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REQUIREMENTS FOR HOSPITAL INDEMNITY OR OTHER FIXED INDEMNITY INSURANCE PLANS

On January 24, 2013, the U.S. Department of Labor, the U.S. Department of Health and Human Services, and the U.S. Department of the Treasury (collectively "federal departments") issued guidance regarding hospital indemnity or other fixed indemnity insurance plans.[1] These health insurance plans are considered "excepted benefits" and, therefore, not subject to requirements of the Patient Protection and Affordable Care Act ("ACA" or "Affordable Care Act"). 42 U.S.C. § 300gg–91 (2013). On May 27, 2014, the federal departments issued a final rule entitled "Patient Protection and Affordable Care Act: Exchange and Insurance Market Standards for 2015 and Beyond." 79 Fed. Reg. 30240 [hereinafter "market rules"]. These market rules and subsequent guidance establish conditions for the sale of hospital indemnity or other fixed indemnity plans in the individual market.[2] This Bulletin explains the impact of the federal departments' market rules and guidance in Nevada.

The market rules and this Bulletin apply to hospital indemnity or other fixed indemnity insurance policies sold in the individual market, but do not apply to any other type or category of insurance that is listed separately as excepted benefits in the Public Health Service Act,[3] regardless of whether benefits under such coverage are paid as a fixed dollar amount.

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[1] U.S. Dep't of Health & Human Serv., Ctr. For Consumer Info. & Ins. Oversight, Ctr. For Medicare & Medicaid Serv., Affordable Care Act Implementation FAQs – Set 11 (Jan. 24, 2013), http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs 11.html (last visited Dec. 20, 2013).

[2] On December 31, 2013, the Commissioner of Insurance issued Bulletin 13-012 to provide guidance to affected carriers and set forth a Schedule of Compliance.

[3] *See* 42 U.S.C. § 300gg–91(c) (2013) (listing, e.g., disability income, specified disease insurance, and accident insurance as excepted benefits).

In the market rules and related guidance, the federal departments have established the following conditions for a hospital indemnity or other fixed indemnity insurance policy sold in the individual market:

1. The benefits are provided only to the individuals who attest, in their hospital indemnity or other fixed indemnity insurance application, that they have other health coverage that is considered minimum essential coverage within the meaning of 26 U.S.C. § 5000A(f);
2. There is no coordination between the provision of benefits and an exclusion of benefits under any other health coverage;
3. The benefits are paid in a fixed dollar amount per period hospitalization or illness and/or per service regardless of the amount of expenses incurred and without regard to the amount of benefits provided with respect to the event or service under any other health coverage; and
4. A notice is displayed prominently in the application materials in at least 14-point font that has the following language:

   THIS IS A SUPPLEMENT TO HEALTH INSURANCE AND IS NOT A SUBSTITUTE FOR MAJOR MEDICAL COVERAGE. LACK OF MAJOR MEDICAL COVERAGE (OR OTHER MINIMUM ESSENTIAL COVERAGE) MAY RESULT IN AN ADDITIONAL PAYMENT WITH YOUR TAXES.

Policies Issued on or After May 1, 2015

For individual hospital indemnity or other fixed indemnity policies issued with an effective date beginning on or after May 1, 2015, the insurer must include in the initial insurance application a notice and written attestation that the purchaser has minimum essential coverage as defined by the market rules and subsequent guidance. This is a one-time notice and attestation requirement. The insurer shall not be required to confirm continuous minimum essential coverage by the purchaser.

It is recommended that the following attestation clause be placed above the signature line:

> I hereby attest that I have major medical health insurance or Medicare that meets the requirements of minimum essential coverage as defined by the Affordable Care Act.

Additionally, federal guidance requires that the following notice be displayed prominently in the application materials in at least 14-point font:

> THIS IS A SUPPLEMENT TO HEALTH INSURANCE AND IS NOT A SUBSTITUTE FOR MAJOR MEDICAL COVERAGE. LACK OF MAJOR MEDICAL COVERAGE (OR OTHER MINIMUM ESSENTIAL COVERAGE) MAY RESULT IN AN ADDITIONAL PAYMENT WITH YOUR TAXES.

Policies Issued Before May 1, 2015

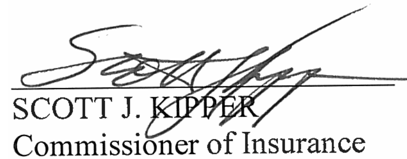
- **Policies Requiring a Renewal Application**: For individual hospital indemnity or other fixed indemnity policies issued with an effective date before May 1, 2015, the same one-time notice and attestation requirement applies to the first renewal application with an effective date on or after October 1, 2016. Alternatively, the carrier has the option to provide the notice and collect the attestation at any earlier date.

- **Policies Not Requiring a Renewal Application**: For individual hospital indemnity or other fixed indemnity policies issued with an effective date before May 1, 2015, that do not require an application as a condition of renewal, but are guaranteed renewable or non-cancellable (with the only condition for renewal being timely payment of premium), the one-time notice and attestation is not required. However, these policies are subject to the one-time notice and attestation requirement applicable to policies effective on or after May 1, 2015, if an insured is required for any reason to fill out a new application form. As denoted in the market rules, the notice and attestation are only required on an application form. However, no later than October 1, 2016, the carrier shall send notice to each insured who was not given notice at the point of sale, in clear, conspicuous, and ordinary language, that the hospital or other fixed indemnity insurance does not meet the minimum essential coverage requirements of the ACA.

It is recommended that carriers use language substantially similar to the following notice:

> THIS INSURANCE POLICY DOES NOT MEET THE AFFORDABLE CARE ACT'S REQUIREMENT THAT YOU MAINTAIN MINIMUM ESSENTIAL COVERAGE, ALSO KNOWN AS MAJOR MEDICAL INSURANCE. FAILURE TO MAINTAIN MINIMUM ESSENTIAL COVERAGE MAY RESULT IN AN ADDITIONAL PAYMENT WITH YOUR TAXES. THIS INSURANCE POLICY WILL REMAIN IN FORCE AS LONG AS YOU CONTINUE TO PAY YOUR PREMIUMS.

For questions or clarification with regard to this Bulletin, please contact the Life & Health Section at (888-872-3234) or insinfo@doi.nv.



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