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TA 295

April 7, 2011

Subject: Update: Louisiana's New Certificates of Insurance Law Effective 1-1-11

Background: During the 2010 Regular Session, the Louisiana Legislature passed Act 1017 (HB 447), which made significant changes to procedures relating to certificates of insurance. Act 1017 is effective January 1, 2011. See [Technical Advisory #293](#) for details. IIABL continues to get many questions about these new certificates of insurance statutes. Below are two recent updates which were sent to all IIABL members via email. Following the two updates are some Q&A from members.

December 28, 2010

On November 23, 2010, IIABL distributed TA 293 - Louisiana's New Certificates of Insurance Law Effective 1-1-2011, which highlighted the DRAFT LDI Regulation 99 implementing the new Act 1017 statutes related to certificates of insurance (COI), which becomes effective January 1, 2011.

LDI Regulation 99 became final on December 20, 2010, when it was published in the Louisiana Register. Attached is a copy of that final LDI Regulation 99 as published in the Louisiana Register.

There was only one very minor change made to the final version of LDI Regulation 99. Section 13917.B. Use of ACORD, AAIS and ISO Forms was revised to make clear that once approved by LDI, ACORD, AAIS, and ISO forms may be used by any persons authorized to use such forms. Because these organizations are membership organizations, only member insurance companies and authorized insurance producers of member insurance companies are authorized to use the forms provided by these organizations. Most IIABL member agencies are authorized to use the commonly used ACORD and ISO forms by virtue of the fact that they are contracted insurance producers for insurance companies who are members of ACORD and ISO.

Other than this one minor clarification, the final version of LDI Regulation 99 is exactly the same as the DRAFT version distributed by IIABL with TA 293 on November 23, 2010.

In very simple terms, Act 1017 and LDI Regulation 99 centers around two fundamental requirements which may serve as guiding principles for compliance. First, all certificate of insurance forms must be approved by the Louisiana Department of Insurance before they may be used, and once approved, the form itself may not be altered without additional approval. Second, all approved certificate of insurance forms which are issued must accurately reflect the underlying insurance policies, and may not include provisions unless they are found in the insurance contracts.

There are two ways to determine whether or not a certificate of insurance form has been approved by LDI. First, as outlined in the attached [LDI Regulation 99](#), once a form has been approved by LDI, the entity which promulgated the form must include an LDI approval number and date on the certificate form. Second, the LDI website, www.lidi.state.la.us, has a "[Search for Certificate of Insurance](#)" link in the "[Producers & Adjusters](#)" box at the bottom of the page. Following is a copy of the direct link to the page: [LDI Certificate of Insurance Search](#)

Once you have confirmed that the certificate of insurance form has been approved by LDI, your primary obligation in completing the form is to make certain that it accurately reflects the terms of the underlying insurance policies. In addition to accurately checking boxes, filling in blanks, and completing the form, the insurance producer should make notes in the comments section when appropriate to clarify coverages provided by the certificate of insurance. **You may NOT certify anything on a certificate of insurance that is not in the insurance policy.**

One area that has caused great confusion and controversy is notice of cancellation. For many years, many insurance producers have incorrectly issued certificates of insurance on the old ACORD form with 30 day notice of cancellation, because the form had a specific line to provide such notice. Unless the certificate holder is a lienholder or there is an endorsement to the policy which gives certificate holders a contractual right to notice of cancellation, most certificate holders on most policies do not have a right to notice of cancellation. If the certificate holder requires notice of cancellation, the policies must be endorsed to provide a contractual right to such notice of cancellation. **If the certificate holder has no right to notice of cancellation in the insurance policy, the insurance producer may not certify a notice of cancellation.** The last two editions of the ACORD certificate form do not include the prominent "shall endeavor to provide ___ day notice of cancellation" provision, because insurance companies do not want producers certifying such notice when none exists under the insurance policy.

January 14, 2011

As previously reported in earlier emails, there are two ways for insurance producers to determine whether or not a certificate of insurance form has been approved by LDI. First, as outlined in the attached [LDI Regulation 99](#), once a form has been approved by LDI, the entity which promulgated the form must include an LDI approval

number and date on the certificate form. Second, the LDI website, www.ldi.state.la.us, has a "[Search for Certificate of Insurance](#)" link in the "Producers & Adjusters" box at the bottom of the page. Following is a copy of the direct link to the page: [LDI Certificate of Insurance Search](#)

There are two important updates related to approved Certificates of Insurance and the LDI Website.

First, if you want to see a list of all approved certificate of insurance forms posted on the LDI website, the search box allows a search by company and/or form number. Alternatively, leaving the search criteria blank will produce a complete list of all approved certificates. Here are the instructions from the LDI web site: "*Please enter your search criteria below. If you do not enter any search criteria, a full list of certificates of insurance results will be shown. It may be useful to sort your results by clicking any of the column headings in your search results.*"

Second, a number of IIABL members contacted us concerned about their agency management computer systems using the old (2009/09) ACORD 25 Certificate of Liability Insurance. The only way to get the current (2010/05) ACORD 25 on most of these agency management computer systems is to buy an expensive upgrade, which in many cases also requires new hardware. The bottom line is that it will take some time for agencies to update their systems to access the current (2010/05) ACORD 25 Certificate of Liability Insurance.

IIABL has been working with ACORD and LDI to get the old (2009/09) ACORD 25 Certificate of Liability Insurance approved, so that agencies will be able to use the old form until they get their systems updated to access the new form. We are very pleased to advise you that LDI has approved the old (2009/09) ACORD 25 Certificate of Liability Insurance. Using the certificate search function described above, when "ACORD 25" is entered as a form number, both the ACORD 25 (2010/05) and the ACORD 25 (2009/09) appear on the list of approved certificates.

[Questions About Certificates of Insurance](#)

Q: Can you simplify this complicated law and explain to me what we need to do to comply with the new law?

A: In simple terms, Act 1017 and LDI Regulation 99 centers around two fundamental requirements which may serve as guiding principles for compliance with the new law.

1) All certificates of insurance forms must be approved by the Louisiana Department of Insurance before they may be used, and once approved, the form itself may not be altered without additional approval. There are two ways to determine whether or not a

certificate of insurance form has been approved by LDI. First, as outlined in the attached [LDI Regulation 99](#), once a form has been approved by LDI, the entity which promulgated the form must include an LDI approval number and date on the certificate form. Second, the LDI website, www.lidi.state.la.us, has a “[Search for Certificate of Insurance](#)” link in the Producers & Adjusters box at the bottom of the page.

Following is a copy of the direct link to the page: [LDI Certificate of Insurance Search](#)

2) All approved certificate of insurance forms which are issued must accurately reflect the underlying insurance policies, and may not include provisions unless they are found in the insurance contracts. As an agent, your primary obligation in completing the form is to make certain that it accurately reflects the terms of the underlying insurance policies. In addition to accurately checking boxes, filling in blanks, and completing the form, the insurance producer may make notes in the comments section when appropriate to clarify coverages provided by the certificate of insurance. **You may NOT certify anything on a certificate of insurance that is not in the insurance policy.**

Q. We have a question about a specific portion of Act 1017 which relates to notice of cancellation and certificates. In section **L.**, it talks about giving a person named within the policy or any endorsement notice of cancellation. Could that include a Blanket Additional Insured Endorsement? How about Notice of Cancellation When Required by Contract?

A. For reference, here is section **L.**, found in Louisiana Statute 22:881.1., which was the statute forming the basis of Act 1017.

22:888.1.1.L. *A person shall have a legal right to notice of cancellation, nonrenewal, or any material change, or any similar notice concerning a policy of insurance only if the person is named within the policy or any endorsement and the policy or endorsement, law, or regulation of this state requires notice to be provided. The terms and conditions of the notice, including the required timing of the notice, are governed by the policy of insurance in accordance with the laws and regulations of this state and cannot be altered by a certificate of insurance.*

To answer your specific question, you may accurately reflect whatever cancellation notice is provided to the certificate holder in the insurance policy. Blanket Additional Insured Endorsements generally do not provide the right to notice of cancellation to the blanket additional insureds, only the First Named Insured normally has the right to notice of cancellation, so you typically cannot show notice of cancellation with the use of a simple Blanket Additional Insured Endorsement.

However, some insurance companies will provide an endorsement which provides a right to “Notice of Cancellation When Required by Contract.” If you have this type of endorsement, or another endorsement which gives the certificate holder a right to notice of cancellation, then you may accurately reflect that policy provision on the certificate of insurance. For example, when applicable you could check the box for “Notice of

Cancellation” but also note in the comments section, “Notice of Cancellation provided when required by contract” so that it accurately reflects the coverage under the policy.

Q. My question for you is regarding the new certificates of insurance where it no longer has the cancellation notice on the bottom of the cert. Since we started using the new approved Louisiana certificate where it no longer reads “we will Endeavor to mail you 30 day notice,” we are getting some questions from the certificate monitors out there. After reading the Big I’ email a while back, it appears that the insurance company has the only right to notify the cert holder where a written contract is in place on GL,WC and Auto policies. After checking with some of our GL companies about this , the underwriters said they would have to endorse each certificate holder at a charge \$250. When our insureds have over 50 Master Service Agreements, that adds up to a lot of money. Is this a normal occurrence in the marketplace now? Or, do you know of how agents are dealing with this issue. Any help would be appreciated!

A. Certificate holders do not have a right to notice of cancellation unless the policy is endorsed to provide them with that right.

Different insurance companies handle the endorsements different ways, depending upon premium size, type of account, number and type of certificate holders, etc.

A fair number of companies are charging a separate fee for each endorsement for each certificate holder as you described. You may shop around with your other markets to see if they are willing to provide the endorsements without a charge.

1. Qualifying Criteria. In order to qualify for the supplemental payment, the non-rural, non-state public hospital must be located in DHH Administrative Region 1 (New Orleans) and identified in the July 17, 2008 United States Government Accountability Office report as a hospital that has demonstrated substantial financial and operational challenges in the aftermath of Hurricane Katrina.

2. Each eligible hospital shall receive quarterly supplemental payments which in total do not exceed a specified individualized hospital limit. Payments will be distributed based on Medicaid paid claims data from state fiscal year 2008 service dates. Payments will end on December 31, 2010 or when the hospital specific cap is reached, whichever occurs first.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:2868 (December 2010).

Bruce D. Greenstein
Secretary

1012#092

RULE

Department of Insurance Office of the Commissioner

Regulation 99—Certificates of Insurance (LAC 37:XIII.Chapter 139)

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. 22:881.1, the Louisiana Department of Insurance has promulgated Regulation 99. Adoption of the regulation is authorized by Acts 2010, No. 1017 of the Regular Session of the Louisiana Legislature. The purpose of Regulation 99 is to implement the provisions of Acts 2010, No. 1017, concerning the issuance, effect, and approval of certificates of insurance.

Title 37

INSURANCE

Part XIII. Regulations

Chapter 139. Regulation 99—Certificates of Insurance

§13901. Authority

A. Regulation 99 is adopted in accordance with the provisions of R.S. 49:953 et seq., of the Administrative Procedure Act and the authority vested in the commissioner granted under the Louisiana Insurance Code, Title 22, R.S. 22:11 and R.S. 22:881.1.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:881.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 36:2869 (December 2010)

§13903. Purpose

A. The purpose of Regulation 99 is to implement the provisions of Acts 2010, No. 1017 of the Regular Session of the Louisiana Legislature, concerning the issuance, effect, and approval of certificates of insurance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:881.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 36:2869 (December 2010).

§13905. Scope and Applicability

A. Regulation 99 applies to certificates of insurance issued in reference to property, operations and risks in Louisiana insured by property and casualty insurance policies.

B. Regulation 99 applies to all certificate holders, policyholders, insurers, insurance producers, and certificate of insurance forms issued as a statement or evidence of any type of property and casualty insurance coverage on property, operations, or risks located in Louisiana, regardless of where the certificate holder, policyholder, insurer, or insurance producer is located.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:881.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 36:2869 (December 2010).

§13907. Exemptions

A. Regulation 99 shall not apply to:

1. ocean marine and foreign trade insurances;
2. self insurance for workers' compensation, including any group self insurance fund pursuant R.S. 23:1195;
3. interlocal risk management agency pursuant R.S. 33:1341;
4. automobile identification cards issued pursuant to R.S. 32:863.1(A)(1)(a);
5. travel insurance;
6. credit card insurance; or
7. forced placed insurance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:881.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 36:2869 (December 2010).

§13909. Definitions

A. For the purposes of Regulation 99 and in accordance with R.S. 22:881.1 the following terms shall have the meaning ascribed herein unless the context clearly indicates otherwise.

Certificate or Certificate of Insurance—any document, instrument, or record, including an electronic record, no matter how titled or described, which is prepared by an insurer or insurance producer and issued to a third person not a party to the subject insurance contract, as evidence of property and casualty insurance coverage. *Certificate or certificate of insurance* shall not mean an insurance binder.

Certificate Holder—any person, other than a policyholder, that is designated on a certificate of insurance as a *certificate holder* or any person, other than a policyholder, to whom a certificate of insurance has been issued by an insurer or insurance producer at the request of the policyholder.

Commissioner—Louisiana Commissioner of Insurance.

Electronic Record—shall have the meaning defined in R.S. 9:2602(7).

Insurance—shall have the meaning defined in R.S. 22:46(9).

Insurance Producer—shall have the same definition as set forth in R.S. 22:1542.

Insurer—an insurer as defined in R.S. 22:46(10) and any other person engaged in the business of making property and casualty insurance contracts, including but not limited to self-insurers, syndicates, risk purchasing groups, and similar risk transfer entities. *Insurer* shall not mean any person self-insured for purposes of workers' compensation, including any group self-insurance fund authorized pursuant to R.S. 23:1195 et seq., any interlocal risk management agency authorized pursuant to R.S. 33:1341 et seq., or any self-insured employer authorized pursuant to R.S. 23:1168 et seq.

LDI—Louisiana Department of Insurance.

Person—any individual, company, insurer, organization, reciprocal or inter-insurance exchange, business, partnership, corporation, limited liability company, association, trust, or other legal entity, including any government or governmental subdivision or agency.

Policyholder—a person who has contracted with a property or casualty insurer for insurance coverage.

Record—shall have the meaning defined in R.S. 9:2602(13).

Self-Insurer—any individual business or group of businesses which have created a risk purchasing group, risk retention plan, syndicate, or other form of self-insurance covering property or casualty risk exposures. *Self-insurer* shall not mean any person self-insured for purposes of workers' compensation, including any group self-insurance fund authorized pursuant to R.S. 23:1195 et seq., any interlocal risk management agency authorized pursuant to R.S. 33:1341 et seq., or any self-insured employer authorized pursuant to R.S. 23:1168 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:881.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 36:2869 (December 2010).

§13911. Effect and Use of Certificates of Insurance

A. A certificate of insurance form that has been approved by the commissioner and properly executed and issued by a property and casualty insurer or an insurance producer, shall constitute a confirmation that the referenced insurance policy has been issued or that coverage has been bound notwithstanding the inclusion of "for information purposes only" or similar language on the face of the certificate.

B. The commissioner may approve a certificate of insurance form that does not state that the form is provided for information only or similar language, provided that the form states that the certificate of insurance does not confer any rights or obligations other than those conveyed by the policy and that the terms of the policy control

C. A certificate of insurance is not a policy of insurance and does not affirmatively or negatively amend, extend, or alter the coverage afforded by the policy to which the certificate of insurance makes reference.

D. A certificate of insurance shall not confer to a certificate holder new or additional rights beyond what the referenced policy or any validly executed endorsements of insurance provides.

E. An insurer or insurance producer may prepare or issue an addendum that clarifies, explains, summarizes, or provides a statement of the coverages provided by a policy of insurance and otherwise complies with the requirements of this Regulation 99.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:881.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 36:2870 (December 2010).

§13913. Filing Requirements

A. No person, wherever located, may prepare, issue, or request the issuance of a certificate of insurance for risks located in this state unless the form has been filed with and approved by the commissioner.

B. No person, wherever located, may alter or modify an approved certificate of insurance form unless the alteration or modification has been approved by the commissioner.

C. The commissioner shall approve or disapprove a certificate of insurance form within 45 days of receipt of the form.

D. Each certificate of insurance form shall be filed separate and apart from other forms.

E. A person submitting a certificate of insurance form for approval shall include:

1. a cover letter which includes the person's full name and Federal Employer Identification Number (FEIN) or National Association of Insurance Commissioners (NAIC) number or producer license number;

2. any person submitting a paper filing shall include two copies of all required documents, including a stamped, self-addressed envelope(s) of sufficient size for use in returning the company's forms filed.

F. Certificate of insurance form filings shall not require:

- 1. a statement of compliance;
- 2. a filing fee.

G. Except for the statutorily approved forms in R.S. 881.1(F)(2) and §13917.A, once a certificate of insurance has been properly submitted and approved, the LDI shall assign a certificate of insurance number for the approved form. The LDI shall provide written notice to the person that the certificate of insurance has been approved. Within 30 days of receipt of the written notice, the person shall incorporate the assigned LDI number and approval date on the certificate of insurance and resubmit the form for placement on the LDI certificate of insurance website.

H. The LDI number and approval date shall be placed on the certificate of insurance in the following format:

LA.	Cert.	Assigned	
Dept.	of	LDI	Date
<u>of Ins.</u>	<u>Ins.</u>	<u>No.</u>	<u>(mm/year)</u>
LDI	COI	123456	08 10

I. The commissioner will not approve any certificate of insurance that contains any references to legal or insurance requirements contained in any contracts other than the underlying contracts of insurance, including construction or service contracts.

J. The commissioner will disapprove any certificate of insurance form, or withdraw approval of a certificate of insurance form if it:

- 1. is unfair, misleading, or deceptive, or violates public policy;
- 2. violates any state statute or regulation validly promulgated by the commissioner;
- 3. requires certification of insurance coverages that are not available.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:881.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 36:2870 (December 2010).

§13915. Certificates of Insurance Approved Prior to Promulgation of Regulation 99

A. Any person that received approval for a certificate of insurance prior to January 1, 2011, and did not receive an LDI certificate of insurance number shall provide written notice of the prior approval to the LDI. The notice of the prior approval shall include:

1. the person(s) name;
2. LDI's filing number; and
3. a copy of the approved certificate of insurance.

B. Pursuant to the written notice required in §13915.A, the LDI shall review the previously approved form to determine if it is compliant with R.S. 22:881.1 and Regulation 99. If deemed compliant, the LDI shall notify the person that the form is approved and provide the person the assigned LDI certificate of insurance number.

C. The person shall incorporate the LDI certificate of insurance number on the approved form using the format provided in §13913.H and shall resubmit the approved form to the LDI prior to use.

D. §13915.B and C do not apply to the statutorily approved forms in R.S. 881.1(F)(2) and §13917.A.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:881.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 36:2871 (December 2010).

§13917. Use of ACORD, AAIS and ISO Forms

A. Standard certificate of insurance forms promulgated by the Association for Cooperative Operations Research and Development (ACORD), the American Association of Insurance Services (AAIS), or the Insurance Services Office (ISO) shall be filed by those organizations, but are deemed approved by the commissioner unless the commissioner determines that these forms do not comply with the provisions of Regulation 99 and R.S. 22:881.1.

B. Once filed, these forms may be issued by any person authorized by such organizations to use their forms as evidence of property and casualty insurance coverage.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:881.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 36:2871 (December 2010).

§13919. Notice of Cancellation

A. A person shall have a legal right to notice of cancellation, nonrenewal, or any material change, or any similar notice concerning a policy of insurance, only if the person is named within the policy or any endorsement and the policy or endorsement, law, or regulation of this state requires notice to be provided. The terms and conditions of the notice, including the required timing of the notice, are governed by the policy of insurance in accordance with the laws and regulations of this state and cannot be altered by a certificate of insurance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:881.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 36:2871 (December 2010).

§13921. Investigations and Examinations of Complaints and Violations

A. The commissioner of insurance may examine and investigate any complaint or allegation of specific violations by any person who has allegedly engaged in an act or practice prohibited by R.S. 22:881.1. Any such examinations or complaint investigations conducted by the commissioner shall be subject to the provisions of R.S. 22:1983(J).

B. The commissioner may fine any person who willfully violates R.S. 22:881.1 not more than one thousand dollars per violation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:881.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 36:2871 (December 2010).

§13923. Severability

A. If any Section or provision of this Regulation 99 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 99 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 99 and the application to any persons or circumstances are severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:881.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 36:2871 (December 2010).

§13925. Effective Date

A. Regulation 99 shall become effective upon final publication in the *Louisiana Register*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:881.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 36:2871 (December 2010).

James J. Donelon
Commissioner

1012#133

RULE

**Department of Public Safety and Corrections
Corrections Services**

Board of Parole (LAC 22:XI.103, 503, 511, and 1301)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950), the Department of Public Safety and Corrections, Board of Parole has amended the contents of Part XI, Board of Parole.