

DECLARATION OF EMERGENCY

Department of Insurance Office of the Commissioner

Emergency Rule 46—Medical Surge-Related Patient Transfers 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 M. Azar II (“Secretary Azar”) declared a public health emergency for the United States to aid the nation’s healthcare community in responding to the coronavirus disease (COVID-19), with such declaration being renewed by Secretary Azar on April 21, 2020, July 23, 2020, October 2, 2020, and January 7, 2021, and renewed by United States Department of Health and Human Services Xavier Becerra on April 15, 2021 and July 19, 2021. The United States Centers for Disease Control and Prevention has declared COVID-19 a worldwide pandemic due to its global effect.

COVID-19 has increased exponentially in Louisiana. Currently, Louisiana remains No. 1 nationwide for the numbers of new COVID-19 cases per capita. Over the past month, the Louisiana Department of Health’s (“LDH”) 7-day average daily count of COVID-19 cases has climbed from approximately 300 cases per day to over 6,000 cases per day. The number of individuals hospitalized with COVID-19 has climbed from 319 to 2,350 over the same span. Six out of nine LDH regions have over 85% of their ICU beds full, and the Greater New Orleans Area region is only five beds away from becoming the seventh. This surge in cases and hospitalizations has occurred much more rapidly than and has exceeded the hospitalization rate of any previous surge in Louisiana. The result has been a dangerous inundation of acute care hospitals throughout the state, with several hospitals reporting that their staffed bed capacity has been or will soon be reached. The Delta variant of COVID-19 has created an imminent peril to the well-being and health of many citizens of Louisiana and threatens the healthcare capability of hospitals and medical facilities to deliver care to these citizens. This imminent peril prompts the promulgation of Emergency Rule 46 pursuant to the specific authority found in R.S.22:1019.2 to ensure that health insurance issuers have adequate networks in place to deliver the necessary care to the citizens of Louisiana.

Emergency Rule 46 is issued to address the statewide acute care hospital capacity crisis caused by the surge in COVID-19 cases. As such, Emergency Rule 46 is issued under the authority of the Commissioner of Insurance for the State of Louisiana, pursuant to R.S.22:11(A), R.S.22:1019.2, and R.S.49:950 et seq.

Accordingly, Emergency Rule 46 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.

The COVID-19 surge has created a dangerous shortage of facility and provider capacity that presents 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 acute care hospitals in heavily affected areas are increasingly being tasked with transferring patients to other area facilities to maximize beds and supplies available to treat COVID-19 patients. The State of Louisiana, through the Louisiana Department of Health, has adopted a public policy supporting the use of health care facilities not traditionally used in the delivery of general acute care to augment the inpatient capacity of acute care hospitals through the acceptance of inpatient transfers that may not otherwise be permissible. In order for this public policy to be implemented safely and effectively and to promote continued network adequacy, it is necessary for health insurance issuers to appropriately cover such post-transfer care. 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 46. Emergency Rule 46 is being issued pursuant to the specific authority found in R.S.22:1019.2.

Title 37

INSURANCE

Part XI. Rules

Chapter 55. Emergency Rule 46—Medical Surge- Related Patient Transfers in Louisiana during the Outbreak of Coronavirus Disease (COVID-19)

§5501. Benefits, Entitlements, and Protections

A. The benefits, entitlements and protections of Emergency Rule 46 shall be applicable to insureds, policyholders, members, subscribers, enrollees and certificate holders who, as of 12:01 a.m. on August 9, 2021 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 R.S.22:11(A), R.S.22:1019.2, and R.S.49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 47:

§5503. Applicability

A. Emergency Rule 46 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 R.S.22:11(A), R.S.22:1019.2, and R.S.49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 47:

§5505. Definitions

A. For purposes of Emergency Rule 46, the following definitions shall apply:

Acute Care Hospital—any facility licensed by the Louisiana Department of Health as a hospital and that provides inpatient medical care and other related services for surgery, acute medical conditions and injury.

Step-Down facility—any health care facility serving as the recipient of inpatient transfers for the purpose of

reducing occupancy of or providing overflow capacity for an acute care hospital during the State of Emergency.

Government-Sponsored Step-Down Facility—any facility serving as the recipient of inpatient transfers for the purpose of reducing occupancy of or providing overflow capacity for an acute care hospital during the State of Emergency, where such services are funded through federal or state appropriation or a combination of both.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11(A), R.S. 22:1019.2, and R.S.49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 47:

§5507. Limited Waiver

A. In any parish or municipality in which daily inpatient bed occupancy at any acute care hospital exceeds 85 percent, the provisions of R.S. 22:1019.2 requiring the maintenance of specialist and primary care provider-to-insured ratios and timely nonemergent access are hereby waived for any health insurance issuer complying with Emergency Rule 46.

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 R.S.22:1019.2, shall be required to comply with the provider-to-insured ratios and timely nonemergent access requirements of 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 R.S.22:11(A), R.S.22:1019.2, and R.S.49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 47:

§5509. Restriction on Authorization of Transfers

A. Health insurance issuers shall not impose prior authorization, utilization, medical necessity, or any related review on the transfer of patients from an acute care hospital to a step-down facility.

B. Health insurance issuers shall not engage in post-service reviews of transfers of patients from acute care hospitals to a step-down facility.

C. Nothing in this Section shall be interpreted to prevent a health insurance issuer from applying its existing utilization review policies to the underlying provision of care when otherwise permissible.

AUTHORITY NOTE: Promulgated in accordance with R.S.22:11(A), R.S.22:1019.2, and R.S.49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 47:

§5511. Coverage of Post-Transfer Inpatient Stay and Services

A. Health insurance issuers shall cover the remainder of the inpatient stay needed after the transfer from an acute care hospital to a step-down facility under terms and at a cost sharing rate no less favorable to the insured than those that would have applied had the insured remained at the acute care hospital.

B. Nothing in this section shall be interpreted to require payment of a particular reimbursement rate to the step-down facility for the remainder of the inpatient stay. The health insurance issuer shall reimburse the step-down facility as provided for by any existing agreement between the health insurance issuer and that step-down facility or through a negotiated rate.

C. Nothing in this Section shall be interpreted to require reimbursement by a health insurance issuer to a government-

sponsored step-down facility where such facility has been fully publicly funded to provide otherwise covered services.

AUTHORITY NOTE: Promulgated in accordance with R.S.22:11(A), R.S.22:1019.2, and R.S.49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 47:

§5513. Intent and Purpose

A. The provisions of Emergency Rule 46 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 R.S.22:11(A), R.S.22:1019.2, and R.S.49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 47:

§5515. Sanctions for Violations

A. The commissioner retains the authority to enforce violations of Emergency Rule 46. Accordingly, any health insurance issuer enumerated in Emergency Rule 46 or other entity doing business in Louisiana and/or regulated by the commissioner who violates any provision of Emergency Rule 46 shall be subject to regulatory action by the commissioner under any applicable provisions of the Louisiana Insurance Code.

AUTHORITY NOTE: Promulgated in accordance with R.S.22:11(A), R.S.22:1019.2, and R.S.49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 47:

§5517. Authority

A. The commissioner reserves the right to amend, modify, alter or rescind all or any portions of Emergency Rule 46. Additionally, the commissioner reserves the right to extend Emergency Rule 46.

AUTHORITY NOTE: Promulgated in accordance with R.S.22:11(A), R.S.22:1019.2, and R.S.49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 47:

§5519. Severability Clause

A. If any section or provision of Emergency Rule 46 is held invalid, such invalidity or determination shall not affect other sections or provisions, or the application of Emergency Rule 46, 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.22:11(A), R.S.22:1019.2, and R.S.49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 47:

§5521. Effective Date

A. Emergency Rule 46 shall become effective on August 9, 2021.

AUTHORITY NOTE: Promulgated in accordance with R.S.22:11(A), R.S.22:1019.2, and R.S.49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 47:

James J. Donelon
Commissioner