



# South Carolina Department of Insurance

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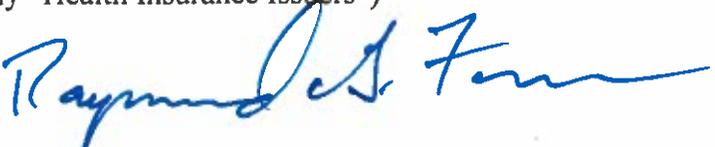
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## BULLETIN NUMBER 2017-01

TO: All Insurers Licensed to Transact Accident and Health Insurance Business within the State of South Carolina and all South Carolina Licensed Health Maintenance Organizations (collectively "Health Insurance Issuers")

FROM: Raymond G. Farmer  
Director of Insurance 

RE: Requirements Applicable to Hospital Indemnity or other Fixed Indemnity Policies Sold in South Carolina

DATE: March 23, 2017

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### I. BACKGROUND, SCOPE AND PURPOSE

This Bulletin withdraws, supersedes and replaces South Carolina Department of Insurance Bulletin 2014-14 issued on December 17, 2014, which explained the federal requirements for fixed indemnity (also known as hospital indemnity) plans to be considered excepted benefits. Among these requirements was that applicants for individual fixed indemnity plans had to attest they had purchased "minimum essential coverage" within the meaning of Section 5000A(f) of the Internal Revenue Code (the "attestation requirement").

On October 14, 2016, the United States District Court for the District of Columbia issued an order in the case of *Central United Life Insurance Co. v. Burwell* declaring that individual market fixed indemnity plans could be sold and issued regardless of whether the policyholder had purchased minimum essential coverage, and that therefore the federal attestation requirement was not enforceable. The district court, however, left other requirements applicable to fixed indemnity plans intact. The purpose of this bulletin is to clarify the obligations of insurers offering fixed indemnity and hospital indemnity coverage in light of these changes to the law.

This bulletin does not apply to any other type or category of insurance that is 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.

## II. INDIVIDUAL MARKET FIXED INDEMNITY AND HOSPITAL INDEMNITY PLANS

Individual market fixed indemnity plans qualify as excepted benefits as long as they meet the following conditions<sup>1</sup>:

1. There is no coordination between the provision of benefits and an exclusion of benefits under any other health coverage.
2. 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.
3. For individual market fixed indemnity policies issued with an effective date on or after January 1, 2015, the following notice must be 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.”

## III. QUESTIONS

Questions regarding this Bulletin should be submitted via email to [LAHmail@doi.sc.gov](mailto:LAHmail@doi.sc.gov) and include complete contact information (with company name, phone number and email address) for follow-up.

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<sup>1</sup> 45 C.F.R. § 148.220(b)(4)

*Bulletins are the method by which the Director of Insurance formally communicates with persons and entities regulated by the Department. Bulletins are Departmental interpretations of South Carolina insurance laws and regulations and provide guidance on the Department's enforcement approach. Bulletins do not provide legal advice. Readers should consult applicable statutes and regulations or contact an attorney for legal advice or for additional information on the impact of that legislation on their specific situation.*