

**Office of the Governor**  
**Division of Administration**  
**Patient's Compensation Fund Oversight Board**  
**(LAC 37:III Emergency Rule 6)**

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 6 at its meeting held on April 16, 2020.

On January 31, 2020, the Secretary for the United States Department of Health and Human Services declared a public health emergency (PHE) for the United States (US) to aid the US healthcare community in responding to the worldwide global effect caused by the COVID-19 pandemic. On March 13, 2020, President Donald Trump declared a national emergency regarding the spread of COVID-19. As of the date of this Emergency Rule, a large number of Louisiana residents have tested positive for COVID-19, thereby posing a significant risk of substantial harm to a large number of Louisiana citizens.

In response to the statewide public health emergency and the emergency conditions threatening the lives and health of the citizens of Louisiana, Governor John Bel Edwards issued a number of proclamations, including but not limited to, Proclamation Nos. JBE 2020-25, 29, 33, 37 and 41, which, *inter alia*, declared a state of emergency for Louisiana (State of Emergency), issued a stay-at-home order and closed nonessential businesses.

To address and minimize the threats of mass disruption to normalcy previously enjoyed by Louisianans and the immediate threat to the public health, safety, and welfare of Louisiana citizens, the State of Louisiana has imposed significant measures that will have a negative economic impact and result in financial hardship for the citizens of Louisiana. In response thereto and to protect and safeguard the public health, safety, and welfare of Louisiana citizens, the Department of Insurance originally issued Emergency Rule 40 (EMR 40) on March 26, 2020, entitled "Moratorium on Policy Cancellations/Non-Renewals for Policyholders in Louisiana during the Outbreak of Coronavirus (COVID-19)". Subsequently, on April 3, 2020, EMR 40 was rescinded by the Department of Insurance and replaced with an "amended" EMR 40 (Amended EMR 40). Amended EMR 40, which became effective on March 12, 2020 and will be published in the April edition of the *Louisiana Register*, suspends certain statutes and regulations regarding cancellations, non-renewals, reinstatements, premium payments, claim filings and related provisions regarding any and all insurance matters affecting insureds, including healthcare providers.

Many qualified healthcare providers (QHCPs) enrolled in the Patient's Compensation Fund (Fund or PCF) are being severely impacted by the COVID-19 pandemic 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 6 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. The COVID-19 pandemic 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 6 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**

#### **§121. Qualified Health Care Provider Services**

##### **Emergency Rule 6**

A.1. Emergency Rule 6 shall apply to all QHCPs whose renewal date or 30 day grace period for payment of the PCF annual renewal surcharge occurs on or after March 12, 2020 but prior to the expiration of this Emergency Rule.

2. For purposes of this Emergency Rule 6, QHCPs who meet the above criteria shall be referred to herein as “Affected QHCPs”. The provisions of this Emergency Rule 6 shall not apply to any health care provider not previously enrolled in the PCF prior to March 12, 2020.

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 6. Except as provided for in paragraph A(5) of this §121, 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 July 9, 2020 or the date the Governor lifts the State of Emergency presently in effect, 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 March 12, 2020 but prior to or on the earlier of July 9, 2020 or the date the Governor lifts the State of Emergency presently in effect, inclusive of any renewal thereof (suspension period), shall be due and owing on the date that is thirty days immediately following the earlier of July 9, 2020 or the date the Governor lifts the State of Emergency presently in effect, 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, contraction of COVID-19, 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 July 9, 2020 or the date the Governor lifts the State of Emergency presently in effect, 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 July 9, 2020 or the date the Governor lifts the State of Emergency presently in effect, 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 6 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 6 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 Emergency Rule 6 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 6 became effective on March 12, 2020 and shall continue in full force and effect to the earlier of July 9, 2020 or the date the Governor lifts the State of Emergency presently in effect, 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. 40 (amended) 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 \_\_\_:

### **§123. Termination; Survival**

A. Emergency Rule 6 shall terminate on the earlier of July 9, 2020 or the date the Governor lifts the State of Emergency presently in effect, inclusive of any renewal thereof. However, Paragraphs A.3 and A.6 through A.8 of §121 shall survive the termination of this Emergency Rule 6.

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

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

**§125. Severability Clause**

A. If any section or provision of Emergency Rule 6, 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 6, 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. 40 (amended) of the Department of Insurance.

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

**Ken Schnauder**

**Executive Director**

**Patient's Compensation Fund Oversight Board**