



August 27, 2014

Mr. Brian Webb
National Association of Insurance Commissioners
444 North Capitol Street NW
Suite 700
Washington, D.C. 20001

Dear Mr. Webb:

The Centers for Medicare & Medicaid Services (CMS) understands that state insurance departments and insurance industry representatives have expressed concern about the applicability date of two new requirements for fixed indemnity insurance to be considered an excepted benefit in the individual market.¹

Under the first requirement, individuals who purchase fixed indemnity insurance must attest, in their fixed indemnity insurance application, that they have other health coverage that is minimum essential coverage (or that they are treated as having minimum essential coverage due to their status as a bona fide resident of a United States territory). With respect to newly issued policies, this attestation requirement applies to policies initially issued on or after January 1, 2015.² Under the second requirement, a notice must be displayed prominently in the application materials stating that the fixed indemnity policy is a supplement to health insurance and is not a substitute for major medical coverage. This notice requirement applies to fixed indemnity insurance policy years beginning on or after January 1, 2015.³

CMS understands that in many states, fixed indemnity issuers must receive approval from state insurance regulators for any amendments to application materials prior to their use. We also understand that, due to other priorities, state regulators may not have adequate time to review and approve such fixed indemnity filings in time for issuers to comply with the January 1, 2015 applicability date.

In recognition of these issues, CMS will not take enforcement action against an issuer of fixed indemnity insurance for failure to meet the January 1, 2015 deadline (and encourages states with

¹ Patient Protection and Affordable Care Act; Exchange and Insurance Market Standards for 2015 and Beyond (May 27, 2014), 79 FR 30240

² 45 CFR §148.220(b)(4)(i)

³ 45 CFR §148.220(b)(4)(iv).

primary enforcement authority to exercise similar enforcement discretion) if all of the following conditions are met:

1. The applicable state authority requires prior approval of any amendments to fixed indemnity policy application materials.
2. The fixed indemnity issuer submits to the applicable state authority by October 1, 2014 revised application materials for approval that are consistent with attestation and notice requirements under the regulations and the issuer takes all required steps to obtain approval.
3. The issuer complies with all other applicable requirements for the fixed indemnity insurance to be considered an excepted benefit.

This policy will apply until the earlier of May 1, 2015, or the date upon which the issuer receives approval from the applicable State authority to use the application materials containing the required language.

We look forward to continuing to work with you and your staff to implement the Affordable Care Act.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Imes", with a stylized flourish at the end.

Robert Imes
Acting Director, Oversight Group
Center for Consumer Information and Insurance Oversight