

## DECLARATION OF EMERGENCY

### Department of Insurance Office of the Commissioner

#### Emergency Rule 40—Moratorium on Policy Cancellations/Non-Renewals for Policyholders in Louisiana during the Outbreak of Coronavirus Disease (COVID-19)

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 of Louisiana.

Emergency Rule 40 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 40 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 (Commissioner); 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 2020-37 issued on March 26, 2020 by Governor John Bel Edwards transferring authority over certain insurance matters to Commissioner of Insurance James J. Donelon (Commissioner).

Accordingly, Emergency Rule 40 shall apply to any and all kinds of insurers as set forth in R.S. 22:48, and any and all kinds of insurance as set forth in R.S. 22:47, including, but not limited to all property and casualty insurers, all life insurers, all annuity insurers, and 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. To minimize these threats, the State of Louisiana has had to impose significant measures that will certainly have a negative economic impact on the state, resulting in financial hardship for the citizens of Louisiana regarding all matters related to all insurers and all kinds of insurance and also threatening access to adequate coverage during an event in which access to such coverage is uniquely important. 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 40.

### Title 37 INSURANCE Part XI. Rules

#### Chapter 40. Emergency Rule 40—Moratorium on Policy Cancellations and Non-Renewals for Policyholders in Louisiana during the Outbreak of Coronavirus Disease (COVID-19)

##### §4001. Benefits, Entitlements, and Protections

A. The benefits, entitlements and protections of Emergency Rule 40 shall be applicable to insureds, policyholders, members, subscribers, enrollees and certificate holders who, as of 12:01 a.m. on March 12, 2020 have an insurance policy, insurance contract, or certificate of coverage for any of the kinds of insurance enumerated in §4003.

B. Emergency Rule 40 shall apply to any authorized insurer as defined in R.S. 22:46(3) operating in Louisiana, and to any approved unauthorized insurer, eligible unauthorized insurer, or domestic surplus lines insurer as defined in R.S. 22:46(17.1) operating in Louisiana (sometimes referred to as a surplus lines insurer).

C. Emergency Rule 40 shall apply to every health and accident insurer, 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 2020-29, Proclamation JBE 2020-37, R.S. 22:2, R.S. 22:11, and R.S. 22:1961 et seq., R.S. 49:950 et seq.

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

##### §4003. Applicability and Scope

A. Emergency Rule 40 shall apply to any and all kinds of insurance set forth in R.S. 22:47, including, but not limited to, life, vehicle, liability, workers' compensation, burglary and forgery, fidelity, title, fire and allied lines, steam boiler and sprinkler leakage, crop, marine and transportation, miscellaneous, homeowners', credit life, health and accident, credit property and casualty, annuity, surety, and industrial fire. The applicability of Emergency Rule 40 to health and accident insurance is specified in §4003.B.

B. Emergency Rule 40 shall apply to any and all kinds of health and accident insurance, including, but not limited to, group and individual health and accident insurance, limited benefit insurance, Medicare supplement insurance, Medicare select insurance, HMOs, PPOs, MCOs except those subject only to licensure and financial solvency regulation pursuant to R.S. 22:1016, excess loss insurance, stop loss insurance,

disability income insurance, short-term health insurance, long-term care insurance, and any and all other health insurance.)

C. Emergency Rule 40 §4015 shall apply to only those kinds of insurance provided for in §4003.A and those kinds of insurers specified in §4001.B.

D. Emergency Rule 40 §§4013, 4019, 4021, 4025, 4027, and 4031 shall apply only to those kinds of insurance provided for in §4003.B and those health insurance issuers specified in §4001.C.

E. All provisions of Emergency Rule 40 not expressly limited in §4003.C and D shall apply to all kinds of insurers and all kinds of insurance as defined in §4001 and §4003.

AUTHORITY NOTE: Promulgated in accordance with Proclamation No. JBE 2020-29, Proclamation JBE 2020-37, R.S. 22:2, R.S. 22:11, and R.S. 22:1961 et seq., R.S. 49:950 et seq.

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

#### **§4005. Cancellation, Nonrenewal, and Nonreinstatement**

A. Emergency Rule 40 hereby suspends any notice of cancellation, notice of nonrenewal, nonreinstatement or any other notice related to any of the kinds of insurance enumerated in §4003 that was in force and effect at 12:01 a.m. on March 12, 2020, and any such notice shall be null and void and have no force of effect. Furthermore, any such notice shall be reissued de novo to the insured in accordance with existing statutory requirements after the expiration of Emergency Rule 40 as provided for in §4043.

B. Any and all provisions in the Louisiana Insurance Code, Title 22, relative to providing for a premium finance company to act on behalf of and/or as agent for an insurance company or an insured is hereby suspended. In furtherance thereof, the right, entitlement, legal provision or any other form of legal authority, including any policy provision, of any insurer to send a notice of cancellation is suspended effective 12:01 a.m. on March 12, 2020, and any such notice shall be null and void and have no legal force or effect. Furthermore, any such notice shall be reissued de novo to the insured in accordance with existing statutory requirements after the expiration of Emergency Rule 40 as provided for in §4043. Emergency Rule 40 hereby suspends the right of any insurer to utilize the services of a premium finance company to issue any such notice to any insured.

C. No policy shall be cancelled or nonrenewed solely because of a claim that is filed during or occurs during the COVID-19 emergency.

D. Unless otherwise expressly authorized in writing by the Commissioner, the cancellation, nonrenewal or nonreinstatement of any insurance policy related to any of the kinds of insurance enumerated in §4003 is hereby suspended and shall not be allowed until after the expiration of Emergency Rule 40 as provided for in §4043.

E. All cancellation, nonrenewal, or nonreinstatement provisions, including, but not limited to, R.S. 22:272, 22:887(F), 22:978, 22:1068, and 22:1074 are hereby suspended, except to the extent such provisions apply to acts or practices constituting fraud or intentional misrepresentations of material fact.

F. As set forth in §4033, Emergency Rule 40 shall not prevent an insurer from cancelling or terminating an insurance policy for fraud or material misrepresentation on the part of the insured.

AUTHORITY NOTE: Promulgated in accordance with Proclamation No. JBE 2020-29, Proclamation JBE 2020-37, R.S. 22:2, R.S. 22:11, and R.S. 22:1961 et seq., R.S. 49:950 et seq.

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

#### **§4007. Renewal**

A. The renewal conditions of all kinds of insurance enumerated in §4003 that are subject to renewal after the effective date of Emergency Rule 40 are suspended and shall be deferred until the expiration of Emergency Rule 40 as provided for in §4043. All policies subject to renewal after the effective date of Emergency Rule 40 shall continue in full force and effect at the previously established premium until the expiration of Emergency Rule 40 as provided for in §4043.

AUTHORITY NOTE: Promulgated in accordance with Proclamation No. JBE 2020-29, Proclamation JBE 2020-37, R.S. 22:2, R.S. 22:11, and R.S. 22:1961 et seq., R.S. 49:950 et seq.

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

#### **§4009. Written Request for Cancellation by Insured**

A. Except as provided for in §4033 herein, a cancellation shall not occur prior to the expiration of Emergency Rule 40 unless upon the documented written request or written concurrence of the insured.

AUTHORITY NOTE: Promulgated in accordance with Proclamation No. JBE 2020-29, Proclamation JBE 2020-37, R.S. 22:2, R.S. 22:11, and R.S. 22:1961 et seq., R.S. 49:950 et seq.

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

#### **§4011. New Policies**

A. Emergency Rule 40 shall not apply to any new insurance policy for any of the kinds of insurance enumerated in §4003 if said insurance policy is issued on or after March 12, 2020.

AUTHORITY NOTE: Promulgated in accordance with Proclamation No. JBE 2020-29, Proclamation JBE 2020-37, R.S. 22:2, R.S. 22:11, and R.S. 22:1961 et seq., R.S. 49:950 et seq.

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

#### **§4013. Claims Notification**

A. All claims notification procedures, including, but not limited to, R.S. 22:975(A)(3)-(5), Regulation 33, Regulation 74, and Regulation 77, are suspended.

AUTHORITY NOTE: Promulgated in accordance with Proclamation No. JBE 2020-29, Proclamation JBE 2020-37, R.S. 22:2, R.S. 22:11, and R.S. 22:1961 et seq., R.S. 49:950 et seq.

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

#### **§4015. Premium Offset**

A. All insurers subject to Emergency Rule 40 receiving a claim from an insured owing a premium may offset the premium owed by the insured from any claim payment made to the insured under the insurance policy. §4015 shall not apply to health insurance issuers as defined in §4001.C.

AUTHORITY NOTE: Promulgated in accordance with Proclamation No. JBE 2020-29, Proclamation JBE 2020-37, R.S. 22:2, R.S. 22:11, and R.S. 22:1961 et seq., R.S. 49:950 et seq.

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

#### **§4017. Obligation of Insured to Pay Premium**

A. Unless otherwise cancelled pursuant to the provisions of §4009 herein, nothing in Emergency Rule 40 shall be construed to exempt or excuse an insured from the obligation to pay the premiums otherwise due for actual insurance coverage provided.

AUTHORITY NOTE: Promulgated in accordance with Proclamation No. JBE 2020-29, Proclamation JBE 2020-37, R.S. 22:2, R.S. 22:11, and R.S. 22:1961 et seq., R.S. 49:950 et seq.

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

#### **§4019. Timely Payment of Health Claims**

A. Only to the extent necessary to permit the pending of claims during a premium payment delinquency by the insured, the provisions of R.S. 22:1832-1834 and Regulation 74 related to timely payment of claims are hereby suspended.

B. For any policy of insurance described in §4003.B which, as a result of nonpayment of premium, would be subject to cancellation or termination but for the suspension ordered in §4005, the health insurance issuer may pend all claims which would not have been denied under such cancellation or termination until the health insurance issuer receives the delinquent premium payment or until such time the health insurance issuer is subsequently entitled to cancel or terminate the policy for non-payment of premium.

C. Once a health insurance issuer receives the delinquent premium payment, all pending claims associated for the time period to which such payment applies shall be processed and adjudicated. The health insurance issuer shall notify the health care provider that the claim is no longer pending and is being processed and adjudicated for payment. Furthermore, the suspension provided for in §4019.A shall be automatically lifted and all applicable timely payment requirements reinstated upon the date of the payment of premium.

AUTHORITY NOTE: Promulgated in accordance with Proclamation No. JBE 2020-29, Proclamation JBE 2020-37, R.S. 22:2, R.S. 22:11, and R.S. 22:1961 et seq., R.S. 49:950 et seq.

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

#### **§4021. Payment of Health Claims**

A. In the event a health insurance issuer pends a claim, as permitted pursuant to §4019, and is subsequently entitled to cancel or terminate a policy for nonpayment of premium, the health insurance issuer shall pay that claim to the health care provider or health care profession at not less than the following rate or allowance:

1. for contracted health care providers or health care professionals, 50 percent of the contracted reimbursement rate;

2. for contracted health care providers or health care professionals, 50 percent of the non-participating rate or allowance;

3. with regard to claims submitted pursuant to this Section, when the underlying policy is cancelled or terminated for nonpayment of premium, health insurance issuers shall be allowed to conduct medical necessity reviews on claims related to non-elective services. Non-elective services are those services that are emergent, urgent, or necessary in order to not place the health of the insured at risk;

4. with regard to any and all claims paid by health insurance issuers pursuant to the requirements of this Section, the provisions of R.S. 22:1838 and 22:1859 are hereby suspended and recoupment is prohibited.

AUTHORITY NOTE: Promulgated in accordance with Proclamation No. JBE 2020-29, Proclamation JBE 2020-37, R.S. 22:2, R.S. 22:11, and R.S. 22:1961 et seq., R.S. 49:950 et seq.

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

#### **§4023. Insureds Obligation to Cooperate in Claim Process**

A. Emergency Rule 40 shall not relieve an insured who has a claim filed before or during the pendency of Emergency Rule 40 from compliance with the insured's obligation to provide information and cooperate in the claim adjustment process relative to the claim.

AUTHORITY NOTE: Promulgated in accordance with Proclamation No. JBE 2020-29, Proclamation JBE 2020-37, R.S. 22:2, R.S. 22:11, and R.S. 22:1961 et seq., R.S. 49:950 et seq.

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

#### **§4025. Physician Credentialing**

A. The Commissioner hereby suspends physician credentialing pursuant to R.S. 22:1009 such that there are no credentialing requirements with regard to any and all licensed physicians who provide medical services between 12:01 a.m. on March 12, 2020 and the expiration of Emergency Rule 40 as provided for in §4043.

AUTHORITY NOTE: Promulgated in accordance with Proclamation No. JBE 2020-29, Proclamation JBE 2020-37, R.S. 22:2, R.S. 22:11, and R.S. 22:1961 et seq., R.S. 49:950 et seq.

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

#### **§4027. New Rate of Premium of Health Insurance**

A. For all health insurance issuers specified in §4001.C, any rate increases that were to take effect after the effective date of Emergency Rule 40 are suspended and shall be deferred until the expiration of Emergency Rule 40 as provided for in §4043.

AUTHORITY NOTE: Promulgated in accordance with Proclamation No. JBE 2020-29, Proclamation JBE 2020-37, R.S. 22:2, R.S. 22:11, and R.S. 22:1961 et seq., R.S. 49:950 et seq.

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

#### **§4029. Imposition of Interest, Penalty, or Other Charge**

A. The commissioner hereby suspends the imposition of any interest, penalty, or other charge and declares that no interest, penalty, or other charge shall accrue or be assessed against any insured as the result of the suspensions ordered in Emergency Rule 40.

AUTHORITY NOTE: Promulgated in accordance with Proclamation No. JBE 2020-29, Proclamation JBE 2020-37, R.S. 22:2, R.S. 22:11, and R.S. 22:1961 et seq., R.S. 49:950 et seq.

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

#### **§4031. Continuation of Health Coverage**

A. The commissioner hereby suspends R.S. 22:1046. In furtherance thereof, a health insurance issuer who has issued a group health insurance policy shall provide to all members or certificate holders under said group policy the option for the continuation of coverage, which said option shall begin on the day after the expiration of Emergency Rule 40 as provided for in §4043. This Section is only applicable in those situations where the employer to whom the group policy had been issued remains in business and continues to offer said group health insurance to active employees for the duration of Emergency Rule 40.

AUTHORITY NOTE: Promulgated in accordance with Proclamation No. JBE 2020-29, Proclamation JBE 2020-37, R.S. 22:2, R.S. 22:11, and R.S. 22:1961 et seq., R.S. 49:950 et seq.

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

#### **§4033. Fraud or Material Misrepresentation**

A. Emergency Rule 40 shall not prevent an insurer from cancelling or terminating an insurance policy for fraud or material misrepresentation on the part of the insured.

AUTHORITY NOTE: Promulgated in accordance with Proclamation No. JBE 2020-29, Proclamation JBE 2020-37, R.S. 22:2, R.S. 22:11, and R.S. 22:1961 et seq., R.S. 49:950 et seq.

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

#### **§4035. Exemption from Compliance**

A. Notwithstanding any other provision contained herein, the commissioner may exempt any insurer from compliance with Emergency Rule 40 upon the written request by the insurer setting forth in detail the reasons for the exemption and then only if the Commissioner determines that compliance with Emergency Rule 40 may be reasonably expected to result in said insurer being subject to undue hardship, impairment, or insolvency.

AUTHORITY NOTE: Promulgated in accordance with Proclamation No. JBE 2020-29, Proclamation JBE 2020-37, R.S. 22:2, R.S. 22:11, and R.S. 22:1961 et seq., R.S. 49:950 et seq.

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

#### **§4037. Sanctions for Violations**

A. The commissioner retains the authority to enforce violations of Emergency Rule 40. Accordingly, any insurer enumerated in Emergency Rule 40 or any other entity doing business in Louisiana and/or regulated by the Commissioner who violates any provision of Emergency Rule 40 shall be subject to regulatory action by the Commissioner under any applicable provisions of the Louisiana Insurance Code, Title 22.

AUTHORITY NOTE: Promulgated in accordance with Proclamation No. JBE 2020-29, Proclamation JBE 2020-37, R.S. 22:2, R.S. 22:11, and R.S. 22:1961 et seq., R.S. 49:950 et seq.

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

#### **§4039. Authority**

A. The commissioner reserves the right to amend, modify, alter, extend, or rescind all or any portion of Emergency Rule 40.

AUTHORITY NOTE: Promulgated in accordance with Proclamation No. JBE 2020-29, Proclamation JBE 2020-37, R.S. 22:2, R.S. 22:11, and R.S. 22:1961 et seq., R.S. 49:950 et seq.

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

#### **§4041. Severability Clause**

A. If any section or provision of Emergency Rule 40 or its application to any person or circumstance is held invalid, such invalidity or determination shall not affect other sections or provisions or the application of Emergency Rule 40 to any persons or circumstances that can be given effect without the invalid section or provision or application, and for these purposes the sections and provisions of Emergency Rule 40 and the application to any persons or circumstances are severable.

AUTHORITY NOTE: Promulgated in accordance with Proclamation No. JBE 2020-29, Proclamation JBE 2020-37, R.S. 22:2, R.S. 22:11, and R.S. 22:1961 et seq., R.S. 49:950 et seq.

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

#### **§4043. Effective Date**

A. Emergency Rule 40 shall become effective at 12:01 a.m. on March 26, 2020 and shall continue in full force and effect until expiration on the earlier of 11:59 p.m. on May 12, 2020 or 11:59 p.m. on the date the Governor lifts the

State of Emergency presently in effect, inclusive of any renewal thereof.

AUTHORITY NOTE: Promulgated in accordance with Proclamation No. JBE 2020-29, Proclamation JBE 2020-37, R.S. 22:2, R.S. 22:11, and R.S. 22:1961 et seq., R.S. 49:950 et seq.

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

James J. Donelon  
Commissioner

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