

# DECLARATION OF EMERGENCY

## Office of the Governor Division of Administration Patient's Compensation Fund Oversight Board

### Qualified Health Care Provider Services (LAC 37:III.127)

A state of emergency for the state of Louisiana was declared by President Donald J. Trump both in August and September 2020 due to the devastation caused by Hurricane Laura and its aftermath. In addition, pursuant to Proclamation Nos. 108, 115, and 124 JBE 2020, Governor John Bel Edwards declared a state of emergency for Louisiana due to the effects of Hurricane Laura on Louisiana and its citizens.

Under Section 2 of Proclamation No. 115 JBE 2020, the Commissioner of Insurance for the State of Louisiana, James J. Donelon (Commissioner Donelon), shall have limited transfer of authority from Governor John Bel Edwards to suspend provisions of any statute of the Louisiana Insurance Code, Title 22 of the Louisiana Revised Statutes of 1950, concerning the cancellation, termination, nonrenewal, and reinstatement provisions of Title 22. Proclamation No. 124 JBE 2020 extended the limited transfer of authority from Governor John Bel Edwards to Commissioner Donelon to October 19, 2020.

Pursuant to said Proclamations, Commissioner Donelon caused the promulgation of Emergency Rule 45, entitled "Suspension of Certain Statutes Regarding Cancellations, Termination, Non-Renewals, and Nonreinstatements, Premium Payments, Claim Filings and Related Provisions Regarding Any and All Insurance Matters Affecting Insureds in Louisiana Caused by the state of emergency Declared by Governor John Bel Edwards on August 31, 2020, Due to Hurricane Laura", which addressed the devastation caused by Hurricane Laura and its aftermath that created emergency conditions threatening the health, safety and welfare of the citizens of Louisiana who are insureds and who either reside in, have insured property located in or whose primary place of employment is or was in, one of the following 16 parishes, to wit: Acadia, Allen, Beauregard, Calcasieu, Cameron, Grant, Jackson, Jefferson Davis, Lincoln, Natchitoches, Ouachita, Rapides, Sabine, Vermilion, Vernon, or Winn. Emergency Rule 45 suspends certain statutes and regulations regarding cancellations, non-renewals, reinstatements, premium payments, claim filings and related provisions regarding any and all insurance matters affecting these certain insureds, including healthcare providers, and was published in the September 2020 issue of the *Louisiana Register*.

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 7 at its meeting held on October 1, 2020.

Many qualified healthcare providers (QHCPs) enrolled in the Patient's Compensation Fund (fund or PCF) are being severely impacted by Hurricane Laura 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 7 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 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. Hurricane Laura and its aftermath 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 7 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

#### §127. Qualified Health Care Provider Services (Emergency Rule 7)

A.1. Emergency Rule 7 shall apply to all QHCPs:

a. who either reside in or whose primary place of employment is or was in, one of the following 16 parishes, to wit: Acadia, Allen, Beauregard, Calcasieu, Cameron, Grant, Jackson, Jefferson Davis, Lincoln, Natchitoches, Ouachita, Rapides, Sabine, Vermilion, Vernon, or Winn; and

b. whose renewal date or 30-day grace period for payment of the PCF annual renewal surcharge occurs on or after August 27, 2020 but prior to the expiration of this Emergency Rule.

2. For purposes of this Emergency Rule 7, QHCPs who meet the above criteria shall be referred to herein as affected QHCPs. The provisions of this Emergency Rule 7 shall not apply to any health care provider not previously enrolled in the PCF prior to August 27, 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 7. Except as provided for in Paragraph A.5 of this Section, 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 October 24, 2020 or the date the governor lifts the state of emergency presently in effect as a result of Hurricane Laura and its aftermath, 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 August 27, 2020 but prior to or on the earlier of October 24, 2020 or the date the governor lifts the state of emergency presently in effect as a result of Hurricane Laura and its aftermath,

inclusive of any renewal thereof (suspension period), shall be due and owing on the date that is 30 days immediately following the earlier of October 24, 2020 or the date the governor lifts the state of emergency presently in effect as a result of Hurricane Laura and its aftermath, 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, 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 October 24, 2020 or the date the governor lifts the state of emergency presently in effect as a result of Hurricane Laura and its aftermath, 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 October 24, 2020 or the date the governor lifts the state of emergency presently in effect as a result of Hurricane Laura and its aftermath, 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 7 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 7 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 7 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 7 became effective on August 27, 2020 and shall continue in full force and effect to the earlier of October 24, 2020 or the date the governor lifts the state of

emergency presently in effect as a result of Hurricane Laura and its aftermath, 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. 45 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 46:

#### **§129. Termination; Survival**

A. Emergency Rule 7 shall terminate on the earlier of October 24, 2020 or the date the governor lifts the state of emergency presently in effect as a result of Hurricane Laura and its aftermath, inclusive of any renewal thereof. However, Paragraphs A.3 and A.6 through A.8 of §127 shall survive the termination of this Emergency Rule 7.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1231.4(D)(3) and to be consistent with Emergency Rule No. 45 of the Department of Insurance.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Patient's Compensation Fund Oversight Board, LR 46:

#### **§131. Severability Clause**

A. If any section or provision of Emergency Rule 7, 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 7, 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. 45 of the Department of Insurance.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Patient's Compensation Fund Oversight Board, LR 46:

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