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Bulletin 13-07

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-Market Conduct

Date: November 27, 2013

The Federally Facilitated Marketplace under the Patient Protection and Affordable Care Act (“ACA”) was announced as open for operations on October 1, 2013. Fundamental to the provisions of the ACA is the requirement that health insurance plans contain “minimum essential coverage.” Health insurance carriers offering hospital indemnity and other fixed indemnity policies have requested guidance on the impact of these requirements.

Under federal law, hospital indemnity and other fixed indemnity plans are exempt from many of the requirements of the ACA. However, on January 24, 2013, in a published Frequently Asked Questions (FAQ) the U.S. Department of Labor, the U.S. Department of Health and Human Services, and the U.S. Department of the Treasury (“the federal departments) announced 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 (This FAQ may be found at Affordable Care Act Implementation, FAQ Part XI, available online at <http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/>) Previously, most state insurance regulators have not required strict adherence to the fixed dollar amount per period because that requirement was not explicitly found in 42 USC § 300gg-21 as enacted under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA). However, the requirement is attributed by the federal departments as found in the final rule implementing portions of HIPAA and made effective on July 1, 2005, and codified at 45 CFR 146.145. As this rule now defines the scope of the exemption from numerous provisions of the ACA, the rule’s meaning has taken on greater significance.

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.

SALES AND MARKETING DISCLOSURE

This bulletin is intended to remind health insurance carriers that Iowa Insurance Code § 507B.4 prohibits sales presentations which misrepresent the benefits, advantages, conditions or terms of an insurance policy. The Division has begun receiving complaints from consumers whom have responded to new marketing materials and advertisements designed to associate with the implementation of the federal Marketplace, but were then led to a telephone sales presentation during which a sales person offered a group membership and the bundling of various hospital plans, fixed indemnity plans and medical, dental or pharmacy discount cards. The bundling was designed to create the impression the consumer was purchasing comprehensive health coverage.

Health insurers are reminded that every individual within the insurer's sales and marketing plan who is describing the benefits, coverages, advantages, exclusions or price of a policy or plan to an Iowa resident must be licensed as an insurance producer in the state of Iowa. Any insurer who fails to use reasonable diligence to prevent, detect and avoid unlicensed activity within its sales and marketing systems may be subject to sanctions.

To protect Iowa consumers from the possibility of confusion or inadvertent failure to satisfy the Affordable Care Act's "minimum essential coverage" requirement, all health insurance issuers offering, selling or negotiating hospital plans or other fixed indemnity plans by using a sales and marketing plan, that includes a telephone sales presentation by any producer who does not have an established insurance business relationship with the consumer, shall require in its agency contract that the producer disclose to the consumer promptly at the beginning of the call, and in a clear and conspicuous manner, that the policies and plans being offered **do not** constitute comprehensive health insurance coverage; that such policies do not satisfy the requirement of minimum essential coverage required under the Affordable Care Act; and that by purchasing the policy or plans, the consumer would not be complying with the legal requirement to obtain qualified coverage.

Furthermore, all health insurers 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 in 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" required 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.

For questions or clarification with regard to this Bulletin, please contact Doug Ommen at doug.ommen@iid.iowa.gov.

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Iowa Insurance Commissioner