

DECLARATION OF EMERGENCY

Workforce Commission Office of Workers' Compensation

Emergency Rule—Patient Protections and Related
Health Care Services Regarding Prescription Refills
(LAC 40:I.Chapter 27 and 29)

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.

Emergency Rule 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 is issued under the authority of the Assistant Secretary of the Office of Workers' Compensation Administration 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 and La. Revised Statute 23:1203.1. Additionally, this Emergency Rule 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, this Emergency Rule shall apply to any and all other workers' compensation insurance related entities licensed by the commissioner or doing business in Louisiana (collectively known as "workers' compensation insurers") 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. 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 issue Emergency Rule.

Title 40

LABOR AND EMPLOYMENT

Part I. Workers' Compensation Administration Subpart 2. Medical Guidelines

Chapter 27. Utilization Review Procedures

§2715. Medical Treatment Schedule Authorization and Dispute Resolution

A. - B.3. ...

C. Minimum Information for Request of Authorization

1. - 3.b. ...

4. The 1010 form approval may last longer than 30 days, especially if a treatment facility is closed because of COVID-19.

D. - O. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1203.1.

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Workers' Compensation, LR 17:263 (March 1991), repromulgated LR 17:653 (July 1991), repromulgated LR 18:257 (March 1992), amended by the Louisiana Workforce Commission, Office of Workers' Compensation, LR 38:1030 (April 2012), repromulgated LR 38:1287 (May 2012), amended LR 38:3255 (December 2012), LR 40:1163 (June 2014), amended by the Louisiana Workforce Commission, Office of Workers' Compensation, LR 46:

Chapter 29. Pharmacy Reimbursement Schedule, Billing Instruction and Maintenance Procedures

Editor's Note: Other Sections applying to this Chapter can be found in Chapter 51.

§2901. Applicability

A. Emergency Rule shall apply to any and all Workers' Compensation insurance related entities licensed by the Department of Insurance, those defined as "carrier" in LAC 40:I.103, or doing business in Louisiana (collectively known as "workers' compensation insurers").

B. The assistant secretary or the secretary reserves the right to amend, modify, alter or rescind all or any portions of Emergency Rule.

C. If any section or provision of Emergency Rule is held invalid, such invalidity or determination shall not affect other sections or provisions, or the application of Emergency Rule, 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 R.S. 23:1203.1.

HISTORICAL NOTE: Promulgated by the Louisiana Workforce Commission, Office of Workers' Compensation, LR 46:

§2902. Effective Date

A. Emergency Rule shall become effective at 12:01 a.m. on March 19, 2020 and shall continue in full force and effect for the maximum time period allowed under the Administrative Procedure Act or for the period of the Governor's Stay-at Home Order, whichever shall end first.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1203.1.

HISTORICAL NOTE: Promulgated by the Louisiana Workforce Commission, Office of Workers' Compensation, LR 46:

§2903. Prescription Drug Coverage

A. Workers' compensation insurers 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. This authorization shall be for at least 30-day and up to 90-day supply, consistent with approval from patients' health care providers and/or pharmacists.

C. Mail order prescriptions should be mailed to an alternate address if requested by the insured.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1203.1.

HISTORICAL NOTE: Promulgated by the Louisiana Workforce Commission, Office of Workers' Compensation, LR 46:

§2904. Prior Authorizations or Restrictions

A. All workers' compensation insurers shall waive time restrictions on prescription medication refills, which include suspension of electronic "refill too soon" edits to pharmacies, to enable insureds or subscribers to refill prescriptions in advance, if there are authorized refills remaining.

B. All workers' compensation insurers shall authorize payment to pharmacies for at least a 30-day supply of any prescription medication, regardless of the date upon which the prescription had most recently been filled by a pharmacist, at any time when the state is declared to be under a state of emergency in an executive order issued by the governor and;

1. the prescription is not for a Schedule II medicinal drug;

2. the medication is essential to the maintenance of life or to the continuation of therapy in a chronic condition;

3. in the pharmacist's professional judgment, the interruption of therapy might reasonably produce undesirable health consequences or may cause physical or mental discomfort; or

4. the dispensing pharmacist notifies the prescriber of emergency dispensing within a reasonable time after such dispensing.

C. Pharmacist may refill most medications, one time, with a 30-day supply, even though the pharmacist cannot reach the patient's physician.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1203.1.

HISTORICAL NOTE: Promulgated by the Louisiana Workforce Commission, Office of Workers' Compensation, LR 46:

Inquiries concerning the proposed enactment may be sent to Assistant Secretary Sheral Kellar, OWC-Administration, 1001 North 23rd Street, Baton Rouge, LA 70802.

Ava Dejoie
Secretary