COMMISSIONER OF SECURITIES AND INSURANCE
Troy Downing
Commissioner

Office of the
Montana State Auditor

ADVISORY MEMORANDUM

To: ALL INTERESTED PERSONS

From: TROY DOWNING
Commissioner of Securities and Insurance, Montana State Auditor

Date: 08/02/2024

Advisory Memorandum Regarding New Federal Rules Governing Hospital Indemnity and Other Independent, Non-coordinated, Fixed-Indemnity Coverage

Background

On March 28, 2024, the Departments of Health and Human Services, Labor, and Treasury released final rules regarding hospital indemnity and other independent and non-coordinated fixed-indemnity policies.[1] These new federal rules revise the consumer notice currently required in the individual market and establish a new requirement to provide a consumer notice in the group market.

Fixed-indemnity policies are excepted benefits not subject to certain federal consumer protection mandates, such as the ACA lifetime and annual dollar limit rules, the ACA preventative services mandate, the HIPAA portability rules, and the Mental Health Parity and Addiction Equity Act (MHPAEA). To fall under the excepted benefits exception: (1) the benefits must be provided under a separate policy, certificate, or contract of insurance; (2) there can be no coordination between the provision of such benefits and any exclusion of benefits under any group health plan maintained by the same plan sponsor; and (3) the benefits must be paid for an event without regard to whether benefits are provided with respect to such event under any group health plan maintained by the same plan sponsor or, with respect to individual coverage, under any health insurance coverage maintained by the same health insurance issuer.[2] 89 FR 23342-43, 42 USC § 300gg-21(c)(2).

[1] 89 FR 23338 (finalizing amendments to, pertinent here, 45 CFR §§ 146.145, 148.220; 29 CFR § 2590.732.). *See* https://www.federalregister.gov/documents/2024/04/03/2024-06551/short-term-limited-duration-insurance-and-independent-noncoordinated-excepted-benefits-coverage).
See also, https://www.cms.gov/newsroom/fact-sheets/short-term-limited-duration-insurance-and-independent-noncoordinated-excepted-benefits-coverage-cms.

[2] To be considered an excepted benefit in the group market, the coverage must pay a fixed dollar amount per day (or other period) of hospitalization or illness regardless of the amount of expenses incurred. In contrast, in the individual market, hospital indemnity and other fixed indemnity insurance must also pay

The required notices highlight the differences between excepted benefits coverage and comprehensive coverage. The notices are intended to ensure that consumers are aware of the limitations of the coverage and do not mistakenly purchase it as an alternative to, or replacement for, comprehensive health insurance coverage.

Guidance

In summary, the new federal rules for issuers of hospital indemnity and other independent, non-coordinated fixed-indemnity policies include the following requirements:

A. To be considered excepted benefits, hospital and other fixed-indemnity policies must be independent, non-coordinated, and must pay benefits regardless of the amount of expense a consumer incurs. 26 CFR Part 54, 29 CFR Part 2590, 45 CFR Parts 146 and 148, 89 FR 23342

B. For group coverage, the attached disclosure notice (Exhibit A) must be provided to participants for plan years beginning on or after January 1, 2025.

   The plan or issuer must display the attached notice (Exhibit A) prominently, in at least 14-point type, on the first page (in either paper or electronic form, including on a website) of any marketing, application, and enrollment materials that are provided to participants at or before the time participants are given the opportunity to enroll or reenroll in the coverage.[3]

C. For individual coverage periods beginning on after January 1, 2015, and prior to January 1, 2025, issuers must continue to provide and display prominently in the application materials, in at least 14-point type, the following disclosure notice: [4]

   "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."

D. For individual coverage periods beginning on or after January 1, 2025, the attached disclosure notice (Exhibit A) must be provided. [5]

   The issuer must display the attached notice (Exhibit A) prominently, in at least 14-point type, on the first page (in either paper or electronic form, including on a website) of any marketing, application, and enrollment or reenrollment materials that are provided at or before the time an individual has the opportunity to apply, enroll or reenroll in coverage, and on the first page of the policy, certificate, or contract of insurance.

---

benefits in a fixed dollar amount, regardless of the amount of expenses incurred, to be considered an excepted benefit, but is permitted to pay on either a per period of hospitalization or illness, or a per-service basis (for example, $100/day or $50/visit). 89 FR 23342.

[3] If a plan or issuer provides the required notice to a participant, the obligation to provide the notice is satisfied for both the plan and issuer. 89 FR 23412-13, 23416, 23419.

[4] 45 CFR 148.220(b)(4)(iv), revised as of October 2, 2023. 89 FR 23386.

[5] The content of the disclosure notices required for both group and individual coverages, effective January 1, 2025, are identical (Exhibit A). 89 FR 23412, 23415, 23419.

Form Filing Instructions

Additional SERFF filings will be required to ensure compliance with the new federal rules and this advisory memo. To facilitate review:

- The general information section should state that the filing is being made to comply with the new federal rules and this advisory memo.
- Under the supporting documentation tab include a redline document of the changes.
- Reference the prior SERFF tracking number for the previously approved form.

This advisory memorandum is informational only and does not enlarge, delimit, or otherwise modify any requirements of applicable law or in any way limit the authority of CSI under applicable law. CSI encourages interested persons to consult with independent legal counsel for guidance on the application of law to any particular circumstances.

IMPORTANT: This is a fixed indemnity policy,
NOT health insurance

This fixed indemnity policy may pay you a limited dollar amount if you're sick or hospitalized. You're still responsible for paying the cost of your care.

- The payment you get isn't based on the size of your medical bill.
- There might be a limit on how much this policy will pay each year.
- This policy isn't a substitute for comprehensive health insurance.
- Since this policy isn't health insurance, it doesn't have to include most Federal consumer protections that apply to health insurance.

Looking for comprehensive health insurance?

- **Visit HealthCare.gov** or call **1-800-318-2596** (TTY: 1-855-889-4325) to find health coverage options.
- To find out if you can get health insurance through your job, or a family member's job, contact the employer.

Questions about this policy?

- For questions or complaints about this policy, contact your State Department of Insurance. Find their number on the National Association of Insurance Commissioners' website (naic.org) under "Insurance Departments."
- If you have this policy through your job, or a family member's job, contact the employer.

Exhibit A