



LOUISIANA DEPARTMENT OF INSURANCE
JAMES J. DONELON
COMMISSIONER

BULLETIN NO. 2013-05 REVISED

TO: ALL HEALTH INSURANCE ISSUERS AND HEALTH MAINTENANCE ORGANIZATIONS

FROM: JAMES J. DONELON, COMMISSIONER OF INSURANCE

RE: HOSPITAL INDEMNITY AND OTHER FIXED INDEMNITY POLICIES

DATE: AUGUST 5, 2013

On January 24, 2013, in a published Frequently Asked Questions (FAQ) document (Affordable Care Act Implementation, FAQ Set 11, available online at <http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/>) the U.S. Department of Labor, the U.S. Department of Health and Human Services, and the U.S. Department of the Treasury (hereinafter collectively “the federal departments”) stated 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. Generally, most state insurance regulators have not required strict adherence to the fixed dollar amount per period as now required in the above referenced FAQ because that requirement was not part of 42 USC § 300gg-21 as enacted under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA). However, the requirement is contained in the final rule implementing portions of HIPAA and made effective on July 1, 2005, and codified at 45 CFR 146.145.

Historically, state insurance regulators have been the primary enforcers of the relevant provisions of HIPAA and state regulators remain the primary enforcers of these provisions following the passage of the federal Affordable Care Act. In order to bring health insurance issuers and health maintenance organizations (hereinafter collectively “health insurance issuers”) in Louisiana into compliance with the provisions of HIPAA as interpreted by the federal departments in the previously mentioned FAQ, the Louisiana Department of Insurance (LDI) hereby gives notice to all health insurance issuers that strict compliance with the federal departments’ interpretation in the FAQ will be enforced for all hospital indemnity or other fixed indemnity policies that are issued on or after January 1, 2014. Health insurance issuers are encouraged to submit compliant form filings for 2014 compliant forms to the LDI as soon as practicable. A compliant form filing is a filing made pursuant to the Louisiana

Insurance Code and Regulation 78. A 2014 compliant form is a form of policy that is in compliance with 42 USC § 300gg-21 and federal regulations.

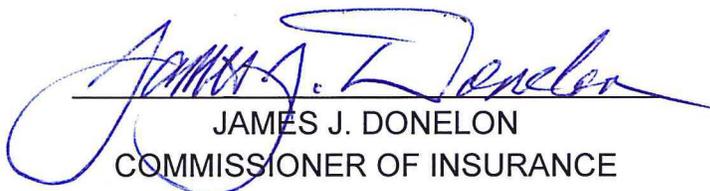
Bulletin No. 2013-05 (issued July 2, 2013) is hereby revised to clarify that Bulletin No. 2013-05 is applicable to hospital and other fixed indemnity policies issued or delivered in both the individual market and the group market, as the provisions of the HIPAA regulations defining hospital or other 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. Bulletin No. 2013-05 is further revised to extend the notice requirements contained in the following paragraph to policies issued on or after January 1, 2014.

In order to avoid market disruptions, any hospital indemnity or other fixed indemnity policies that would otherwise be subject to strict adherence to the FAQ but which policies were issued and in force prior to January 1, 2014, may remain in effect at the option of the insured or health insurance issuer, as permitted by law. Furthermore, to protect consumers from the possibility of confusion or inadvertent failure to satisfy the Affordable Care Act's minimum essential coverage requirement, all health insurance issuers 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 via 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 under the Affordable Care Act.

Except for the safe-harbor provision set forth in Bulletin No. 2013-05 for policies issued and in force prior to January 1, 2014, all health insurance issuers of hospital indemnity or other fixed indemnity policies in the individual market and the group market and any such policy forms filed for review and approval with the LDI shall otherwise comply with all applicable, relevant and appropriate provisions of state and federal law.

For questions or clarification with regard to Bulletin No. 2013-05 (Revised) please contact the Louisiana Department of Insurance, Office of Health Insurance, by telephone at (225) 219-4770.

Baton Rouge, Louisiana, the 5th day of August 2013.


JAMES J. DONELON
COMMISSIONER OF INSURANCE