

LEGAL UPDATE



COURT REJECTS NEW NOTICE REQUIREMENT FOR FIXED INDEMNITY COVERAGE

On Dec. 4, 2024, the U.S. District Court for the Eastern District of Texas **vacated** a new notice requirement for fixed indemnity coverage in the group market. This new notice requirement was scheduled to be effective for plan years beginning in 2025.

FIXED INDEMNITY COVERAGE

Fixed indemnity coverage is a type of excepted benefit not subject to certain key Affordable Care Act (ACA) reforms. The primary purpose of this type of coverage is to provide income replacement benefits rather than comprehensive health coverage. In general, fixed indemnity coverage pays a fixed dollar amount per day (or per other period) following the occurrence of a health-related event, such as a period of hospitalization or illness, subject to the policy's terms. Fixed indemnity benefit payments are made at a predetermined level, regardless of the amount of health care costs incurred (for example, \$100 per day of hospitalization).

Traditionally, benefits under fixed indemnity coverage are paid directly to a policyholder rather than a health care provider or facility. The policyholder has discretion over how to use such benefits—including using the payment to cover nonmedical expenses, such as child care or transportation—that may or may not be related to the event that precipitated the payment.

NOTICE REQUIREMENT AND COURT RULING

On April 3, 2024, the U.S. Departments of Labor, Health and Human Services, and the Treasury (Departments) issued a final rule on certain types of health coverage that are not subject to the ACA's consumer protections, including fixed indemnity coverage.

Effective for plan years beginning on or after Jan. 1, 2025, the final rule required a consumer notice to be provided when offering fixed indemnity excepted benefits coverage in the group market to ensure that consumers could distinguish between this coverage and traditional health coverage. The final rule required the new notice to be prominently displayed on the first page of any marketing, application or enrollment materials provided to participants at or before the time they are given the opportunity to enroll in the coverage.

After the **final rule** was issued, fixed indemnity insurers filed a lawsuit under the Administrative Procedures Act, alleging that the new notice requirement exceeded the Departments' statutory authority. On Dec. 4, 2024, the U.S. District Court for the Eastern District of Texas ruled in favor of the insurers by striking down the new notice requirement for fixed indemnity coverage. It is possible that the Departments will appeal the court's ruling, although that seems unlikely at this point.

HIGHLIGHTS

- + In April 2024, the Departments issued a final rule that imposed a new notice requirement for fixed indemnity coverage.
- + The new notice requirement was scheduled to be effective for 2025 plan years.
- + On Dec. 4, 2024, a federal District Court in Texas struck down the new notice requirement.

