

DECLARATION OF EMERGENCY

Department of Insurance Office of the Commissioner

Emergency Rule 35—Healthcare Coverage for Louisiana Families Protection Act (LAC 37:XI.Chapter 35)

The Department of Insurance hereby exercises the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), as further specified by R.S. 22:11.1, and pursuant to the authority granted by R.S. 22:1 et seq., adopts, maintains, and continues in effect Emergency Rule 35, which adopts initial administrative rules pursuant to the Healthcare Coverage for Louisiana Families Protection Act. Emergency Rule 35 became effective December 19, 2019 for a maximum period of one hundred twenty days and shall continue in effect for an additional one hundred twenty days, unless terminated sooner, as allowed under the Administrative Procedure Act.

Emergency Rule 35 is issued pursuant to the authority specified in Act 412 of the 2019 Regular Legislative Session permitting adoption of initial administrative rules without a finding that an imminent peril to the public health, safety, or welfare exists. Emergency Rule 35 will provide predictability and stability for participants in the non-grandfathered individual and small group insurance market in the event the provisions of the Healthcare Coverage for Louisiana Families Protection Act, R.S. 22:1121 et seq., become effective. The adoption of this Emergency Rule which maintains and continues in effect its provisions is necessary to permit issuers to prepare for future requirements while also maximizing the time permitted for relevant legal developments under the framework provided by R.S. 22:1121 et seq.

Therefore, Emergency Rule 35 is reissued and shall apply to all health insurance issuers and health maintenance organizations doing business in Louisiana and/or regulated by the Commissioner of Insurance.

Emergency Rule 35 is available on the Internet at www.lidi.state.la.us and is available for inspection between the hours of 8 a.m. and 4:30 p.m. at the Louisiana Department of Insurance, 1702 N. Third Street, Baton Rouge, LA 70802.

Title 37 INSURANCE Part XI. Rules

Chapter 35. Healthcare Coverage for Louisiana Families Protection Act

§3501. Purpose and Applicability

A. The purpose of Emergency Rule 35 is:

1. To define essential health benefits and required levels of coverage and to establish annual limitations on cost sharing pursuant to R.S. 22:11.1 and 22:1128.

2. To provide for compliance with the remaining provisions of Act 412 of the 2019 Regular Legislative Session.

B. This Emergency Rule applies to all health insurance policies, contracts or certificates and includes all accident and health products and health maintenance organization products that are issued on or after the effective date of this Emergency Rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11.1, and the Administrative Procedure Act, R.S. 49:953(B).

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

§3503. Definitions

A. As used in this Emergency Rule, these words and terms have the following meanings, unless the context clearly indicates otherwise.

AV—the actuarial value of the plan as established by the U.S. Department of Health and Human Services (HHS) for benefit year 2019 and calculable from the AV Calculator developed and made available by HHS for benefit year 2019.

Issuer—health insurance issuer or health maintenance organization.

Health Plan—health insurance policies, contracts or certificates issued by an issuer.

Healthcare Service—services, items, supplies, or drugs for the diagnosis, prevention, treatment, cure, or relief of a health condition, illness, injury, or disease.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11.1, and the Administrative Procedure Act, R.S. 49:953(B).

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

§3505. Essential Health Benefits Package

A. The essential health benefits package required under R.S. 22:1128 means the scope of covered benefits and associated limits of a health plan offered by an issuer that provides at least the ten statutory categories of benefits, as described in paragraph B of this section, and that provides coverage sufficient to meet the benchmark established through the Essential Health Benefits benchmark plan provided by 45 CFR 156.20 et. seq. for health plans offered in the State of Louisiana for the calendar year 2019.

B. As required under R.S. 22:1128, coverage shall include at least the following categories of benefits:

1. ambulatory patient services;
2. emergency services;
3. hospitalization;
4. maternity and newborn care;
5. mental health and substance use disorder services, including behavioral health treatment;
6. prescription drugs;
7. rehabilitative and habilitative services and devices;
8. laboratory services;
9. preventive and wellness services and chronic disease management;
10. pediatric services, including oral and vision care.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11.1, and the Administrative Procedure Act, R.S. 49:953(B).

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

§3507. Levels of Coverage

A. General requirements for levels of coverage. Levels of coverage are determined by the AV of a health plan, with an allowance for a *de minimis* variation as specified in §16407.C.

B. The levels of coverage are:

1. a bronze health plan is a health plan that has an AV of 60 percent;
2. a silver health plan is a health plan that has an AV of 70 percent;
3. a gold health plan is a health plan that has an AV of 80 percent;
4. a platinum health plan is a health plan that has an AV of 90 percent.

C. *De Minimis* Variation. The allowable variation in the AV of a health plan that does not result in a material difference in the true dollar value of the health plan is -4 percentage points and +2 percentage points, except if a bronze health plan either covers and pays for at least one major healthcare service, other than preventive healthcare services, before the deductible or meets the requirements to be a high deductible health plan within the meaning of 26 U.S.C. 223(C)(2), in which case the allowable variation in AV for such plan is -4 percentage points and +5 percentage points.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11.1, and the Administrative Procedure Act, R.S. 49:953(B).

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

§3509. Limits on Cost Sharing

A. The annual limitation on cost sharing shall be that established in the most current published HHS Notice of Benefit and Payment Parameters pursuant to 84 FR 17454 (April 25, 2019) and any successor HHS Notice of Benefit and Payment Parameters

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11.1, and the Administrative Procedure Act, R.S. 49:953(B).

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

§3511. Issuers' Compliance with Act 412 of the 2019 Regular Legislative Session

A. All health insurance issuers and health maintenance organizations are required to comply with Act 412 of the 2019 Regular Legislative Session.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11.1, and the Administrative Procedure Act, R.S. 49:953(B).

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

§3513. Severability

A. If any section or provision of Emergency Rule 35 or the application to any person or circumstance is held to be invalid, such invalidity or determination shall not affect other Sections or provisions or the application of Emergency Rule 35 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 35 and the application to any persons or circumstances are severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11.1, and the Administrative Procedure Act, R.S. 49:953(B).

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

§3515. Effective Date

A. Emergency Rule 35 shall become effective immediately upon signature of the Commissioner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11.1, and the Administrative Procedure Act, R.S. 49:953(B).

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

James J. Donelon
Commissioner