

Publications

Court Vacates Fixed Indemnity Regulations

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On December 4, 2024, a federal court in the Eastern District of Texas issued a ruling vacating the notice requirement under the [final regulations](#) (the “Final Rule”) on hospital and other fixed indemnity insurance (“Fixed Indemnity”) ([ManhattanLife Insurance and Annuity Co. et al. v. U.S. Department of Health and Human Services et al., No. 6:24-cv-00178-JCB, Doc. 36 \(E.D. Tex. Dec. 4, 2024\)](#)). The Departments of Labor, Treasury, and Health and Human Services (the “Departments”) issued the Final Rule on March 28, 2024. (See our previous alert on the Final Rule [here](#)).

Final Rule

The Final Rule created new notice requirements for Fixed Indemnity coverage to qualify as an excepted benefit in the group market and modified the existing notice requirement from 2014 regulations (the “2014 Notice Requirement”) for Fixed Indemnity coverage to qualify as an excepted benefit in the individual market.

- For group coverage, the Final Rule required the plan or issuer to display the notice “prominently” on the first page (in either paper or electronic form, including on a website) of any marketing, application, and enrollment materials that are provided to participants at or before the time participants are given the opportunity to enroll in the coverage, in at least 14-point font.
- For individual coverage, the Final Rule required the issuer to display the notice “prominently” on the first page (in either paper or electronic form, including on a website) of any marketing, application, and enrollment or reenrollment materials that are provided at or before the time an individual has the opportunity to apply, enroll or reenroll in coverage, and on the first page of the policy, certificate, or contract of insurance, in at least 14-point font.

The notice requirements were set to apply for plan years and coverage periods beginning on or after January 1, 2025.

District Court Decision

In May 2024, an insurance company and an insurance agency selling Fixed Indemnity policies filed a complaint against the Departments in the Eastern District of Texas challenging the Final Rule's Fixed Indemnity notice requirements. On December 4, 2024, the Court ruled that (1) the Final Rule's notice requirement exceeded the Departments' statutory authority and (2) the Final Rule's notice language "was not a logical outgrowth" of the notice requirement in the proposed regulations. Therefore, the Fixed Indemnity notice requirements issued under the Final Rule will no longer apply. The Court also found that the Final Rule's rescission of the 2014 Notice Requirement for the individual market is not severable from the Final Rule's notice language, so the 2014 Notice Requirement for individual market policies remains in effect.

Although this challenge only addressed the Final Rule's Fixed Indemnity requirements, the American Association of Ancillary Benefits has brought separate litigation in the Eastern District of Texas seeking to invalidate the Final Rule's short-term limited duration provisions.

Takeaway for Group Coverage

In the group market, no notice requirement applies.

Takeaway for Individual Coverage

The following notice, displayed "prominently in the application materials in at least 14 point type," is compliant with the *ManhattanLife* ruling

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.