

Office of the Governor
Division of Administration
Patient's Compensation Fund Oversight Board
(LAC 37:III Emergency Rule 8)

A State of Emergency for the State of Louisiana was declared by President Joseph R. Biden in late August 2021 due to the devastation caused by Hurricane Ida and its aftermath. In addition, pursuant to Proclamation No. 165 JBE 2021, Governor John Bel Edwards declared a state of emergency for Louisiana due to the effects of Hurricane Ida on Louisiana and its citizens.

Pursuant to the emergency provisions of the Louisiana Administrative Procedure Act, R.S. 49:953(B), R.S. 22:11, and the authority granted by R.S. 22:1 *et seq.*, the Department of Insurance caused the promulgation of Emergency Rule 47, entitled "Suspension of Certain Statutes Regarding Cancellations, Termination, Non-Renewals, and Nonreinstatements, Premium Payments, Claim Filings and Related Provisions Regarding Any and All Insurance Matters Affecting Insureds in Louisiana Caused by the State of Emergency Declared by Governor John Bel Edwards on August 26, 2021, Due to Hurricane Ida", which addressed the devastation caused by Hurricane Ida and its aftermath that created emergency conditions threatening the health, safety and welfare of the citizens of Louisiana who are insureds (as defined therein) and who, *inter alia*, either reside in, whose primary place of employment is or was in, or whose permanent employer had assigned said person to a business located in, one of the following twenty-five (25) parishes, to wit: Ascension, Assumption, East Baton Rouge, East Feliciana, Iberia, Iberville, Jefferson, Lafourche, Livingston, Orleans, Plaquemines, Pointe Coupee, St. Bernard, St. Charles, St. Helena, St. James, St. John the Baptist, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Washington, West Baton Rouge and West Feliciana. Emergency Rule 47 suspends certain statutes and regulations regarding cancellations, non-renewals, reinstatements, premium payments, claim filings and related provisions regarding any and all insurance matters affecting these certain insureds, including healthcare providers, and was published in the September 2021 issue of the *Louisiana Register*.

Upon finding that imminent peril to the public health, safety or welfare required adoption of an emergency rule, the Patient's Compensation Fund Oversight Board (Oversight Board), under authority of the Louisiana Medical Malpractice Act, R.S. 40:1231.1 *et seq.* (MMA), and in accordance with the Administrative Procedure Act, R.S. 49:950 *et seq.*, adopted this Emergency Rule 8 at its meeting held on September 23, 2021.

Many qualified healthcare providers (QHCPs) enrolled in the Patient's Compensation Fund (Fund or PCF) are being severely impacted by Hurricane Ida and the disruptions therefrom. It is believed that these disruptions have affected and will continue to affect for some time, the ability of these QHCPs to timely pay their annual renewal PCF surcharges in full and, as such, may seriously affect the provision of health care services by QHCPs to patients in Louisiana. This public health emergency has undoubtedly created a mass disruption to the normalcy previously enjoyed by QHCPs and patients and produced an immediate threat to the public health, safety, and welfare of Louisiana citizens, both patients and QHCPs alike.

Accordingly, Emergency Rule 8 was adopted by the Oversight Board and shall apply to all QHCPs as set forth in this Emergency Rule.

In the ordinary course of business and pursuant to LAC 37:III §517, a QHCP is allowed a “grace” period of thirty (30) days in which to pay the annual renewal PCF surcharge in full to the insurer, the PCF or to the self-insurance trust, as applicable, to extend PCF coverage for another year. Hurricane Ida and its aftermath and the public health emergency resulting therefrom have produced a disruption in the ability of many QHCPs to timely pay the annual renewal PCF surcharge in full to maintain their enrollment in the Fund. This could result in a QHCP being without PCF coverage or having a gap in PCF coverage. Emergency Rule 8 was adopted to provide emergency relief to QHCPs as set forth therein.

Title 37 INSURANCE

Part III. Patient's Compensation Fund Oversight Board

Chapter 1. General Provisions

§133. Qualified Health Care Provider Services

Emergency Rule 8

A.1. Emergency Rule 8 shall apply to all QHCPs (i) who either reside in or whose primary place of employment is or was in, one of the following twenty-five (25) parishes, to wit: Ascension, Assumption, East Baton Rouge, East Feliciana, Iberia, Iberville, Jefferson, Lafourche, Livingston, Orleans, Plaquemines, Pointe Coupee, St. Bernard, St. Charles, St. Helena, St. James, St. John the Baptist, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Washington, West Baton Rouge and West Feliciana; and (ii) whose renewal date or 30 day grace period for payment of the PCF annual renewal surcharge occurs on or after August 26, 2021 but prior to the expiration of this Emergency Rule 8.

2. For purposes of this Emergency Rule 8, QHCPs who meet the above criteria shall be referred to herein as “Affected QHCPs”. The provisions of this Emergency Rule 8 shall not apply to any health care provider not previously enrolled in the PCF prior to August 26, 2021.

3. The Oversight Board's Rules, previously promulgated in the *Louisiana Register*, and the applicable provisions of the PCF's Rate Manual, to the extent that said regulatory provisions impose upon QHCPs a time limit to pay the applicable annual PCF renewal surcharges, shall be suspended for Affected QHCPs during the effective periods set forth in this Emergency Rule 8. Except as provided for in paragraph A(5) of this §133, the cancellation of PCF qualification for Affected QHCPs for failure to timely pay an annual PCF renewal surcharge is hereby suspended until the earlier of September 27, 2021 or the date the Governor lifts the State of Emergency presently in effect as a result of Hurricane Ida and its aftermath, inclusive of any renewal thereof.

a. PCF surcharges for all Affected QHCPs whose renewal date or 30 day grace period for payment of the annual PCF renewal surcharge occurs on or after August 26, 2021 but prior to or on the earlier of September 27, 2021 or the date the Governor lifts the State of Emergency presently in effect as a result of Hurricane Ida and its aftermath, inclusive of any renewal thereof (suspension period), shall be due and owing on the date that is thirty days immediately following the earlier of September 27, 2021 or the date the Governor lifts the State of Emergency presently in effect as a result of Hurricane Ida and its aftermath,

inclusive of any renewal thereof. Affected QHCPs shall also furnish the required proof of financial responsibility concurrently with the payment of the appropriate surcharge. PCF surcharges for all other QHCPs shall be due, owing and payable consistent with the Oversight Board's previously promulgated rules.

b. The executive director is hereby granted continuing authority to reasonably extend the suspension period for those Affected QHCPs who certify to the Oversight Board in writing that said Affected QHCP was impacted by the State of Emergency in a manner, including but not limited to, evacuation, displacement, business interruption, or temporary relocation, sufficient to prevent the timely payment of the renewal surcharge (extended suspension period).

c. The 30 day grace period provided for in LAC 37:III §517 for payment of the annual PCF renewal surcharge by Affected QHCPs who have been granted an extension of the suspension period shall commence on the day immediately following the end of the extended suspension period; the 30 day grace period for all other Affected QHCPs shall commence on the day immediately following the earlier of September 27, 2021 or the date the Governor lifts the State of Emergency presently in effect as a result of Hurricane Ida and its aftermath, inclusive of any renewal thereof.

4. In the event an insurer, agent or trust fund collects a renewal surcharge during the suspension period from an Affected QHCP, then the renewal surcharge shall be timely remitted to the PCF consistent with the MMA and the Oversight Board's applicable rules.

5. A cancellation of PCF qualification for an Affected QHCP shall not occur prior to the earlier of September 27, 2021 or the date the Governor lifts the State of Emergency presently in effect as a result of Hurricane Ida and its aftermath, inclusive of any renewal thereof, unless upon the documented written request or written concurrence of the Affected QHCP.

6. Unless otherwise cancelled pursuant to the provisions of Paragraph 5 herein, nothing in this Emergency Rule 8 shall be construed to exempt or excuse an Affected QHCP from the obligation to pay the applicable PCF surcharge for renewal or for an extended reporting endorsement otherwise due for actual PCF qualification provided during the suspension period or the extended suspension period.

7. Emergency Rule 8 shall not relieve an Affected QHCP from compliance with the MMA and the applicable Oversight Board's rules upon receiving notice of the filing of a medical review panel request (claim) against the affected QHCP.

8. The provisions of this Emergency Rule 8 shall be liberally construed to effectuate the intent and purposes expressed herein and to afford maximum protection for the Affected QHCPs and the citizens of Louisiana.

9. Emergency Rule 8 became effective on August 26, 2021 and shall continue in full force and effect to the earlier of September 27, 2021 or the date the Governor lifts the State of Emergency presently in effect as a result of Hurricane Ida and its aftermath, inclusive of any renewal thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1231.4(D)(3) and to be consistent with Emergency Rule No. 47 of the Louisiana Department of Insurance.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Patient's Compensation Fund Oversight Board, LR ____:

§135. Termination; Survival

A. Emergency Rule 8 shall terminate on the earlier of September 27, 2021 or the date the Governor lifts the State of Emergency presently in effect as a result of Hurricane Ida and its aftermath, inclusive of any renewal thereof. However, Paragraphs A.3 and A.6 through A.8 of §133 shall survive the termination of this Emergency Rule 8.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1231.4(D)(3) and to be consistent with Emergency Rule No. 47 of the Department of Insurance.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Patient's Compensation Fund Oversight Board, LR ____:

§137. Severability Clause

A. If any section or provision of Emergency Rule 8, as originally adopted and/or amended, is held invalid, such invalidity or determination shall not affect other Sections or provisions, or the application of Emergency Rule 8, as originally adopted and/or amended, to the Affected QHCPs or circumstances that can be given effect without the invalid Sections or provisions and the application to Affected QHCPs or circumstances shall be severable.

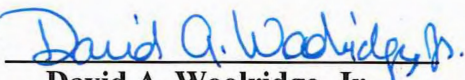
AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1231.4(D)(3) and to be consistent with Emergency Rule No. 47 of the Department of Insurance.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Patient's Compensation Fund Oversight Board, LR ____:

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Patient's Compensation Fund Oversight Board

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Dated: 09/27/2021