



## LOUISIANA DEPARTMENT OF INSURANCE

JAMES J. DONELON  
COMMISSIONER

### BULLETIN 2017-03

**TO: ALL HEALTH INSURANCE ISSUERS AND HEALTH MAINTENANCE ORGANIZATIONS**

**FROM: JAMES J. DONELON, COMMISSIONER OF INSURANCE**

**RE: HOSPITAL OR OTHER FIXED INDEMNITY INSURANCE & STATE ENFORCEMENT OF TITLE 45 OF THE CODE OF FEDERAL REGULATIONS; RESCISSION OF BULLETIN No. 2014-06**

**DATE: MARCH 6, 2017**

The purpose of Bulletin 2017-03 is to give notice to all health insurance issuers and health maintenance organizations (hereinafter "issuers") of the rescission of Bulletin 2014-06 and to inform all issuers that the Louisiana Department of Insurance (LDI) will continue to enforce limited portions of a final rule promulgated by the Centers for Medicare and Medicaid Services (CMS) on May 27, 2014, as the *Final Rule on the Exchange and Insurance Market Standards for 2015 and Beyond* (79 FR 30240), which amended numerous sections of Title 45 of the Code of Federal Regulations. With respect to hospital or other fixed indemnity insurance, the final rule established preconditions under which hospital or other fixed indemnity insurance may be purchased in the individual or non-group market under 45 CFR 148.220. One precondition requires that:

[t]he benefits are provided only to individuals who attest, in their hospital or other fixed indemnity insurance application, that they have other health coverage that is considered minimum essential coverage within the meaning of 26 U.S. Code § 5000A(f);

In addition to the precondition recited above, the final rule also requires that:


[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 ADDITIONAL PAYMENT WITH YOUR TAXES."

On July 1, 2016, the United States Court of Appeals for the District of Columbia Circuit handed down its decision in *Central United Life Insurance Co., et al., v. Sylvia Burwell*, 827 F.3d 70 (2016), in which the D.C. Circuit permanently enjoined enforcement of the precondition recited above regarding the restriction that hospital or other fixed indemnity insurance only be issued to persons who have attested that they have other health insurance that qualifies as minimum essential coverage under the Internal Revenue Code. As a result, that portion of the final rule is not being enforced by the LDI. However, the D.C. Circuit did not enjoin the enforcement of the final rule's notice requirement, and therefore, we will continue to enforce that portion of the rule.

Bulletin 2014-06 is hereby rescinded.

Please be governed accordingly.

Baton Rouge, Louisiana, this 6th day of March 2017.



---

JAMES J. DONELON  
COMMISSIONER OF INSURANCE