

DECLARATION OF EMERGENCY

Department of Insurance Office of the Commissioner

Emergency Rule 39—Mid-Term Audit of Auditable Policies (LAC 37:XI.Chapter 39)

On January 31, 2020, the United States Department of Health and Human Services Secretary Alex A. Azar declared a public health emergency (PHE) for the United States to aid the nation's healthcare community in responding to the coronavirus disease (COVID-19). The United States Centers for Disease Control and Prevention (CDC) has declared COVID-19 a worldwide pandemic due to its global effect. Furthermore, on March 13, 2020, President Donald Trump invoked the Stafford Act and declared a national emergency regarding the COVID-19 outbreak. COVID-19 has been detected in the state of Louisiana with a growing number of residents testing positive for the disease. It has been established that COVID-19 is spreading among the population of Louisiana by various means of exposure, therefore posing a significant risk of substantial harm to a large number of citizens of Louisiana.

The Department of Insurance hereby exercises the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), as further specified by R.S. 22:11.1, and pursuant to the authority granted by R.S. 22:1 et seq., adopts, maintains, and continues in effect Emergency Rule 39 until May 12, 2020, unless terminated sooner, which is issued to address the statewide public health emergency declared to exist in the state of Louisiana as the result of the imminent threat posed to Louisiana citizens by COVID-19, creating emergency conditions threatening the lives and health of the citizens of this state. Emergency Rule 39 became effective March 26, 2020 and shall continue in effect until May 12, 2020, unless terminated sooner, as allowed under the Administrative Procedure Act.

Emergency Rule 39 is issued to address the mass disruption to the normalcy previously enjoyed by citizens of Louisiana caused by the effects of COVID-19. Specifically, the stay at home order inhibits the ability of insureds who operate commercial enterprises to maintain their normal workforce to perform the functions of their business operations from which they earn income that allows them to pay their insurance premiums. Many commercial insurance policies are rated based on variable and auditable exposures, including but not limited to, payroll, sales, enrollment, attendance, occupancy rates, and square footage. Emergency Rule 39 is issued under the authority of the Commissioner of Insurance for the State of Louisiana, pursuant to the following: Proclamation No. JBE 2020-25 issued on March 11, 2020, by Governor John Bel Edwards declaring a State of Emergency extending from March 11, 2020 through April 9, 2020 unless terminated sooner; Proclamation No. JBE 2020-29 issued on March 14, 2020 transferring authority over certain insurance matters to Commissioner of Insurance James J. Donelon (Commissioner); Proclamation No. JBE 2020-33 issued on March 22, 2020 by Governor John Bel Edwards declaring a stay at home order and closure of nonessential businesses until April 13, 2020 unless terminated sooner; Proclamation No. JBE 2020-37 issued on March 26, 2020 transferring authority over certain insurance matters to Commissioner of Insurance James J. Donelon

(Commissioner); and Proclamation No. JBE 2020-41 issued on April 2, 2020 extending the stay at home order and closure of nonessential businesses until April 30, 2020 unless terminated sooner.

Accordingly, Emergency Rule 39 shall apply to all admitted insurers who issued any policy of insurance in Louisiana that provides insurance coverage to commercial insureds whose insurance policy is rated using an auditable exposure basis, including but not limited to, payroll, sales, enrollment, attendance, occupancy rates, square footage or any other basis and to any commercial policyholder in Louisiana regarding any commercial insurance policies rated using an auditable exposure basis, including but not limited to, payroll, sales, enrollment, attendance, occupancy rates, square footage or any other basis.

COVID-19 has created a mass disruption to the normalcy previously enjoyed by commercial enterprises in Louisiana and is an immediate threat to the public health, safety, and welfare of all Louisiana citizens. In order to respond to the COVID-19 emergency and to protect and safeguard the public, health, safety, and welfare of the citizens of this state, it is necessary to issue Emergency Rule 39.

Title 37

INSURANCE

Part XI. Rules

Chapter 39. Emergency Rule 39—Mid-Term Audit of Auditable Policies

§3901. Purpose

A. Emergency Rule 39 provides for the procedure whereby insureds who operate commercial enterprises in Louisiana can make demand upon their admitted insurers to allow for either a mid-term audit by the insured or a physical audit by the insurer of those insurance policies that are auditable in order to appropriately and immediately adjust the premium for the risks that have negatively affected the ability of commercial enterprises to operate in the normal course of their business. Emergency Rule 39 is issued due to COVID-19 and following the issuance of: Proclamation No. JBE 2020-25 issued on March 11, 2020, by Governor John Bel Edwards declaring a State of Emergency extending from March 11, 2020 through April 9, 2020 unless terminated sooner; Proclamation No. JBE 2020-29 issued on March 14, 2020 transferring authority over certain insurance matters to Commissioner of Insurance James J. Donelon (Commissioner); Proclamation No. JBE 2020-33 issued on March 22, 2020 by Governor John Bel Edwards declaring a stay at home order and closure of nonessential businesses until April 13, 2020 unless terminated sooner; Proclamation No. JBE 2020-37 issued on March 26, 2020 transferring authority over certain insurance matters to Commissioner of Insurance James J. Donelon (Commissioner); and Proclamation No. JBE 2020-41 issued April 2, 2020 extending the stay at home order and closure of nonessential businesses until April 30, 2020 unless terminated sooner.

B. An additional purpose of Emergency Rule 39 is to set forth the procedures that will control the actions of those admitted insurers who have provided commercial insurance coverage to those commercial insureds whose insurance policies are rated using an auditable exposure basis, including but not limited to, payroll, sales, enrollment, attendance, occupancy rates, square footage or any other basis.

AUTHORITY NOTE: Promulgated in accordance with Proclamation No. JBE 2020-25, Proclamation No. JBE 2020-29,

Proclamation No. JBE 2020-33, Proclamation No. JBE 2020-37, Proclamation No. JBE 2020-41, R.S. 22:2, R.S. 22:11, and R.S. 22:1261 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 46:

§3903. Applicability and Scope

A. Emergency Rule 39 shall apply to all admitted insurers who issued any policy of insurance in Louisiana that provides insurance coverage to commercial insureds whose insurance policy is rated using an auditable exposure basis, including but not limited to, payroll, sales, enrollment, attendance, occupancy rates, square footage or any other basis.

B. Emergency Rule 39 shall apply to any commercial policyholder in Louisiana regarding any commercial insurance policies rated using an auditable exposure basis, including but not limited to, payroll, sales, enrollment, attendance, occupancy rates, square footage or any other basis.

AUTHORITY NOTE: Promulgated in accordance with Proclamation No. JBE 2020-25, Proclamation No. JBE 2020-29, Proclamation No. JBE 2020-33, Proclamation No. JBE 2020-37, Proclamation No. JBE 2020-41, R.S. 22:2, R.S. 22:11, and R.S. 22:1261 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 46:

§3905. Definitions

A. For purposes of Emergency Rule 39 the following terms are defined:

Auditable Insurance Policy—a policy of insurance that provides commercial insurance coverage to insureds that is rated using an auditable exposure basis, including, but not limited to, payroll, sales, enrollment, attendance, occupancy rates, square footage or any other basis.

Commissioner—the Commissioner of Insurance for the State of Louisiana.

Insured—a natural person or juridical person who is operating a commercial enterprise in Louisiana who has a policy of commercial insurance issued by an admitted insurer.

Insurer—an authorized insurer as defined in R.S. 22:46(3) and operating in Louisiana and who has delivered or issued for delivery in Louisiana an auditable insurance policy.

Physical Audit—an on-site or desk examination conducted by the insurer that analyzes the rating variables that form the basis for the premium.

Self-Audit—an examination conducted by the insured that analyzes the rating variables that form the basis for the premium.

Surplus Lines Insurer—an approved unauthorized insurer, an eligible unauthorized insurer, or a domestic surplus lines insurer as defined in R.S. 22:46(17.1) operating in Louisiana.

AUTHORITY NOTE: Promulgated in accordance with Proclamation No. JBE 2020-25, Proclamation No. JBE 2020-29, Proclamation No. JBE 2020-33, Proclamation No. JBE 2020-37, Proclamation No. JBE 2020-41, R.S. 22:2, R.S. 22:11, and R.S. 22:1261 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 46:

§3907. Surplus Lines Insurers

A. Surplus lines insurers are urged and requested to adhere to Emergency Rule 39.

AUTHORITY NOTE: Promulgated in accordance with Proclamation No. JBE 2020-25, Proclamation No. JBE 2020-29,

Proclamation No. JBE 2020-33, Proclamation No. JBE 2020-37, Proclamation No. JBE 2020-41, R.S. 22:2, R.S. 22:11, and R.S. 22:1261 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 46:

§3909. Insured's Right to Demand Mid-Term Self-Audit and Insurers Obligation

A. Any insured who has an auditable insurance policy issued by an admitted insurer shall have the right to make a demand upon its admitted insurer to permit the insured to immediately conduct a mid-term self-audit of the insurance policy.

B. Any admitted insurer who receives a demand from its insured for a mid-term self-audit shall honor the demand and shall assist in the mid-term self-audit being conducted by the insured.

C. A demand by an insured for a mid-term self-audit made at any time before the termination of Emergency Rule 39 shall be valid and enforceable between the insured and the admitted insurer. Further, the insured shall have the right to complete the mid-term self-audit at any time up to the termination of the insurance policy.

D. Upon the completion of the mid-term self-audit by the insured, the insured shall promptly transmit the results of the mid-term self-audit to the admitted insurer.

AUTHORITY NOTE: Promulgated in accordance with Proclamation No. JBE 2020-25, Proclamation No. JBE 2020-29, Proclamation No. JBE 2020-33, Proclamation No. JBE 2020-37, Proclamation No. JBE 2020-41, R.S. 22:2, R.S. 22:11, and R.S. 22:1261 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 46:

§3911. Insurer's Right to Conduct Physical Audit and Insured's Duty to Cooperate

A. Any admitted insurer who, pursuant to Emergency Rule 39, has been required to allow its insured to conduct a mid-term self-audit retains the right to conduct a physical audit of the auditable insurance policy at any time during the policy term or at the end of the policy term as provided in the insurance policy terms and conditions in order to ensure the calculation of proper premium for the risk.

B. If an admitted insurer chooses to conduct a mid-term physical audit, it shall transmit the results of said mid-term physical audit to the insured immediately and without the necessity of any demand by the insured.

AUTHORITY NOTE: Promulgated in accordance with Proclamation No. JBE 2020-25, Proclamation No. JBE 2020-29, Proclamation No. JBE 2020-33, Proclamation No. JBE 2020-37, Proclamation No. JBE 2020-41, R.S. 22:2, R.S. 22:11, and R.S. 22:1261 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 46:

§3913. Adjustment of Premium upon Completion of Mid-Term Audit

A. If the mid-term self-audit conducted by the insured establishes that the presumptive premium charged at the initiation of the subject insurance policy is now in excess of what the premium would be based on the current rating variables, the admitted insurer shall adjust the premium immediately but in no event less than 10 days from the completion of the mid-term self-audit.

B. Any overpayment of premium shall result in the admitted insurer making a refund of the overpayment to the insured within 10 days from the completion of the mid-term self-audit.

C. Upon the completion of the mid-term self-audit, the admitted insurer and the insured shall continue to operate in the normal course of business as set forth in the insurance policy, except as otherwise provided for by Emergency Rule 39.

AUTHORITY NOTE: Promulgated in accordance with Proclamation No. JBE 2020-25, Proclamation No. JBE 2020-29, Proclamation No. JBE 2020-33, Proclamation No. JBE 2020-37, Proclamation No. JBE 2020-41, R.S. 22:2, R.S. 22:11, and R.S. 22:1261 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 46:

§3915. Effective Date

A. Emergency Rule 39 became effective March 26, 2020 and shall continue in effect until May 12, 2020, unless terminated sooner, as allowed under the Administrative Procedure Act.

AUTHORITY NOTE: Promulgated in accordance with Proclamation No. JBE 2020-25, Proclamation No. JBE 2020-29, Proclamation No. JBE 2020-33, Proclamation No. JBE 2020-37, Proclamation No. JBE 2020-41, R.S. 22:2, R.S. 22:11, and R.S. 22:1261 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 46:

§3917. Severability

A. If any section or provision of Emergency Rule 39 or its application to any person or circumstance is held invalid, such invalidity or determination shall not affect other sections or provisions or the application of Emergency Rule 39 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 Emergency Rule 39 and the application to any persons or circumstances are severable.

AUTHORITY NOTE: Promulgated in accordance with Proclamation No. JBE 2020-25, Proclamation No. JBE 2020-29, Proclamation No. JBE 2020-33, Proclamation No. JBE 2020-37, Proclamation No. JBE 2020-41, R.S. 22:2, R.S. 22:11, and R.S. 22:1261 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 46:

James J. Donelon
Commissioner