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**BULLETIN NO. 06-02**

**TO: ALL NEW JERSEY HEALTH INSURANCE COMPANIES,  
HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE  
CORPORATIONS, HEALTH SERVICE CORPORATIONS, AND  
OTHER INTERESTED PARTIES**

**FROM: DONALD BRYAN, ACTING COMMISSIONER**

**RE: HOSPITAL CONFINEMENT INDEMNITY AND OTHER FIXED  
INDEMNITY INSURANCE**

The Department has received submissions of forms from some carriers that purport to provide hospital confinement indemnity insurance coverage coupled with other fixed indemnity insurance, such as surgical, office visit and/or prescription drug scheduled benefits. The carriers maintain that such products are exempt from the portability and mandated benefits requirements under New Jersey law. The purpose of this Bulletin is to advise carriers that, for the reasons set forth below, the Department believes that such products are subject to such portability and mandated benefits requirements set forth in existing statutes and rules, and that form submissions with respect to such products that do not comply with those requirements will not be approved.

Carriers should refer to N.J.S.A. 17B:27-54 et seq., which sets forth the various group health insurance portability requirements in New Jersey as required by HIPAA. These requirements include limits on preexisting condition exclusions, special open enrollment periods, a prohibition on use of health status related factors for enrollment, and guaranteed renewability. These requirements do not apply to "excepted benefits," which are defined by the law to include the following "when offered as independent, noncoordinated benefits: hospital indemnity **or** other fixed indemnity insurance" (emphasis supplied). The Department has determined that policy forms that combine hospital indemnity with surgical, office visit, prescription drug, or other types of indemnity benefits

do not qualify as excepted benefits because they are neither stand alone hospital indemnity, nor stand alone other non-hospital confinement, fixed indemnity coverage. A policy that combines the two types of coverage falls outside of the definition of excepted benefits because of the definition's use of the term "or" rather than "and."

Moreover, the Individual Health Coverage Program rules at N.J.A.C. 11:20-1.2 define "hospital confinement indemnity coverage" as coverage offered on a stand alone basis, with an elimination period of no greater than three days, that provides coverage for at least 31 days per confinement, and subject to dollar limits on daily benefits. The Department has also determined that plans that combine hospital indemnity and other fixed indemnity coverage do not satisfy the above definition and therefore cannot be sold on an individual basis, or on a group basis if there is no policyholder contribution. (Carriers should refer to the definition of "individual health benefits plan" at N.J.S.A. 17B:27A-2, which includes certain certificates issued to eligible persons if the eligible person pays the premium.)

Some carriers contend that their combined hospital confinement indemnity insurance and other fixed indemnity insurance policies are exempt from mandated benefits requirements because they are not expense incurred policies (*i.e.*, the benefit paid is not based on the amount of the expense incurred). The Department disagrees with the carriers' interpretation for the following reasons:

First, not every mandated benefit law is limited to expense incurred policies. For example, N.J.S.A. 17B:26-2.1k and 17B:27-46.1k require every individual and group health policy that provides maternity coverage to cover 48 hours of inpatient care following a vaginal delivery, or 96 hours of inpatient care following a cesarean section, for a mother and a newborn following delivery of a child;

Second, although the benefits provided by the forms in question are pre-determined, fixed sum amounts, rather than being determined by the actual amount of the expense incurred, various provisions throughout the forms indicate that if a hospital or medical expense is not incurred, a benefit is not payable. This product appears designed to cover, at least in part, hospital and medical expenses. For example, while the product may be described as providing a benefit identified as a fixed sum amount, such amount is determined based on the deductible and coinsurance liability under an associated plan. Deductible and coinsurance are calculated based on incurred medical expenses. Thus, the products providing benefits described as fixed sum amounts are, in effect, providing expense incurred benefits. Also, the Department has found that carriers typically require bills for hospital and medical expenses as the standard form of proof of loss when submitting claims in connection with these products.

Accordingly, all carriers are reminded that policies that provide hospital confinement indemnity coverage coupled with other fixed indemnity products are subject to the portability and mandated benefits requirements under New Jersey law. The Department intends to propose amendments in the near future clarifying the rules and statutory interpretations set forth in this Bulletin. Interested parties will then have the opportunity to submit comments on those proposed rules in accordance with the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-4.

1/10/06

Date

/s/ Donald Bryan

Donald Bryan

Acting Commissioner

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