

DECLARATION OF EMERGENCY

Department of Insurance Office of the Commissioner

Emergency Rule 36—Patient Protections and Related Health Care Services Regarding Health Insurance Matters Affecting Insureds in Louisiana Caused by the Outbreak of Coronavirus Disease (COVID-19) (LAC 37:XI.Chapter 31)

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. There is reason to believe that COVID-19 may spread among the population by various means of exposure, therefore posing a significant risk of substantial harm to a large number of citizens.

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 36 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 36 became effective March 17, 2020 and shall continue in effect until May 12, 2020, unless terminated sooner, as allowed under the Administrative Procedure Act.

Emergency Rule 36 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, and Proclamation No. JBE 2020-37 issued on March 26, 2020 transferring authority over certain insurance matters to Commissioner of Insurance James J. Donelon. Additionally, Emergency Rule 36 is being issued following the issuance of 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, 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.

COVID-19 has created a mass disruption to the normalcy previously enjoyed by Louisianans and is an immediate threat to the public health, safety, and welfare of Louisiana citizens. In order to respond to the emergency and to protect

and safeguard the public, health, safety and welfare of the citizens of this state, it is necessary to reissue Emergency Rule 36.

Therefore, Emergency Rule 36 is adopted, maintained, and continued, and shall apply to all health maintenance organizations (HMOs), managed care organizations (MCOs), preferred provider organizations (PPOs), pharmacy benefit managers (PBMs), and third party administrators (TPAs) acting on behalf of an HMO, MCO, PPO, and any and all other insurance related entities licensed by the Commissioner or doing business in Louisiana (collectively known as "health insurance issuers") and their insureds, policyholders, members, subscribers, enrollees and certificate holders.

Emergency Rule 36 is available on the Internet at www.lidi.state.la.us and is available for inspection between the hours of 8 a.m. and 4:30 p.m. at the Louisiana Department of Insurance, 1702 N. Third Street, Baton Rouge, LA 70802.

Title 37 INSURANCE Part XI. Rules

Chapter 31. Emergency Rule 36— Patient Protections and Related Health Care Services Regarding Health Insurance Matters Affecting Insureds in Louisiana Caused by the Outbreak of Coronavirus Disease (COVID-19)

§3101. Benefits, Entitlements, and Protections

A. The benefits, entitlements and protections of Emergency Rule 36 shall be applicable to insureds, policyholders, members, subscribers, enrollees and certificate holders who, as of 12:01 a.m. on March 17, 2020 have a policy, insurance contract or certificate of coverage issued by a health maintenance organization or for any of the types of insurance enumerated in La. R. S. 22:47(2)(a) and reside in the state of Louisiana. Insureds shall include, but not be limited to, any and all policyholders, members, subscribers, enrollees and certificate holders.

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, and Proclamation No. JBE 2020-41.

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

§3103. Applicability

A. Emergency Rule 36 shall apply to every health maintenance organization (HMO), managed care organization (MCO), preferred provider organization (PPO), pharmacy benefit manager (PBM), and third party administrator (TPA) acting on behalf of a health insurance issuer, HMO, MCO, PPO, and any and all other insurance related entities licensed by the Commissioner or doing business in Louisiana (collectively known as "health insurance issuers").

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, and Proclamation No. JBE 2020-41.

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

§3105. Waiver

A. All health insurance issuers shall waive all cost-sharing including copayments, coinsurance, and deductibles for screening and testing for COVID-19 as specified by the

CDC, including hospital, emergency department, urgent care, provider office visits, lab testing, telehealth, telemedicine, and any immunizations that are made available.

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, and Proclamation No. JBE 2020-41.

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

§3107. Prior Authorizations or Restrictions

A. All health insurance issuers shall waive any prior authorization requirements or restrictions for screening and diagnostic testing for COVID-19 and respond to any requests for treatment of COVID-19 on a timely 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, and Proclamation No. JBE 2020-41.

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

§3109. Network Adequacy

A. All health insurance issuers are directed to verify that their provider networks are adequate to handle a potential increase and the need for healthcare services for COVID-19 cases diagnosed in Louisiana, including by offering access to out-of-network services where appropriate.

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, and Proclamation No. JBE 2020-41.

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

§3111. Notice to Contracted Providers of Waiver

A. All health insurance issuers shall provide notice to contracted providers that they are waiving the cost-sharing and prior authorization requirements, or any restrictions, and ensure that information regarding the waivers is provided to customer service centers, nurse advice lines, and others so that proper information is provided to insured citizens.

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, and Proclamation No. JBE 2020-41.

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

§3113. Prescription Drug Coverage

A. Health insurance issuers shall allow insured individuals to obtain refills of their prescriptions even if the prescription was recently filled, consistent with approval from patients' health care providers and/or pharmacists. This provision does not apply to prescription drugs with a high likelihood of abuse, such as opioids that are restricted to 7-day prescriptions.

B. The Commissioner hereby suspends any and all precertification or step-therapy procedures in order to fill a prescription. This authorization shall be for a thirty (30) day supply.

C. The Commissioner hereby suspends any provisions in the Louisiana Insurance Code which place restrictions on replacement prescriptions pertaining to mail order prescriptions. Mail order prescriptions should be mailed to an alternate address if requested by the insured.

D. All health insurance issuers shall waive any and all restrictions relative to out-of-network access to pharmacy services or prescriptions.

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, and Proclamation No. JBE 2020-41.

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

§3115. Timely Utilization Review

A. Timely decision making is essential to responding appropriately to COVID-19, and is particularly important to utilization review. Health insurance issuers are reminded to comply with the utilization review decision timelines set forth in La. R.S. 22:2401 et seq. and 22:2411 et seq.

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, and Proclamation No. JBE 2020-41.

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

§3117. Intent and Purpose

A. The provisions of Emergency Rule 36 shall be liberally construed to effectuate the intent and purposes expressed herein and to afford maximum consumer protection for the insureds of 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, and Proclamation No. JBE 2020-41.

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

§3121. Sanctions for Violations

A. The Commissioner retains the authority to enforce violations of Emergency Rule 36. Accordingly, any health insurance issuers enumerated in Emergency Rule 36 or other entity doing business in Louisiana and/or regulated by the Commissioner who violates any provision of Emergency Rule 36 shall be subject to regulatory action by the Commissioner under any applicable provisions of the Louisiana Insurance Code

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, and Proclamation No. JBE 2020-41.

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

§3123. Authority

A. The commissioner reserves the right to amend, modify, alter or rescind all or any portions of Emergency Rule 36. Additionally, the commissioner reserves the right to extend Emergency Rule 36.

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, and Proclamation No. JBE 2020-41.

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

§3125. Severability Clause

A. If any section or provision of Emergency Rule 36 is held invalid, such invalidity or determination shall not affect other sections or provisions, or the application of Emergency Rule 36, to any persons or circumstances that can be given effect without the invalid sections or provisions and the application to any person or circumstance shall be 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, and Proclamation No. JBE 2020-41.

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

§3127. Effective Date

A. Emergency Rule 36 became effective at 12:01 a.m. on March 17, 2020 and shall continue in full force and effect until 12:01 a.m. 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, and Proclamation No. JBE 2020-41.

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

James J. Donelon
Commissioner

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