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Bulletin 13-06

TO: All Insurance Carriers Writing Health Coverage in the State of Iowa

FROM: Nick Gerhart, Iowa Insurance Commissioner

RE: Hospital Indemnity and Other Fixed Indemnity Policies-Technical Guidance

Date: November 27, 2013

On January 24, 2013, in a published Frequently Asked Questions (FAQ) document (Affordable Care Act Implementation, FAQ Part XI, available online at <http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/>) the U.S. Department of Labor, the U.S. Department of Health and Human Services, and the U.S. Department of the Treasury (hereinafter collectively called “the federal departments”) states that hospital indemnity or other fixed indemnity insurance policies under a group health plan provides excepted benefits only when the benefits are paid as a fixed dollar amount per day or other period of hospitalization or illness regardless of the amount of expenses incurred, among other requirements. Generally, most state insurance regulators have not required strict adherence to the fixed dollar amount per period as now required in the above referenced FAQ because that requirement was not part of 42 USC § 300gg-21 as enacted under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA). However, the requirement is contained in the final rule implementing portions of HIPAA and made effective on July 1, 2005, and codified at 45 CFR 146.145.

Historically, state insurance regulators have been the primary enforcers of the relevant provisions of HIPAA and state regulators remain the primary enforcers of these provisions following the passage of the federal Affordable Care Act. In order to bring health insurance issuers and health maintenance organizations (hereinafter collectively called “health insurance issuers”) in Iowa into compliance with the provisions of HIPAA as interpreted by the federal departments in the previously mentioned FAQ, the Iowa Insurance Division (IID) hereby gives notice to all health insurance issuers that strict compliance with the federal departments’ interpretation in the FAQ will be enforced for all hospital indemnity or other fixed indemnity policies that are issued on or after January 1, 2014. Health insurance issuers are encouraged to submit compliant form filings for 2014 compliant forms to the IID as soon as practicable. A compliant form filing is a filing made pursuant to the Iowa Insurance Code §§ 509.6 and 514A.13 and Iowa Administration Code 191-35.7. A 2014 compliant form is a form that is in compliance with 42 USC § 300gg-21 and federal regulations.

This bulletin is applicable to hospital and other fixed indemnity policies issued or delivered in both the individual market and group market, as the provisions of the HIPAA regulations defining hospital or other fixed indemnity policies are applicable to both the individual market and the group market. The

HIPAA regulation governing such policies in the individual market, which cross-references the provisions of the group market regulation, is codified at 45 CFR 148.220.

TRANSITIONAL PROVISION

To aid the hospital indemnity and fixed indemnity market in coming into compliance with the provisions of HIPAA as interpreted by the federal departments and to minimize market disruptions, health insurance issuers shall follow the following transitional method as protection from further enforcement and penalty:

Any hospital or other fixed indemnity policies that would otherwise be subject to strict adherence to the FAQ but which policies were issued and in force prior to January 1, 2014, may remain in effect at the option of the insured or health insurance issuer, through December 31, 2014. Where group policies are issued and in force prior to January 1, 2014, certificates may continue to be issued to new enrollees on or after January 1, 2014 until the group policy anniversary date following the date of approval of the carrier's 2014 compliant form. Additionally, strict compliance with the federal departments' interpretation in the FAQ will not be enforced against any hospital indemnity or other fixed indemnity policies that are issued on or after January 1, 2014 on a policy or certificate that is not a 2014 compliant form if a 2014 compliant form was filed with the IID and is still pending approval.

DISCLOSURE

Furthermore, to protect consumers from the possibility of confusion or inadvertent failure to satisfy the Affordable Care Act's minimum essential coverage requirement, all health insurance issuers with hospital or other fixed indemnity policies currently in force and effect or that become effective prior to, on, or after January 1, 2014, shall notify each insured under any such policies via a clear, conspicuous, and understandable notice that such policies do not constitute comprehensive health insurance coverage (often referred to as "major medical coverage") and that such policies do not satisfy the requirement of minimum essential coverage under the Affordable Care Act. This notice shall be issued no later than February 1, 2014. The disclosure requirement is applicable to all hospital and other fixed indemnity policies issued or delivered in both the individual market and group market regardless of the safe harbor provision utilized by health insurance carriers.

Nothing contained within this bulletin shall be construed as a determination regarding the classification of hospital indemnity or fixed indemnity policies for the purposes of the reporting or reconciliation of medical loss ratios.

For questions or clarification with regard to this Bulletin, please contact Becky Blum at becky.blum@iid.iowa.gov.

Nick Gerhart
Iowa Insurance Commissioner