

COMPLIANCE ALERT

Agencies Impose New Notice Requirement for Fixed Indemnity Plans, But Hold Back on other Proposed Rules

April 12, 2024

Action Required:

- Employers and plan sponsors should discuss these new rules and requirements with their advisors and confirm that their plan's indemnity insurer will comply with the new consumer protection notice requirement on behalf of the plan.

On April 3, 2024, the Departments of Labor, Health and Human Services and Treasury ("Agencies") published [final regulations](#) ("Final Rule") implementing new transparency and other rules pertaining to fixed indemnity plans and short-term limited-duration health insurance (STLDI). Among other changes, the Final Rule imposes a new notice requirement for fixed indemnity plans but holds back on finalizing other fixed indemnity requirements released in [proposed regulations](#) ("Proposed Rule") issued in July of last year. The Agencies also issued a [Fact Sheet](#) to better explain the new requirements and help ensure compliance. The Final Rule was designed to increase individuals' understanding of STLDI and fixed indemnity plans, and to ensure that they do not expect such plans to be comprehensive healthcare plans.

What Should Employers and Plan Sponsors Do Next?

Employers and plan sponsors should address these new rules and requirements with their trusted benefits advisors, including their Corporate Synergies account team, and should confirm that their plan's group fixed indemnity insurer will satisfy the new consumer protection notice requirement on behalf of the plan. Finally, given that the Final Rule did not fully address all of the Proposed Rule's requirements, it's important to stay tuned for additional final regulations from the Agencies likely coming in the near future. ■

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How Does the Final Rule Change the Law?

For plan years beginning on or after January 1, 2025, plan sponsors offering fixed indemnity coverage in the group market must provide a new consumer protection notice to all enrollees. Additionally, issuers of such coverage in the individual market must provide a new revised consumer notice. A new model notice was provided in the Final Rule to ensure compliance with this requirement (additional rules and requirements are explained in more detail below). These new fixed indemnity requirements must be satisfied in order to ensure that such plans do not become fully subject to Affordable Care Act (ACA) mandates, such as preventive care requirements, annual and lifetime limits and pre-existing condition exclusions, that is, in order to ensure that such plans remain “ACA excepted benefits.” Notably, and as explained in more detail below, the Final Rule did not implement new rules and requirements pertaining to coordination of benefits between fixed indemnity and major medical coverage, as well as rules on taxation of fixed indemnity plans, and deferred such rules for a later date.

For STLDI, the Agencies amended the federal definition of STLDI to limit the length of the initial contract term to no more than three months and the maximum coverage period to no more than four months, taking into account any renewals or extensions. Previously, the rules defined STLDI as coverage that has an initial contract term of fewer than 12 months and a maximum total coverage period of up to 36 months, including renewals and extensions. Additionally, the Final Rule amends the federal definition of STLDI to provide that a renewal or extension includes STLDI sold by the same issuer, or any issuer that is a member of the same controlled group, to the same policyholder within a 12-month period. The Final Rule also updates the STLDI notice requirements to highlight coverage limitations (and to eliminate confusion with major medical coverage) in concise, easy-to-understand, and prominently displayed language. To further consumer protection, the notice must be included in all marketing, application and enrollment materials.

How does the Final Rule Impact Employer-sponsored/Group Fixed Indemnity Plans?

First, in order to qualify as ACA excepted benefits, employer-sponsored (or group) fixed indemnity policies must pay benefits per day (or other time period) of hospitalization or illness, regardless of the expenses incurred, medical services received or illness severity. Accordingly, group fixed indemnity coverage that pays benefits on a per medical item or per service basis would no longer be considered an excepted benefit (it should be noted that while the Proposed Rule would have also amended certain requirements pertaining to coordination of benefits between (and payments between) an employer’s fixed indemnity plan and group health plan, the Final Rule did not include these changes, stating that additional time is needed to study concerns raised by commenters on the Proposed Rule).

The Final Rule also explains that while fixed indemnity coverage is designed to provide income replacement in the event of an illness or hospitalization, such policies often include certain features resembling comprehensive medical coverage, including, for example, the payment of benefits based on receipt of a medical service or item (e.g., an annual wellness physical), or direct payment to medical providers. To address the confusion that this can cause, the Final Rule requires that, in order to retain the plan’s excepted benefit status, a consumer protection notice be provided to employees in relation to such group indemnity coverage that is designed to highlight the differences between such indemnity coverage and comprehensive major medical coverage. This notice must be prominently displayed in all marketing, application, and enrollment materials. Notably, it is permissible for insurers to satisfy this new notice requirement on behalf of the plan sponsor.

Which Proposed Rules were Not Included in the Final Rule?

In addition to the Proposed Rule's requirements pertaining to coordination of benefits between fixed indemnity and major medical plans (discussed above), the Agencies deferred until a later time proposed rules pertaining to the tax treatment of employer-sponsored/group fixed indemnity accident or health insurance plans (including wellness-type fixed indemnity, hospital indemnity and specified disease coverage), stating that additional time is needed to study the concerns raised by commenters.

More specifically, such proposed rules sought to clarify that, under circumstances where contributions were made on a pre-tax basis to employer-provided fixed indemnity health insurance and similar plans, benefit payments from such plans are not excluded from a taxpayer's gross income if the payments are made without regard to the actual amount of incurred medical expenses. Also not finalized in the Final Rule were proposed rules clarifying the substantiation requirements for medical expense reimbursements from such plans. Further, while the Proposed Rule requested comments on the design and operation of specified disease coverage and level-funded plan arrangements, no new rules in this area were provided in the Final Rule.

When do the New Requirements in the Final Rule Go Into Effect?

For policies, certificates, or contracts of STLDI sold or issued on or after September 1, 2024, the Final Rule's maximum term and duration amendments to the definition of STLDI, as well as the new consumer notice requirements, apply for coverage periods beginning on or after September 1, 2024. Policies issued prior to September 1, 2024, including subsequent renewals or extensions, may continue to have a contract term of fewer than 12 months and a maximum duration of up to 36 months, including any renewals or extensions, subject to limits under applicable state law.

The notice provisions for group and individual market fixed indemnity excepted benefits coverage apply with respect to plan years beginning on or after January 1, 2025.

What Should Employers and Plan Sponsors Do Next?

Employers and plan sponsors should address these new rules and requirements with their trusted benefits advisors, including their Corporate Synergies account team, and should confirm that their plan's group fixed indemnity insurer will satisfy the new consumer protection notice requirement on behalf of the plan. Finally, given that the Final Rule did not fully address all of the Proposed Rule's requirements, it's important to stay tuned for additional final regulations from the Agencies likely coming in the near future. ■

**If you have any additional questions,
please call your Corporate Synergies
Account Manager or 866.CSG.1719.**