department of Health and Hospitals, Bureau of Health Services Financing amends the reimbursement methodology contained in the October 20, 1989 rule for private intermediate care facilities for the mentally retarded to discontinue the practice of automatically applying an inflationary adjustment to the current reimbursement rates for non-fixed costs in those years when the rates are not rebased. Subsequent application of an inflationary adjustment to the reimbursement rates for private intermediate facilities for the mentally retarded shall be contingent on the allocation of funds by the Legislature in the Appropriation Bill.

David W. Hood
Secretary

9903#063

DECLARATION OF EMERGENCY

Department of Health and Hospitals Office of the Secretary Bureau of Health Services Financing

Private Nursing Facilities—Reimbursement Methodology

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following rule in the Medical Assistance Program as authorized by LA R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This rule is in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the rule whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a rule on June 20, 1984 which established the reimbursement methodology for private nursing facilities (*Louisiana Register*, Volume 10, Number 6). The reimbursement methodology provides for the application of an inflationary adjustment to the current reimbursement rates for non-fixed costs in those years when the rates are not rebased. The department determined that it was necessary to amend the reimbursement methodology for private nursing facilities contained in the June 20, 1984 rule to discontinue the practice of automatically applying an inflationary adjustment to the current reimbursement rates for non-fixed costs in those years when the rates are not rebased. The subsequent application of an inflationary adjustment to the reimbursement rates for private nursing facilities shall be contingent on the allocation of funds by the Legislature in the Appropriation Bill. Notwithstanding the elimination of the inflation adjustment for fiscal year 1999, the department has carefully reviewed the current rates and is satisfied that they

are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that private nursing facility care and services under the state plan are available at least to the extent that they are available to the general population in the state. A subsequent emergency rule was previously adopted amending the reimbursement methodology for private nursing facilities (*Louisiana Register*, Vol. 24, No. 10). The following emergency rule continues the provisions of the October 1998 emergency rule in force.

Emergency Rule

Effective for dates of service on or after March 8, 1999, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the reimbursement methodology for private nursing facilities contained in the June 20, 1984 rule to discontinue the practice of automatically applying an inflationary adjustment to the current reimbursement rates for non-fixed costs in those years when the rates are not rebased. The subsequent application of an inflationary adjustment to the reimbursement rates for private nursing facilities shall be contingent on the allocation of funds by the Legislature in the Appropriation Bill.

Interested persons may submit written comments to the following address: Thomas D. Collins, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to all inquiries regarding this emergency rule. A copy of this emergency rule is available for review by interested parties at parish Medicaid offices.

David W. Hood
Secretary

9903#062

DECLARATION OF EMERGENCY

Department of Insurance Office of the Commissioner

Medicare Supplement Insurance Minimum Standards (LAC 37:XIII.Chapter 5)

In accordance with 49:953(B), the Louisiana Department of Insurance has adopted this Emergency Regulation in order to ensure that Medicare beneficiaries of this state are afforded the same protections under the newly enacted provisions of the federal Medicare statute, as set forth in 42 CFR Parts 400, 403, 410, 417 and 422 effective July 27, 1998. The purpose of this Emergency Regulation is to implement the specific requirements of the Social Security Act, mandated by the Balanced Budget Act of 1997, which established a new Medicare+Choice (M+C) program that significantly expands the health care options available to Medicare beneficiaries. Further, Congress has mandated that each state amend its laws to conform to the federal standards by April 29, 1999.

Failure to adopt this emergency regulation would result in imminent peril to Louisiana Medicare beneficiaries' health, safety, or welfare, in that it would endanger the eligibility, enrollment, benefits and beneficiary protections, quality assurance, participating providers, payments to M+C

organizations, premiums, appeals, and grievances, and contracting rules. When the individuals of this state receiving state and federal medical assistance and/or enrolled in Medicare managed care plan, cannot access medical and health care services, their health is seriously threatened. Hence, it is paramount that this emergency regulation be adopted.

This emergency regulation was adopted on March 1, 1999 by the Louisiana Department of Insurance, Office of the Commissioner.

Copies of this Emergency Rule may be obtained at the Office of the State Register, 1051 North Third Street, Baton Rouge, and the Department of Insurance, 950 North Fifth Street, Baton Rouge, Louisiana.

James H. "Jim" Brown
Commissioner

9903#005

DECLARATION OF EMERGENCY

Department of Insurance Office of the Commissioner

Year 2000 Exclusions (LAC 37:XIII.Chapter 87)

In accordance with the provisions of R.S. 49:953B et seq. of the Administrative Procedure Act the Commissioner of Insurance has adopted emergency Regulation 69 in order that it might be implemented without delay in order to protect the public welfare. The Regulation addresses the impending Year 2000 crisis and its impact on the availability of insurance coverage in Louisiana.

By providing a mechanism for transferring risk insurance acts as an underpinning for modern day commerce and life in general. If insurance were to become unavailable, the effect upon Louisiana businesses and citizens would be severe and potentially devastating. The economic impact would be so disruptive it would put at risk the general welfare of the citizens of this state. Because the availability of insurance to Louisiana businesses and citizens is so vital it is necessary that this regulation be adopted on an emergency basis.

Further, since "Y2K" exclusions are already being introduced into the market, emergency rulemaking is necessary to establish parameters on the appropriate use of such exclusions. The failure to adopt this regulation on an emergency basis will delay and otherwise impair the ability of the LDOI to take action, should it become necessary, to protect the interest of the public and Louisiana policyholders.

This regulation will take effect in March, 1999, upon publication in the Louisiana Register. It shall remain in effect 120 days or until it is adopted as a permanent regulation through the normal promulgation process, whichever occurs first.

Preamble

It is a given that come January 1, 2000, and perhaps sooner for some systems, computers which have not been made Y2K compliant will read the wrong date. What is not a given is what

results may follow from a computer's miscalculation of the year. It may be that very little will happen but, it is more likely that problems will arise, some of which may be severe in nature.

Most losses from Y2K will be economic losses arising from the cost of replacing or upgrading computer systems and embedded chips and the loss of income if there is a system failure which shuts down business operations. The average cost to upgrade software is \$1.00 to \$2.00 per line. Billions will be spent by private industry and government to make their systems Y2K compliant. The expense of becoming Y2K compliant will be compounded by the shortage of trained personnel, especially those who are trained in the older computer languages such as COBOL and FORTRAN.

As a general rule, insurance policies do not cover economic losses. That is, they do not respond to suits in contract, i.e. for breach of warranty and/or failure to perform or for the consequential damages arising from the breach of contract. However, faced with the possibility of a catastrophic event, the industry has developed exclusions to preclude, or at least minimize, the shifting of the economic costs posed by the Year 2000 problem to it. Most of the Y2K exclusions filed by the industry contain very broad language.

The rationale provided by insurers for approval of the Y2K exclusions includes the potential risk that the cost of repairing, upgrading or replacing non-Y2K compliant computer systems, including systems which employ embedded chips, will be shifted to the insurance industry by a policyholders and judges looking for "deep pockets". There is concern that lawsuits which involve first party disputes which are outside of the scope of coverage provided under liability policies might be recast as "liability" claims. Another area of concern is the possibility that "data and media" may be recategorized as "tangible property" to satisfy the predicate for "property damage" under property and liability policies. And there may be an increase in suits against software vendors and providers under expanded theories of negligence or professional "tradesperson" liability which may trigger coverage where previously none has existed.

Due in large part to the regulatory problems arising from the use of pollution exclusions in underwriting and claimshandling, the LDOI was not inclined to approve the Y2K exclusions. A sub-committee was formed to study the issue. Eventually the decision was made to approve Y2K exclusions, in order to avoid a disruption in the market, but the approval was conditioned upon industry compliance with Bulletin LIRC 98-04 and with this Regulation.

In adopting Regulation 69 the Department is guided by the following principles taken from the Louisiana Insurance Code.

1. "Insurance is a business affected with the public interest and it is the purpose of this code to regulate that business in all its phases." LSA-R.S. 22:2.

2. Insurers owe to their insureds a duty of good faith and fair dealing and have an affirmative duty to insureds and claimants alike to adjust claims fairly. LRS 22:1220.

3. Liability policies are issued for the benefit of injured persons and for the protection of insureds. LSA-R.S. 22:655.

Additional guidance is derived from traditional civilian

principles found in the Civil Code. Of particular applicability is the principle that insurance contracts are contracts of adhesion. See Civil Code Article 2056 and the Comments thereunder. See also 15 Civil Law Treatise §3.

It is intended that this regulation be read in conjunction with Bulletin LIRC 98-04. If there are any inconsistencies between Regulation 69 and Bulletin LIRC 98-04, the provisions of the Regulation govern. This regulation does not restrict the authority of the LDOI, and other regulatory action, as warranted, may be taken in accordance with law.

Title 37

INSURANCE

Part XIII. Regulations

Chapter 87. Year 2000 Exclusions

§8701. Authority

This regulation is adopted under the authority granted to the Commissioner of Insurance pursuant to LRS 22:2 to regulate the business of insurance in all of its phases.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:

§8703. Purpose

The purpose of this regulation is to set parameters on the use of Y2K exclusions and endorsements in order to protect the public interest and to assure the continued viability of the insurance market in this state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:

§8705. Scope and Applicability

This regulation applies to all property and casualty insurance companies, including admitted insurers, surplus lines insurers and brokers and reinsurers engaged in the business of insurance in this state. It also applies to all contracts of insurance delivered or issued for delivery in this state, and covering property or liability risks located in this state or to be performed in Louisiana regardless of where made or delivered. This regulation governs the use of all Y2K exclusions whether issued before, on or after its effective date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3., R.S. 22:941, R.S. 22:1262 and R.S. 22:1262.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner LR 25:

§8707. Severability

If any section or provision of this regulation is held invalid, such invalidity shall not affect other sections of provisions which can be given effect without the invalid section or provision, and for this purpose the sections and provisions of this regulation are severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:

§8709. Definitions

A. For the purposes of this regulation the following terms shall have the meaning ascribed herein:

Economic Loss—means losses arising out of business transactions.

File and Use—means the filing of forms which may then be used by the insurer without receiving prior approval, subject to the LDOI's right of review and right to disallow continued use of the forms.

LDOI—means the Louisiana Department of Insurance and/or the Commissioner of Insurance.

LIRC—means the Louisiana Insurance Rating Commission.

Y2K—means the year 2000 anno domini.

Y2K Exclusion—means all exclusions and endorsements developed by the insurance industry, including but not limited to the ISO forms, to address coverage issues raised by the Y2K problem whether they are captioned Y2K or use terminology such as *date recognition*, *computer related*, *electronic data*.

Y2K Problem—means the inability of computers and other electronic systems including embedded chips to accurately process, provide and/or receive date data from, into, and between the twentieth and twenty first centuries due to a programming design which causes the system to read "00" as 1900 not 2000. The term *Y2K problem* also includes problems resulting from the leap year calculation, date recognition problems attributed to the Global Positioning System arising on or after August 22, 1999 and the programming of 9/9/99 to read end of field or to delete data.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:

§8711. Forms Approval

Y2K exclusions are hereby exempted from the requirement that they be approved prior to use. Such exclusions may be submitted on a "file and use" basis if the filing complies with Section 7 of this regulation. Pending filings must be reviewed by the filer to determine compliance. If the original filing does not comply with this regulation the filing must be corrected and resubmitted. Authorization to issue Y2K exclusions expires on January 1, 2002. This exemption applies only to forms. Rate and rule filings must be made with the LIRC as required by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and R.S. 22:620E the applicable part of which provides that the Commissioner may exempt forms to which in his opinion Section 620 may not practically be applied.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:

§8713. Underwriting Standards

A. Except as provided herein, Y2K exclusions may not be used on a blanket basis. This standard applies to both property and liability coverage. Exclusions should not be used where the insured makes or has made a good faith effort to resolve any Y2K problems on its property or where the insured has demonstrated compliance with Y2K criteria established by the insurer.

1. Personal Lines. Y2K exclusions are not approved for use in personal lines, including homeowner policies, farmowner policies and personal umbrella policies, except for business pursuits coverage. A Y2K exclusion may be used in connection with a personal lines policy's business coverage only if the company can document that there is a realistic risk of exposure which warrants the use of a Y2K exclusion. The

underwriting documentation must be maintained in the insured's file for a period of five (5) years from the date of issuance of the exclusion. If a Y2K exclusion is attached to the business pursuits portion of a personal line policy it must provide coverage for ensuing perils otherwise covered by the policy and it must have an exception for on premises bodily injury.

2. Commercial Lines (including but not limited to Commercial Property, Boiler & Machinery, Commercial Auto, General Liability, Professional Liability, Directors & Officers and Business Owners).

a. Property Coverage. ISO's IL 09 35, FP 10 21 and BP 10 04 may be used on a mandatory basis as filed and approved. Y2K exclusions with substantially similar language and which provide coverage for ensuing perils (notwithstanding language in the policy which could be interpreted to the contrary such as "indirectly, concurrently caused, or regardless of other causes") may also be used in the same manner as ISO exclusions. But, because potential Y2K property exposures are definable and measurable hazards a filing which substantially deviates from the ISO exclusions referenced above must justify the conclusion that there is no impact on premium or specify the premium reduction to be given insureds in exchange for attaching the exclusion.

b. Y2K exclusions which do not contain language stating that ensuing perils are covered may not be used in Louisiana. If approval was granted to a Y2K exclusion in conflict with this provision, the approval is hereby withdrawn.

3. Liability Coverage. Use of Y2K exclusions with liability coverage is strongly discouraged and should be limited to those insureds which have failed to take adequate steps to correct their Y2K problem or which have excessive exposure to outside contamination. "Total" Y2K exclusions, such as ISO's CG 21 60, should be limited to high risk insureds. For other classes, Y2K exclusions which have an exception for bodily injury or which provide for the scheduling of risks and perils, such as ISO's CG 21 63 and CG 21 64, should be used.

a. And, except as provided below, Y2K exclusions may not be used for the following classes of risks: mercantile and restaurants, lodging and habitational, or institutional, such as churches and schools.

b. Y2K exclusions which provide for the scheduling of risks and perils, such as ISO's CG 21 63 and CG 21 64, may be used with a subclasses of the classes stated in the above paragraph if the insurer identifies and justifies the exposure to be excluded or limited in the specific subclass. An insurer attaching a Y2K exclusion to an individual risk within such a subclass must maintain documentation in the underwriting file of each individual risk that identifies and justifies the exposure presented by that particular risk; and, maintain documentation that the insurer has provided loss control information to the insured. This documentation must be maintained in the insured's file for a period of five (5) years from the date of issuance of the exclusion.

4. Surplus Lines. Use of Y2K exclusions by surplus lines insurers should comply with this section. Failure to do so without justification may constitute grounds for removal from the list of approved unauthorized insurers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, R.S. 22:3, R.S. 22:1211 et seq., R.S. 22:941, R.S. 22:1262 and R.S. 22:1262.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:

§8715. Monitoring of Market Conduct

A. Each admitted insurer must file with the LIRC a list identifying the classes it has determined warrant the use of Y2K exclusion. The filing must contain the criteria used in determining that a particular class of business should be included on the list and identify the type of exclusion which it may use with each class. If an insurer issues a "total" Y2K exclusion (such as ISO's CG 21 60) to a risk within the filed classes it must be able to provide documentation upon request which identifies and justifies the exposure presented by that particular risk. If the list filed with the LIRC contains a subclass of any of the following classes, the insurer must still comply with the requirements imposed by §8713: mercantile and restaurants, lodging and habitational, or institutional, such as churches and schools.

B. Any insurer which denies coverage or issues a reservation of rights letter to an insured based in toto or in part upon a Y2K exclusion in the policy must notify the LDOI. The notice must be provided to the LDOI within fifteen (15) days of the denial of coverage or issuance of the reservation of rights letter. A copy of the denial of coverage letter or reservations of rights letter is sufficient notice.

C. The LDOI will closely monitor the use of Y2K exclusions to make certain that they are not used inappropriately in underwriting or claimshandling. Examples of inappropriate activity are: blanket use of Y2K exclusions; failure to individually underwrite except when authorized by this Regulation; denial of claims inconsistent with underwriting standards; canceling or nonrenewing coverage as a general business practice; widespread unavailability of buy back coverage; and, unsupported blanket denial of claims based upon lack of fortuity, or the known risk and/or expected or intended exclusions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, R.S. 22:3, R.S. 22:1211 et seq., R.S. 22:941, R.S. 22:1215, R.S. 22:1262, R.S. 22:1262.1, R.S. 22:1301 and R.S. 22:1404.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:

§8717. Representations and Warranties

No representation or warranty may defeat coverage or be used to deny a claim unless the representation or warranty is (a) material (b) false and (c) made with the intent to deceive. Questionnaires used to assess Y2K exposure are subject to this standard. Any denial of coverage on the grounds that an answer in a questionnaire is erroneous or inadequate, in the absence of fraud, will result in disciplinary action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, R.S. 22:619 and R.S. 22:1262.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:

§8719. Notice

A. No policy may be issued or renewed with a Y2K exclusion unless the insured is provided with a copy of the Y2K Notice prepared by the LDOI.

B. Notice for renewals must be provided not less than sixty (60) days in advance to the insured and the agent of record; however, this requirement is not applicable to surplus lines insurers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, R.S. 22:3, and R.S. 22:1262.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:

§8721. Exemptions

A. Lines of Coverage. If the commissioner finds that the application of this regulation unduly hinders the availability of coverage for a particular line of insurance he may, by written order, grant an exemption for so long as he deems proper.

B. Individual Insureds. An exemption may be granted upon written notification to the LDOI by an insurer regarding an individual policyholder which poses an extraordinary risk due to its failure to take any steps to remedy its Y2K problem. Documentation that demonstrates the necessity for the exemption must be maintained in the insureds file for a period of five (5) years from the date of issuance of the exclusion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, R.S. 22:3, and R.S. 22:1262.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:

§8723. Penalties for Failure to Comply

Noncompliance with this regulation by any insurer subject to its provisions may result in the imposition of such penalties as are authorized by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, R.S. 22:3, R.S. 22:1211 et seq., R.S. 22:941, R.S. 22:1115, R.S. 22:1262.1, and R.S. 22:1457.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:

§8725. Effective Date

This regulation shall take effect upon publication in the *Louisiana Register*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:

James H. "Jim" Brown
Commissioner of Insurance

9903#064