



FEBRUARY 2017

WEST VIRGINIA INFORMATIONAL LETTER

NO. 191A

To: All Carriers Writing Hospital Indemnity or Other Fixed Indemnity Policies in West Virginia

Re: Hospital Indemnity or Other Fixed Indemnity Policies – Attestation Requirement

This Informational Letter is intended to supplement Informational Letter 191 issued by the Offices of the West Virginia Insurance Commissioner (“OIC”) in December 2014.

As set forth in Informational Letter 191, the federal government established by rule (45 CFR § 148.220) certain conditions for a hospital indemnity or other fixed indemnity insurance policy sold in the individual market. One of those conditions required a person applying for an individual fixed indemnity policy to sign a written attestation stating that they had purchased minimum essential coverage (the “attestation requirement”).

The attestation requirement was challenged in the United States District Court for the District of Columbia in *Central United Life Ins. Co. v. Burwell*, Case No. 1:14-cv-01954. In October 2016, a final order was entered in that case. The order stated that “restrictions on the sales and marketing of fixed indemnity plans set forth in 45 CFR § 148.220 are invalid and unenforceable insofar as those restrictions prohibit or penalize the sale of such plans to anyone other than persons who attest that they have other health coverage that is ‘minimal essential coverage’ within the meaning of § 5000A(f) of the Internal Revenue Code.” Thus, the effect of *Central United Life* is that the attestation requirement found in 45 CFR § 148.220(4)(i) is void and no longer required. The other requirements of 45 CFR § 148.220(4) remain in effect.

Effective immediately, insurers who have a previously approved application form to be used to purchase hospital indemnity or other fixed indemnity insurance plans in the individual market in West Virginia may remove the attestation from such application. OIC will not require the refiling and new approval of the amended application form, as long as the insurer complies as follows:

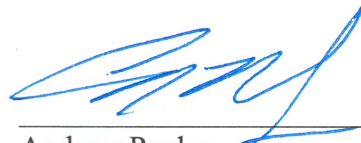
1. Submits a “Note to Reviewer” on the applicable SERFF filing containing the APPROVED application form, indicating the company is removing the attestation from the form pursuant to the administrative process outlined in this Informational Letter.



2. Identifies in the “Note to Reviewer” the application form by its West Virginia approved form number, and the company declares the form number is not changing due to this administrative change.

OIC will acknowledge the company’s action with a “Note to Filer.” Insurers do not have to await OIC’s acknowledgement before utilizing the administratively changed application form(s).

Please e-mail any questions concerning this Informational Letter to OICInformationalLetters@wv.gov or call 304-558-0401.



Andrew Pauley
Acting Insurance Commissioner