

DECLARATION OF EMERGENCY

Department of Insurance Office of the Commissioner

Emergency Rule 37—Telemedicine and Network Adequacy
in Health Insurance in Louisiana during the
Outbreak of Coronavirus Disease (COVID-19)
(LAC 37:XIII.Chapter 33)

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 37 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 37 became effective March 23, 2020 and shall continue in effect until May 12, 2020, unless terminated sooner, as allowed under the Administrative Procedure Act.

Emergency Rule 37 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 37 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.

Accordingly, Emergency Rule 37 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.

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. Moreover, the unique nature of the COVID-19 pandemic is such that traditional provider networks organized to deliver care primarily in in-person settings can no longer be reasonably expected to adequately meet the needs of Louisiana's insured population without substantial augmentation by remote provision of services, including care unrelated to COVID-19. 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 adopt, maintain, and continue Emergency Rule 37.

Title 37

INSURANCE

Part XI. Rules

Chapter 33. Emergency Rule 37—Telemedicine and Network Adequacy in Health Insurance in Louisiana During the Outbreak of Coronavirus Disease (COVID-19)

§3301. Benefits, Entitlements, and Protections

A. The benefits, entitlements and protections of Emergency Rule 37 shall be applicable to insureds, policyholders, members, subscribers, enrollees and certificate holders who, as of 12:01 a.m. on March 23, 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.

§3303. Applicability

A. Emergency Rule 37 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.

§3305. Limited Waiver

A. Except as it pertains to emergency services, services not ordered postponed by the State Health Officer in Healthcare Facility Notice #2020-COVID19-ALL-006 on March 18, 2020, services related to the testing or treatment of COVID-19, and services ancillary to any of the above, the geographic accessibility requirements of La. R.S. 22:1019.2 are hereby waived subject to maintenance of adequate access for those same services in compliance with all provisions of this Rule.

B. Any health insurance issuer not complying with all provisions of this Rule in providing a health benefit plan shall not be subject to this waiver of La. R.S. 22:1019.2, shall be required to comply with the geographic accessibility requirements of La. R.S. 22:1019.2, and shall be subject to the Commissioner's reservation of right to invoke any appropriate authority to address any resulting endangerment of Louisiana residents.

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.

§3307. Allowed Telemedicine Devices

A. Health insurance issuers shall waive any limitation on the use of audio-only telephonic consultations in the provision of telemedicine services, including the use of personal devices, to the extent permitted under federal guidance issued by the Office for Civil Rights at the Department of Health and Human Services as found here: <https://www.hhs.gov/hipaa/for-professionals/special-topics/emergency-preparedness/notification-enforcement-discretion-telehealth/index.html>.

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.

§3309. Telemedicine Provider Access

A. Health insurance issuers shall waive any coverage limitations restricting telemedicine access to providers included within a plan's telemedicine network.

B. Health insurance issuers shall waive any requirement that the patient and provider have a prior relationship in order to have services delivered through telemedicine.

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.

§3311. Telemedicine Services Coverage

A. Health insurance issuers shall cover mental health services provided by telemedicine consultation to the same extent the services would be covered if provided through an in-person consultation. This shall not be interpreted to require coverage of telemedicine services that cannot be appropriately provided remotely.

B. Health insurance issuers shall waive any requirement limiting coverage to provider-to-provider consultations only and shall cover telemedicine consultations between a patient and a provider to the extent the same services would be covered if provided in person.

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.

§3313. Cost Sharing Given Network Access

A. All health insurance issuers shall evaluate differences in cost-sharing responsibilities for their insureds seeking in-network and non-network care for the duration of this event and take appropriate steps to ensure that patients in areas in which in-network surge capacity is exceeded are not subject to unreasonable cost sharing requirements due to access limitations.

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.

§3315. Intent and Purpose

A. The provisions of Emergency Rule 37 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.

§3317. Sanctions for Violations

A. The Commissioner retains the authority to enforce violations of Emergency Rule 37. Accordingly, any health insurance issuers enumerated in Emergency Rule 37 or other entity doing business in Louisiana and/or regulated by the Commissioner who violates any provision of Emergency Rule 37 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.

§3319. Authority

A. The commissioner reserves the right to amend, modify, alter or rescind all or any portions of Emergency Rule 37. Additionally, the commissioner reserves the right to extend Emergency Rule 37.

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.

§3321. Severability Clause

A. If any section or provision of Emergency Rule 37 is held invalid, such invalidity or determination shall not affect other sections or provisions, or the application of Emergency Rule 37, 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.

§3323. Effective Date

A. Emergency Rule 37 became effective at 12:01 a.m. on March 23, 2020 and shall continue in full force and effect until 12:01 a.m. May 12, 2020.

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

2004#060