

August 28, 2006
OPINION NUMBER 05-0437

61 – LAWS - General

Mr. Frank H. Perez
General Counsel
Department of Health and Hospitals
1201 Capitol Access Road
P. O. Box 3836
Baton Rouge, LA 70821-3836

Because LSA-R.S. 49:953 does not explicitly authorize an agency to transmit the “in writing” requirement by other means of transmission such as facsimile or computer.pdf formats, this office does not recommend reliance solely upon these methods of transmission.

Dear Mr. Perez:

Your request for an Attorney General opinion was forwarded to me for research and reply. Your question is whether an electronic submission by way of *facsimile* or *computer pdf* satisfies the “in writing” requirement as interpreted by *LSA-R.S. 49:953*.

Louisiana Revised Statute 49:953(B) provides as follows:

B. (1) If an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule upon shorter notice than that provided in Subsection A of this Section and within five days of adoption states **in writing** to the governor of the state of Louisiana, the attorney general of Louisiana, the speaker of the House of Representatives, the president of the Senate, and the Department of the State Register, its reasons for that finding, it may proceed without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency rule. The provisions of this Paragraph also shall apply to the extent necessary to avoid sanctions or penalties from the United States, or to avoid a budget deficit in the case of medical assistance programs or to secure new or enhanced federal funding in medical assistance programs. The agency statement of its reason for finding it necessary to adopt an emergency rule shall include specific reasons why the failure to adopt the rule on an emergency basis would result in imminent peril to the public health, safety, or welfare, or specific reasons why the emergency rule meets other criteria provided in this Paragraph for adoption of an emergency rule.

There is no provision contained within R.S. 49:953 which explicitly authorizes an agency to transmit such action taken as it relates to any rule by way of *facsimile* or *computer pdf* format, nor does the statute prohibit such transmissions. Since the statute does not specifically provide for these methods, this office does not recommend that you rely solely upon these methods of transmission especially when our research has found that where these formats are accepted they have been explicit within the statute.

In conclusion, it is the opinion of this office that legislative assistance should be sought in amending the statute to include a provision that specifically governs the transmission of the "in writing" requirement by methods which may include *facsimile* and *computer pdf* transmissions.

We hope this opinion has sufficiently addressed your concerns. If our office may be of further assistance, please do not hesitate to contact us.

Very truly yours,

CHARLES C. FOTI, JR.
ATTORNEY GENERAL

By: _____
CHARLENE PATTERSON
Assistant Attorney General

/cp

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