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REGULATORY BULLETIN 2015-03[1]

To: All Life and Disability Insurers; Health Care Services Organizations; Hospital, Medical, Dental and Optometric Service Corporations; Professional Associations; and All Other Interested Parties.

From: Germaine L. Marks
Director

Date: March 23, 2015

Re: Excepted Benefits in the Arizona Individual Health Insurance Market.

The purpose of this Bulletin is to highlight (underscore) the criteria for certain health insurance benefits in the individual market to be exempt ("excepted") from the market reforms of the Affordable care Act ("ACA"), and from corresponding regulations promulgated by the Department of Health and Human Services ("HHS") in Title 45 of the Code of Federal Regulations ("45 CFR"). In particular, this Bulletin addresses recent changes to 45 CFR §148.220 (2014), offers guidance regarding three issues raised by the amendment of §148.220, and provides sample language to meet the requirements of §148.220.

BACKGROUND

In 1996, Congress amended the Public Health Service Act ("PHSA") to create the Health Insurance Portability and Accountability Act ("HIPAA"). HIPAA exempted certain benefits from its requirements and named these the "excepted benefits." HIPAA §2791. In 2010, Congress amended the PHSA again and created the Patient Protection and Affordable Care Act ("PPACA"), which continued the exception for certain benefits. PHSA §§2722, 2763, 2791.

As in HIPAA and PPACA, 45 CFR §148.220 (2009) placed excepted benefits in several categories: 1) those excepted in all circumstances (accident-only including accidental death and dismemberment, disability income, general and automobile liability, liability supplement, worker's compensation, automobile medical payment, credit-only, and on-site medical clinic coverage); 2) limited scope dental only or vision only; 3) long-term care; 4) specified disease or illness (e.g., cancer policies), or hospital indemnity or other fixed indemnity insurance paid on a per period

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basis (e.g., $100/day); 5) Medicare Supplement insurance; 6) CHAMPUS supplemental programs; and 7) supplemental coverage provided to coverage under a group health plan.

However, on May 27, 2014, the Centers for Medicare and Medicaid Services ("CMS") amended 45 CFR §148.220. The amended rule: 1) distinguishes specified disease products from hospital indemnity or other fixed indemnity products; 2) emphasizes that hospital indemnity or other fixed indemnity policies must be supplemental to, and not a replacement for, minimum essential coverage; and 3) establishes new criteria for hospital indemnity or other fixed indemnity policies to be excepted from the market reforms of the ACA and its implementing regulations. §148.220(b)(3)-(4).

Under amended §148.220(b)(4)(i)-(iv), a hospital indemnity or other fixed indemnity policy is excepted only if:

(i) the benefits are provided only to individuals who attest ("Attestation"), in their fixed indemnity insurance application, that they have other health coverage that is minimum essential coverage;[2]

(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 (for example, $100/day or $50/visit) 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 COVERAGE0 MAY RESULT IN AN ADDITIONAL PAYMENT WITH YOUR TAXES."[3]

In letters dated August 27, 2014 and October 8, 2014, addressed to the National Association of Insurance Commissioners ("NAIC"), CMS provided safe harbor, until May 1, 2015, from enforcement of these requirements while issuers await regulatory review of amendments. The safe harbor applies to all new hospital indemnity or other fixed indemnity policies issued January 1, 2015 or later, if: 1) the state requires prior approval of amendments to fixed indemnity application materials; 2) the issuer filed the amendments by October 1, 2014; and 3) the issuer complies with all other applicable requirements for the hospital indemnity or other fixed indemnity product to be excepted.

[2] The individual must have minimum essential coverage within the meaning of section 5000A(f) of the Internal Revenue Code, or be treated as having minimum essential coverage due to their status as a bona fide resident of any possession of the United States pursuant to Internal Revenue Code section 5000A(f)(4)(B). 45 CFR §148.220(b)(4)(i).

[3] The requirement of paragraph (b)(4)(iv) (Notice) of this section applies to all hospital or other fixed indemnity insurance policy years beginning on or after January 1, 2015, and the requirement of paragraph (b)(4)(i) (Attestation) of this section applies to hospital or other fixed indemnity insurance policies issued on or after January 1, 2015, and to hospital or other fixed indemnity policies issued before that date, upon their first renewal occurring on or after October 1, 206. 45CFR §148.220(b)(5)(v).

FILING REQUIREMENTS

This Section provides guidance related to three issues raised by amended rule §148.220: 1) Attestation and Notice for new applications; 2) Attestation for in-force business (renewable products and guaranteed renewable or non-cancellable products); and 3) filing of "hybrid" products (hospital indemnity or other fixed indemnity coverage commingled with specified disease benefits).

Attestation and Notice for New Applications on or after January 1, 2014

For hospital indemnity or other fixed indemnity policies issued on or after January 1, 2015, amended rule §148.220(b)(4) requires: 1) Notice to the applicant – within the application materials – that the hospital indemnity or other fixed indemnity coverage is not minimum essential coverage; and 2) Attestation (one-time) from the applicant - in this application - that he or she has other minimum essential coverage. §148.220(b)(4)(i), (iv), (v).

Appendix A below provides sample language for issuers of hospital indemnity or other fixed indemnity coverage to use in applications for coverage effective January 1, 2015 or later. Use of the sample language – and the suggested position of the Notice and Attestation within the application – will expedite the review and approval process.

Attestation for In-Force Business effective before January 1, 2015

For hospital indemnity or other fixed indemnity policies effective before January 1, 2015, the amended rule requires a one-time Attestation from each enrollee that he or she has other minimum essential coverage.

In-Force Renewable Products:
For in-force renewable products issued before January 1, 2015, issuers must obtain a one-time Attestation from each enrollee indicating that the enrollee has other minimum essential coverage. §148.220(b)(4)(i), (v). This must occur in the renewal application for the enrollee's first renewal on or before October 1, 2016. §148-220(b)(4)(v).

Appendix B below provides sample language for obtaining the one-time attestation on renewal applications from enrollees who obtained coverage in a renewable product before January 1, 2015. Use of the sample language in the renewal application will expedite the review and approval process.

In-Force Guaranteed Renewable or Non-Cancellable Products:
Unlike renewal products, guaranteed renewable and non-cancellable products do not require renewal applications. Thus, issuers may meet the §148.200(b)(4)(i) & (v) in-force business Attestation requirement by providing an Attestation Notice to the enrollee before the enrollee's renewal date, by no later than October 1, 2016. Payment of premium after receipt of the Attestation Notice will meet the one-time in-force business Attestation requirement for enrollees in guaranteed renewable and non-cancellable products.

Appendix C below provides sample language for Attestation Notice to enrollees in guaranteed renewable and non-cancellable products. Use of the sample language will expedite the review and approval process. The guaranteed renewable or non-cancellable enrollee's continued payment of premium after receipt of the Attestation Notice will meet the §148.220(b)(4)(i) & (v) requirement for one-time Attestation for products issued before January 1, 2015.

Hybrid Products: Amended rule §148.220(b)(4) adds exception criteria only to hospital indemnity or other fixed indemnity products. The amended rule distinguishes specified disease or illness products for these new requirements. §148.220(b)(3)-(4). However, if an issuer files a product with ADOI that commingles hospital indemnity or other fixed indemnity coverage with specified disease benefits, the issuer's filing must meet the greater except3ed benefits standards required by the amended §148.220(b)(4). As above, the criteria for exception include: 1) Attestation of other minimum essential coverage; 2) lack of coordination of benefits; 3) payment in fixed dollar amount per period or per service without regard to benefits under any other health coverage; and 4) Notice that the policy does not provide minimum essential coverage.

Please direct any questions related to this Regulatory Bulletin to Sheri Shudde at (602) 364-2143 or sshudde@azinsurance.gov.

APPENDIX A

SAMPLE LANGUAGE AND POSITION ON APPLICATION
FOR NOTICE AND ATTESTATION
FOR NEW APPLICATION FOR COVERAGE ISSUED ON OR AFTER JANUARY 1, 2015*

*[To expedite the review and approval process, ADOI recommends placing the following suggested Attestation immediately following the required Notice, both in at least 14 point type]:

NOTICE: 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.

ATTESTATION: I HEREBY ATTEST THAT I HAVE MAJOR MEDICAL HEALTH INSURANCE COVERAGE OR MEDICARE WHICH MEETS THE FEDERAL REQUIREMENT FOR "MINIMUM ESSENTIAL COVERAGE."

_____
Applicant's Signature

APPENDIX B

SAMPLE RENEWAL APPLICATION
LANGUAGE FOR ONE-TIME ATTESTATION FROM ENROLLEES
IN IN-FORCE RENEWABLE HOSPITAL INDEMNITY
OR OTHER FIXED INDEMNITY PRODUCTS
WHO OBTAINED COVERAGE BEFORE JANUARY 1, 2015*

*[Issuers must obtain a one-time Attestation from each enrollee indicating that the enrollee has other minimum essential coverage, and this must occur in the renewal application for the enrollee's first renewal on or before October 1, 2016. § 148.220(b)(4)(i), (v).]

ATTESTATION required by § 148.220(b)(4)(i), (v)

[ADOI recommends using this language in at least 14 point type]:

I ATTEST THAT I AM PURCHASING THIS POLICY AS A SUPPLEMENT TO MY MAJOR MEDICAL HEALTH INSURANCE COVERAGE OR MEDICARE COVERAGE, AND THAT MY COVERAGE MEETS THE FEDERAL REQUIREMENTS FOR MINIMUM ESSENTIAL COVERAGE.

_____

Applicant's Signature

APPENDIX C

SAMPLE LANGUAGE FOR ONE-TIME ATTESTATION NOTICE TO ENROLLEES IN GUARANTEED RENEWABLE AND NON-CANCELLABLE HOSPITAL INDEMNITY OR OTHER FIXED INDEMNITY PRODUCTS WHO OBTAINED COVERAGE BEFORE JANUARY 1, 2015*

*****[The guaranteed renewable or non-cancellable enrollee's continued payment of premium after receipt of the Attestation Notice below will meet the § 148.220(b)(4)(i), (v) requirement for one-time Attestation for products issued before January 1, 2015.]

ATTESTATION NOTICE TO ENROLLEES IN GUARANTEED RENEWABLE AND NON-CANCELLABLE HOSPITAL INDEMNITY OR OTHER FIXED INDEMNITY PRODUCTS ISSUED BEFORE JANUARY 1, 2015

[ADOI recommends providing a Notice to the enrollee with this language in at least 14 point type]

THIS POLICY IS A SUPPLEMENT TO HEALTH INSURANCE, IS NOT A SUBSTITUTE FOR MAJOR MEDICAL COVERAGE, AND DOES NOT MEET THE FEDERAL CRITERIA FOR MINIMUM ESSENTIAL COVERAGE UNDER THE AFFORDABLE CARE ACT. LACK OF MAJOR MEDICAL COVERAGE (OR OTHER MINIMUM ESSENTIAL COVERAGE) MAY RESULT IN AN ADDITIONAL PAYMENT WITH YOUR TAXES. CONTINUED PAYMENT OF YOUR PREMIUM WILL KEEP THIS SUPPLEMENTAL POLICY IN FORCE AND WILL PROVIDE ATTESTATION REQUIRED BY 45 CFR § 148.220(b)(4)(i), (v) THAT YOU HAVE OTHER MINIMUM ESSENTIAL COVERAGE AND ARE ENROLLED IN THIS PRODUCT AS A SUPPLEMENT TO THAT COVERAGE.