

LIFE & HEALTH

**Advisory Memorandum on Hospital Indemnity or Other Fixed Indemnity Policies
In the Individual Market**

To: All Insurers of Hospital Indemnity or Other Fixed Indemnity Policies in the Individual Market¹

From: Life and Health Division

Date: November 30, 2016

The Life & Health Division (“L&H”) of the North Carolina Department of Insurance (“NCDOI”) issues this advisory memorandum to provide guidance to insurers offering hospital indemnity or other fixed indemnity products in the individual market² in North Carolina. These health insurance plans are considered “excepted benefits” and therefore, not subject to requirements of the Patient Protect and Affordable Care Act (“ACA” or “Affordable Care Act”³).

On May 27, 2014, the U.S. Department of Labor, the U.S. Department of Health and Human Services, and the U.S. Department of Treasury (collectively “federal departments”) issued the final rule entitled “Centers for Medicare & Medicaid Services (CMS) issued federal regulations that included new requirements for fixed indemnity insurance to be considered an excepted benefit in the individual market.⁴ One of those requirements provided that individuals who purchase fixed indemnity insurance must attest, in the fixed indemnity insurance application, that they had other health coverage that is minimum essential coverage. Another requirement provided that a notice be displayed prominently in the application materials stating that the fixed indemnity policy was a supplement to health insurance and not a substitute for major medical coverage.

On October 14, 2016 a final stipulation in the case of Central United Life Insurance Company (“Central United”), et al. v Sylvia Matthews Burwell, et al before Hon. Royce C. Lamberth in the United State District Court for the District of Columbia was issued which “declared that the restrictions⁵ on the sales and marketing of fixed indemnity insurance plans set for at 45 CFR § 148.220 are invalid and unenforceable.” Further a judgement in favor of the plaintiffs (Central United, et al.) was entered on all counts.

¹ As defined in 45 CFR §144.103

² Including individual association group plans.

³ 42 U.S.C. § 300gg-91 (2012)

⁴ Patient Protection and Affordable Care Act; Exchange and Insurance Market Standards for 2015 and Beyond (May 27, 2014), 79 FR 30240.

⁵ “...insofar as those restrictions prohibit or penalize the sale of such plans to anyone other than persons who attest that they have other health coverage that is “minimum essential coverage” within the meaning of §5000A(f) of the Internal Revenue Code.”

Effectively immediately, insurers who have a previously approved application form to be used to purchase hospital indemnity or other fixed indemnity insurance plans in the individual market in NC that included the federal attestation may remove that attestation from such application. NCDOI will not require the refiling and new approval of the amended application form, as long as the insurer complies as follows:

1. Submits a “Note To Reviewer” on the applicable SERFF filing containing the APPROVED application form, indicating the company is removing the attestation from the form pursuant to the administrative process outlined in this guidance.
2. Identifies in the “Note to Reviewer” the application form by its NC approved form number, and the company attests the form number is not changing due to this administrative change.

L&H staff will acknowledge the company’s action with a “Note to Filer”.

Insurers should note the following:

- Insurers are asked to submit the Note to Reviewer” no later than February 1, 2017.
- Insurers do NOT have to await NCDOI’s acknowledgement before utilizing the administratively changed application form(s).
- Insurers who decide to change the form number on an amended application form or who wish to obtain a separate formal approval of the revised form shall submit the revised application form(s) for prior approval pursuant to G.S. §58-3-150(a) in one or more new SERFF submissions. Such filings will be processed according to the Division’s normal processes. No special handling of such submissions is anticipated.
- Insurers with pending or new submissions of other fixed indemnity related forms for approval should indicate in the submission when the company exercised this administrative procedure to revise its previously approved application forms pursuant to this memorandum and/or submit information identifying other SERFF filings containing the approval of the revised application.

Questions about this memorandum should be addressed to Jean Holliday, Regulatory Project Manager/Health Care Reform Supervisor, at jean.holliday@ncdoi.gov or 919-807-6061.