

2021 Regular Session

SENATE BILL NO. 29

BY SENATORS ABRAHAM AND JOHNS

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

INSURANCE COMMISSIONER. Authorizes the commissioner of insurance to take certain actions relative to insurance during a declared emergency. (8/1/21)

1 AN ACT

2 To enact R.S. 22:11(C), relative to the commissioner of insurance; to authorize the
3 commissioner to take certain emergency actions related to insurance; to provide for
4 limitations on these emergency actions; and to provide for related matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. R.S. 22:11(C) is hereby enacted to read as follows:

7 §11. Rules and regulations by commissioner

8 * * *

9 **C.(1) When the governor declares a state of emergency pursuant to R.S.**
10 **29:724 or a public health emergency pursuant to R.S. 29:766, the commissioner**
11 **may issue emergency rules or regulations that address any of the following**
12 **related to insurance policies or health maintenance organization contracts in**
13 **this state:**

14 **(a) Medical coverage relative to each of the following:**

15 **(i) Removal of telehealth and telemedicine access restraints.**

16 **(ii) Suspension of physician credentialing requirements.**

17 **(iii) Expansion of remote access to pharmaceutical drugs.**

1 **(b) Grace periods for payment of premiums and performance of other**
2 **obligations by insurers or insureds. For health and accident insurance and**
3 **health maintenance organizations, the commissioner may implement a grace**
4 **period for a period not to exceed sixty days during which the commissioner shall**
5 **be strictly limited to requiring health insurers to pend all subsequent claims**
6 **until any arrearages are corrected or the product is permissibly cancelled or**
7 **nonrenewed at the end of the grace period. The commissioner may require prior**
8 **notice to providers as a prerequisite for nonpayment of claims. In the event**
9 **arrears are not corrected within the duration of the grace period and the**
10 **product is permissibly cancelled or nonrenewed, a health care provider may**
11 **seek payment for any medical services that were rendered by the health care**
12 **provider but pended by the insurer directly from the insured.**

13 **(c) Temporary postponement of involuntary cancellation or nonrenewal**
14 **by the insurer.**

15 **(2) An action pursuant to Paragraph (1) of this Subsection shall specify**
16 **all of the following:**

17 **(a) The kinds of insurance, as defined in R.S. 22:47, affected.**

18 **(b) The geographic areas to which the emergency rule or regulation**
19 **applies, which may be less extensive but shall not be more extensive than the**
20 **geographic areas in the governor's emergency declaration.**

21 **(c) The effective dates of the emergency rule or regulation, which shall**
22 **not exceed the period of the governor's emergency declaration including any**
23 **extensions or an earlier termination of the state of emergency.**

24 **(3) Any emergency rules or regulations issued by the commissioner**
25 **pursuant to this Subsection shall be subject to legislative oversight in**
26 **accordance with R.S. 49:950, et seq. and all of the following:**

27 **(a) If the commissioner finds that an imminent peril to the public health,**
28 **safety, or welfare requires adoption of a rule upon shorter notice than that**
29 **provided in R.S. 49:953(A) and within five days of adoption states in writing to**

1 the governor of the state of Louisiana, the attorney general of Louisiana, the
2 speaker of the House of Representatives, the president of the Senate, and the
3 office of the state register, the reasons for that finding, the commissioner may
4 proceed without prior notice or hearing or upon any abbreviated notice and
5 hearing that it finds practicable to adopt an emergency rule.

6 (b) The commissioner's statement of the reasons for finding it necessary
7 to adopt an emergency rule shall include specific reasons why the failure to
8 adopt the rule on an emergency basis would result in imminent peril to the
9 public health, safety, or welfare, or specific reasons why the emergency rule
10 meets other criteria provided in this Subsection for adoption of an emergency
11 rule.

12 (c) The commissioner's statement required in this Paragraph shall be
13 submitted to the speaker of the House of Representatives and the president of
14 the Senate at their respective offices in the state capitol by electronic
15 transmission if such means are available. If electronic means are not available,
16 the commissioner's statement shall be submitted to the office of the speaker of
17 the House of Representatives and the president of the Senate in the state capitol
18 by certified mail with the return receipt requested or by messenger who shall
19 provide a receipt for signature. The return receipt, the receipt for signature, or
20 the electronic confirmation receipt shall be proof of receipt of the
21 commissioner's statement by the respective offices.

22 (d) Within sixty days after receipt of the commissioner's statement by the
23 presiding officer of either house for an emergency rule, an oversight
24 subcommittee of that house may conduct a hearing to review the emergency
25 rule and make a determination of whether the emergency rule meets the criteria
26 for an emergency rule and those determinations as provided in R.S.
27 49:968(D)(3). If within that time period an oversight subcommittee finds an
28 emergency rule unacceptable, it shall prepare a written report containing a
29 copy of the proposed rule and a summary of the determinations made by the

1 committee and transmit copies thereof as provided in R.S. 49:968(F)(2).

2 (e) Within sixty days after adoption of an emergency rule, the governor
3 may review the emergency rule and make the determinations as provided in
4 Subparagraph (d) of this Paragraph. If within this time period the governor
5 finds an emergency rule unacceptable, he shall prepare a written report as
6 provided in Subparagraph (d) of this Paragraph and transmit copies thereof to
7 the commissioner and the Louisiana Register no later than four days after the
8 governor makes his determination.

9 (f) Upon receipt by the commissioner of a report as provided in either
10 Subparagraph (d) or (e) of this Paragraph, the rule shall be nullified and shall
11 be without effect.

12 (4) No later than June 30, 2021, the commissioner shall promulgate, in
13 accordance with provisions of the Administrative Procedure Act, rules and
14 regulations to govern the business of insurance in the event of a declaration of
15 emergency. The rules and regulations promulgated by the commissioner shall
16 establish requirements related to insurance policies or health maintenance
17 contracts under the authority granted by Paragraph (1) of this Subsection.

18 (5)(a) Any rule adopted pursuant to the authority granted in
19 Subparagraph (1)(a) of this Subsection and governing medical coverage not
20 specifically enumerated therein shall be presented by the commissioner to the
21 Senate Insurance Committee and House Insurance Committee for review and
22 approval by either committee prior to adoption.

23 (b) Any temporary postponement of cancellation or nonrenewal
24 pursuant to Subparagraph (1)(c) of this Subsection shall not remain in effect
25 beyond sixty days unless presented by the commissioner to the Senate Insurance
26 Committee and House Insurance Committee for review and approval by either
27 committee prior to any extension.

28 (c) The House Committee on Insurance and the Senate Committee on
29 Insurance meeting jointly or separately to consider an emergency rule

- 1 **promulgated pursuant to this Subsection may reject the rule or any provision**
 2 **thereof, in which case the rejected rule or provision shall be nullified and shall**
 3 **be without effect.**

The original instrument was prepared by Thomas L. Tyler. The following digest, which does not constitute a part of the legislative instrument, was prepared by Ann S. Brown.

DIGEST

SB 29 Reengrossed 2021 Regular Session Abraham

Present law authorizes the commissioner of insurance to promulgate rules and regulations necessary to implement the provisions of the Louisiana Insurance Code.

Proposed law authorizes the commissioner to issue certain emergency rules and regulations whenever the governor declares a state or emergency or a public health emergency.

Proposed law provides that the rules and regulations may address any of the following items related to insurance policies or health maintenance organization contracts in the state:

- (1) Medical coverage relative to each of the following:
 - (a) Removal of telehealth and telemedicine access restraints.
 - (b) Suspension of physician credentialing requirements.
 - (c) Expansion of remote access to pharmaceutical drugs.
- (2) Grace periods for payment of premiums and performance of other obligations by insurers or insureds. Authorizes the commissioner to implement a grace period for a period not to exceed sixty days during which the commissioner shall be strictly limited to requiring health insurers pending subsequent claims until any arrearages are corrected or the product is permissibly cancelled or nonrenewed and may require prior notice to providers as a prerequisite for nonpayment of claims at the end of the grace period. Further provides that if arrearages are not corrected and the product is permissibly cancelled or nonrenewed, a health care provider may seek payment for services rendered from the insured.
- (3) Temporary postponement of involuntary cancellation or nonrenewal by the insurer.

Proposed law requires that the commissioner's action specify the kinds of insurance affected, the geographic areas to which the rule or regulation applies which may be less extensive but not more extensive than the geographic area in the governor's declaration, and the effective dates of the emergency rule or regulation are not to exceed the period of the governor's emergency declaration, including any extension or an earlier termination of the state or emergency.

Proposed law requires that any emergency rules or regulations are subject to legislative oversight in accordance with R.S. 49:950, et seq. and all of the following provisions:

- (1) Upon determination by the commissioner that an imminent peril to the public health, safety, or welfare requires adoption of a rule upon shorter notice and within five days of adoption states in writing to the governor, the attorney general, the speaker of the House of Representatives, the president of the Senate, and the office of the state register, the reasons for that finding, then he may proceed without prior notice or

- hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency rule.
- (2) Requires that the reasons for finding it necessary to adopt an emergency rule include specific reasons why the failure to adopt the rule on an emergency basis would result in imminent peril to the public health, safety, or welfare, or specific reasons why the emergency rule meets other criteria for adoption of the rule.
 - (3) Requires the commissioner's statement be submitted to the speaker of the House of Representatives and the president of the Senate at their respective capitol offices by electronic transmission if available. If no electronic means are available, requires the statement be submitted to the office of the speaker of the House of Representatives and the president of the Senate in capitol by certified mail with the return receipt requested or by messenger who shall provide a receipt for signature.
 - (4) Authorizes an oversight subcommittee hearing to review the emergency rule within 60 days after receipt of the commissioner's statement by the presiding officer of either house to determine whether it meets criteria for an emergency rule. Provides that if the oversight subcommittee finds the rule unacceptable it shall prepare a written report to the governor.
 - (5) Provides for gubernatorial review of the emergency rule within 60 days after its adoption. If found unacceptable, the governor is to provide a written report to the commissioner and the Louisiana Register no later than four days his determination.
 - (6) Requires that upon receipt of the report, the rule shall be nullified and shall be without effect.

Proposed law requires promulgation, pursuant to the Administrative Procedure Act, rules and regulations to govern the business of insurance in the event of a declaration of emergency. Provides that the rules establish requirements related to insurance policies or health maintenance contracts under the authority under proposed law.

Proposed law requires that any rule adopted under proposed law governing medical coverage not specifically enumerated be presented by the commissioner to the Senate Insurance Committee and House Insurance Committee for review and approval by either committee prior to adoption.

Provides that any temporary postponement of cancellation or nonrenewal shall not remain in effect beyond 60 days unless presented by the commissioner to the Senate Insurance Committee and House Insurance Committee for review and approval by either committee prior to any extension.

Authorizes the House Committee on Insurance and the Senate Committee on Insurance meeting jointly or separately to consider an emergency rule promulgated under proposed law to reject the rule or any provision thereof, in which case the rejected rule or provision shall be nullified and shall be without effect.

Effective August 1, 2021.

(Adds R.S. 22:11(C))

Summary of Amendments Adopted by SenateCommittee Amendments Proposed by Senate Committee on Insurance to the original bill

1. Adds provisions regarding medical coverage related to removal of telehealth and telemedicine access restraints; suspension of physician credentialing requirements; and expansion of remote access to pharmaceutical drugs.
2. Add provisions as to grace periods for payment of premiums and performance of other obligations as applied to health and accident insurance and HMO's.
3. Provides for temporary postponement of involuntary cancellations or nonrenewal by the insurer.
4. Provides the procedure for the commissioner to issue emergency rules or regulations on a finding of imminent peril to public health, safety, or welfare.

Senate Floor Amendments to engrossed bill

1. Clarifies that the commissioner's power to implement a 60 days or less grace period during a declared emergency is strictly limited to health insurers.
2. Provides that if, during the duration of the grace period, arrearages are not corrected and the product is permissibly cancelled or nonrenewed, a health care provider may seek payment for services rendered from the insured.
3. Makes technical changes.