



Pete Ricketts, Governor

## Cover Sheet

CB-132 (Amended)  
November 29, 2016

### BULLETIN

#### **SUBJECT: HOSPITAL INDEMNITY OR OTHER FIXED INDEMNITY POLICIES**

This guidance document is advisory in nature but is binding on an agency until amended by such agency. A guidance document does not include internal procedural documents that only affect the internal operations of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules and regulations made in accordance with the Administrative Procedure Act. If you believe that this guidance document imposes additional requirements or penalties on regulated parties, you may request a review of the document.

Contents of CB-132 (Amended) follow on next page.

Bruce R. Ramge, Director

**Department of Insurance**

941 O Street, Suite 400  
PO Box 82089

Lincoln, Nebraska 68501-2089

OFFICE 402-471-2201 FAX 402-471-4610  
[www.doi.nebraska.gov](http://www.doi.nebraska.gov)



November 29, 2016  
CB-132 (Amended)

## BULLETIN

### **SUBJECT: HOSPITAL INDEMNITY OR OTHER FIXED INDEMNITY POLICIES**

This bulletin is directed to all insurers writing hospital indemnity policies or other fixed indemnity policies sold in the individual market in Nebraska. It is intended to provide guidance regarding the Department of Insurance's implementation and enforcement of the recently released rules and guidance from the federal government regarding hospital indemnity or other fixed indemnity policies. The guidance originates from the Centers for Medicare and Medicaid Services' (CMS) final rule on the Exchange and Insurance Market Standards for 2015 and Beyond issued on May 27, 2014, and other subsequent formal and informal guidance by CMS.

The federal rule and this bulletin apply only to hospital indemnity or other fixed indemnity insurance policies sold in the individual market. Neither of them apply to any other type or category of insurance that are listed separately as excepted benefits in the federal Public Health Service Act; e.g., disability income, specified disease insurance, accident insurance, etc., regardless of whether benefits under such coverage are paid as a fixed dollar amount.

In the federal rule (45 C.F.R. § 148.220(4)(i)-(iv)) and subsequent guidance, the federal government established conditions for a hospital indemnity or other fixed indemnity insurance policy sold in the individual market. (Section (i) is underlined because subsequent litigation and the amendment of this Bulletin are focused on that portion of the rule.)

(i) The benefits are provided only to 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. Code §5000A(f);

(ii) There is no coordination between the provision of benefits and an exclusion of benefits under any other health coverage;

(iii) The benefits are paid in a fixed dollar amount per period of 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

(iv) A notice is displayed prominently in the application materials in at least 14-point type 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."

After the federal rule was issued, the rule was challenged in the United States District Court for the District of Columbia in *Central United Life Ins. Co. v. Burwell*, Case No. 1:14-cv-01954. On October 14, 2016, a final order was entered in *Central United Life*, which contains the following statement:

DECLARED that the restrictions on the sales and marketing of fixed indemnity insurance plans set forth at 45 C.F.R. § 148.220 are invalid and unenforceable 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.

The effect of the *Central United Life* case is that the attestation required under 45 C.F.R. § 148.220(4)(i) is void and no longer required. The remaining requirements under (ii), (iii) and (iv) remain in effect.

#### **New Sales Effective On or After January 1, 2015**

For policies issued with an effective date beginning on or after January 1, 2015, 45 C.F.R. § 148.220(4)(iv) requires that the following notice must be displayed prominently in the application materials in at least 14-point type: "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 January 1, 2015**

For policies issued with an effective date before January 1, 2015, that do not require an application as a condition of renewal but that are guaranteed renewable or noncancellable and only condition renewal on the timely payment of premiums, the aforementioned notice requirement does not apply. As denoted in the federal guidance, the federally mandated language is only required on an application form. If an insured is required for any reason to fill out a new application form, the federal notice at 45 C.F.R. § 148.220(4)(iv) must be included.

Questions about this bulletin may be directed to Martin Swanson, Administrator for Health Policy, at 402-471-4648 or at [martin.swanson@nebraska.gov](mailto:martin.swanson@nebraska.gov).



Bruce R. Ramge  
Director