Benefit Comply
Compliance Focus

Hospital Indemnity Plan Notice FAQ

September 2024

Included in the final regulations for short-term limited duration insurance that were issued in April 2024 was also a new notice requirement for group hospital indemnity plans effective for plan years starting on or after January 1, 2025. See Appendix A for the text of this new notice. Below are a series of frequently asked questions (FAQs) describing which plans are subject to the notice and how to satisfy the notice requirements.

Q1: To what plans does this new notice apply?

A1: The new notice applies to group hospital indemnity or other fixed indemnity insurance. Note that while critical illness and accident plans are indemnity plans, they are not considered "hospital indemnity or other fixed indemnity insurance" for this purpose and are not subject to this new notice requirement.

Q2: When is this new notice requirement effective?

A1: The new notice requirement apples to plan years beginning on or after January 1, 2025, which means plans that non-calendar year plan years do not need to start providing the notice until the policy renews in 2025.

Q3. Who is responsible for issuing this notice?

A3: The notice obligation falls on the plan (i.e., the employer) or the issuer (i.e., the insurance company). To the extent that the insurance company includes the notice in written materials the employer distributes to its employees, the employer is not required to duplicate those efforts. However, in many cases, the only information the employees will receive about the plan and how to enroll will come from the employer, whether in the form of benefit guides or online enrollment portals, in which case the notice obligation would fall on the employer as plan administrator. See also Q/A #4 below.

Q4: How and where must this notice be provided?

A4: The notice must appear on the first page of any of any marketing, application, and enrollment (or re-enrollment) materials, whether in paper or electronic form, in at least 14-point font. What constitutes marketing, application, and enrollment materials that must include the notice is often fact specific. The preamble of the regulations indicates marketing materials *"include any documents or website pages that advertise the benefits or offer an opportunity to enroll (or reenroll) in group market fixed indemnity excepted benefits coverage."*

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Common Locations Where the Notice May Need to Appear

Insurance Carrier Materials

If the employer educates employees about the plan by distributing marketing flyers or plan summaries from the insurance company and employees enroll on paper enrollment forms provided by the insurance company, those flyers and enrollment forms would need to include the notice on the first page of those materials and the employer would not have to duplicate those efforts.

Benefits Booklets or Guides

In a lot of cases the only marketing or information about the plan that employees see before enrolling on the plan is information contained in the employer's benefits guide. Under those circumstances, we believe the benefits guide serves as the marketing material, and the employer would need to include a copy of the notice in that guide.

Online Enrollment Platforms

In many cases, the only way for an employee to enroll in or renew a hospital indemnity policy is through the employer's online enrollment portal. In that case, the enrollment portal would be the enrollment / application materials, and the employer would need to ensure the hospital indemnity policy notice appears in the portal.

Q5: What does it mean that the notice must appear on the first page?

A5: For stand-alone materials that only reference or discuss the hospital indemnity plan, the notice must appear on the first page of those materials before any other information. Where the information on the hospital indemnity plan is bundled with information on other benefits (e.g., in a benefit guide), the agencies have acknowledged it will often be clearer if the notice appears in the guide immediately before the information on the hospital indemnity plan rather than the first page of the bundled material where it may not be obvious to which plan the notice applies.

In the case of electronic materials, like an online enrollment portal, it should be sufficient if the notice appears on the screen immediately before, or the same screen as, where the employee actually enrolls in the hospital indemnity plan. The regulations indicate it is not sufficient to merely include a link employees can click to access the notice; the notice itself must be displayed in the portal immediately before the place where the employee enrolls in the benefit.

Q6: Can I include the notice in my annual notice packet with all of the other required notices?

A6: The notice cannot be included in a stand-alone notice packet or simply posted on a benefits intranet page as that will not satisfy the requirement that the notice appear on the first page of any marketing, application, and enrollment materials.

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Q7: What is the consequence of not including the notice in marketing, enrollment and application materials?

A7: The notice is a requirement of being able to categorize the plan as an excepted benefit. Without the notice, the plan would not be an excepted benefit and must comply with all of the requirements of HIPAA portability (e.g., HIPAA special enrollment, nondiscrimination, etc.) and the so-called PHSA mandates under the ACA (e.g., no lifetime / annual limits, preventive care, etc.). Most hospital indemnity plans are not designed to satisfy all such requirements, so the plan would likely be out of compliance with one or more of those mandates if it does not contain the notice, which could allow employees to sue for the missing benefits or the employer could be assessed an excise tax of $100 per person per day.

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Appendix A

IMPORTANT: This is a fixed indemnity policy,

NOT health insurance

This fixed indemnity policy may pay you a limited dollar amount if you're sick or hospitalized. You're still responsible for paying the cost of your care.

- The payment you get isn't based on the size of your medical bill.
- There might be a limit on how much this policy will pay each year.
- This policy isn't a substitute for comprehensive health insurance.
- Since this policy isn't health insurance, it doesn't have to include most Federal consumer protections that apply to health insurance.

Looking for comprehensive health insurance?

- **Visit HealthCare.gov** or call **1-800-318-2596** (TTY: 1-855-889-4325) to find health coverage options.
- To find out if you can get health insurance through your job, or a family member's job, contact the employer.

Questions about this policy?

- For questions or complaints about this policy, contact your State Department of Insurance. Find their number on the National Association of Insurance Commissioners' website (naic.org) under "Insurance Departments."
- If you have this policy through your job, or a family member's job, contact the employer.

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