



**COMMONWEALTH OF KENTUCKY  
DEPARTMENT OF INSURANCE  
FRANKFORT, KENTUCKY**

**AMENDED AFFORDABLE CARE ACT  
IMPLEMENTATION UPDATE**

*The purpose of this document is to provide insurers doing business in Kentucky with guidance from the Department of Insurance (DOI) for implementing the Affordable Care Act. This Implementation Update is not legally binding on the Department or the reader. The ultimate authority for the interpretation of the Affordable Care Act lies with the Department of Health and Human Services.*

TO: ALL INSURERS SELLING FIXED INDEMNITY PRODUCTS IN THE  
COMMONWEALTH OF KENTUCKY

FROM: H. BRIAN MAYNARD, COMMISSIONER  
KENTUCKY DEPARTMENT OF INSURANCE

RE: FIXED INDEMNITY POLICIES

DATE: DECEMBER 2, 2016

In light of the recent court ruling in *Central United Life Insurance Co., et al. v. Sylvia Mathews Burwell, et al.*, the Department is amending the Affordable Care Act Implementation Update issued August 6, 2014. In the Order issued by Hon. Royce C. Lamberth of the United States District Court for the District of Columbia, Hon. Lambert

“declared that the restrictions on the sales and marketing of fixed indemnity plans set forth in 45 CFR § 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 ‘minimal essential coverage’ within the meaning of § 5000A(f) of the Internal Revenue Code.”

Therefore, the Department will no longer be requiring issuers of hospital indemnity or other fixed indemnity products to include an attestation by the proposed insured that he/she has minimum essential coverage.

The Affordable Care Act Implementation Update, issued August 6, 2014 is amended as follows:

On May 16, 2014, the United States Department of Health and Human Services issued a final rule on exchange and insurance market standards effective for 2015 and beyond. This rule addressed numerous issues including the treatment of hospital indemnity and fixed indemnity insurance policies.

The final regulation states that hospital indemnity or fixed indemnity insurance can only be considered an excepted benefit, and therefore not subject to the consumer protections in the Affordable Care Act, if all of the following are true:

- ~~• The benefits are provided only to individuals who attest, in their application, that they have other health coverage that is minimum essential coverage within the meaning of section 5000A(f) of the Internal Revenue Code, or that they are treated as having minimum essential coverage due to their status as a bona fide resident of any possession of the United States pursuant to Code section 5000A(f)(4)(B);~~
- There is no coordination between the provision of benefits and an exclusion of benefits under any other health coverage;
- 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
- 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.”

The final rule provides for the following implementation deadlines for these requirements:

- The following required notice must be included in the application materials for all hospital indemnity or fixed indemnity insurance policies issued or renewed on or after January 1, 2015:

“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.’’

- ~~For policies issued on or after January 1, 2015, an individual purchasing a hospital indemnity or a fixed indemnity insurance policy must perform a one-time attestation upon issuance of the first policy issued on or after January 1, 2015. The attestation must indicate that the individual has minimum essential coverage and those policies may only pay a fixed dollar amount per period of hospitalization or illness and/or per services.~~
- ~~For policies issued prior to January 1, 2015, insurers must obtain an individual’s attestation indicating that the individual has minimum essential coverage upon the first renewal of the policy occurring on or after October 1, 2016.~~

[45 CFR 148.220]

To be in compliance with these federal requirements, the DOI expects insurers offering these policies to:

- Provide the required notice to members in the packet of materials given at the time of sale and renewal beginning on or after January 1, 2015. The DOI requests that insurers include the required notice on the cover page of the policy or certificate.
  - While the DOI expects insurers to be in compliance with this federal requirement, at this time, the DOI is not requiring insurers to file amendments to previously approved forms. Any forms submitted for approval in the future will need to comply with this notice requirement.
- ~~Submit amended applications for compliance with the attestation requirements. New products cannot be sold in Kentucky on or after January 1, 2015, and existing products cannot be renewed in Kentucky on or after October 1, 2016, unless they are in compliance with the attestation requirements in this final rule and insurers have received the appropriate approval from the DOI. Please note that the attestation must be displayed in the application.~~

Insurers can contact the Health & Life Division at 502-564-6088 for questions regarding this implementation update.