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DIRECTIVE 17-EX-5

TO: All Insurers Licensed to Write Hospital Indemnity or other Fixed Indemnity Insurance Policies in the Individual Market within the State of Georgia

FROM: Ralph T. Hudgens, Insurance and Safety Fire Commissioner

RE: The Replacement of Directive 15-EX-2 with this Directive due to the *Central United Life v. Burwell* Court Decision

DATE: August 22, 2017

I. BACKGROUND, SCOPE AND PURPOSE

This Directive withdraws and replaces Directive 15-EX-2 issued on January 29, 2015, which explained the federal requirements for hospital indemnity and other fixed indemnity insurance to be considered excepted benefits. Among these requirements was that applicants for individual fixed indemnity plans had to attest they had purchased "minimum essential coverage" within the meaning of Section 5000A(f) of the Internal Revenue Code (the "attestation requirement").

On October 14, 2016, the United States District Court for the District of Columbia issued an order in the case of *Central United Life Insurance Co. v. Burwell* declaring that individual market fixed indemnity plans could be sold and issued regardless of whether the policyholder had purchased minimum essential coverage, and that therefore the federal attestation requirement was not enforceable. The district court, however, left other requirements applicable to fixed indemnity plans intact. The purpose of this Directive is to clarify the obligations of insurers offering hospital indemnity and other fixed indemnity coverage in light of these changes to the law.

This Directive does not apply to any other type or category of insurance that is listed separately as excepted benefits in the federal Public Health Service Act (e.g., disability income, specified disease insurance, accident insurance, etc.), regardless of whether benefits under such coverage are paid as a fixed dollar amount.

II. INDIVIDUAL MARKET FIXED INDEMNITY AND HOSPITAL INDEMNITY PLANS

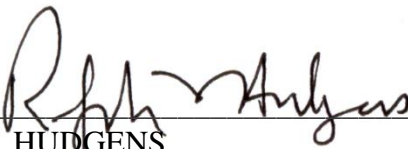
Individual market fixed indemnity plans qualify as excepted benefits as long as they meet the following conditions:

1. There is no coordination between the provision of benefits and an exclusion of benefits under any other health coverage.
2. The benefits are paid in a fixed dollar amount per period of hospitalization or illness and/or per service (for example, \$100/day or \$50/visit) regardless of the amount of expenses incurred and without regard to the amount of benefits provided with respect to the event or service under any other health coverage.
3. For individual market fixed indemnity policies issued with an effective date on or after January 1, 2015, the following notice must be 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 AN ADDITIONAL PAYMENT WITH YOUR TAXES."

III. QUESTIONS

Questions regarding this Directive should be submitted via email to TCarswell@oci.ga.gov and include complete contact information (with company name, phone number and email address) for follow-up.



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