



Formerly The Foundation for Taxpayer & Consumer Rights

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Monday, April 14, 2008

Ms. Cindy Ehnes
Director
Department of Managed Health Care
980 Ninth Street, Suite 500
Sacramento, CA 95814-2725

Dear Ms. Ehnes,

I am writing to you on behalf of Consumer Watchdog to urge the Department of Managed Health Care to require health plans to reinstate the coverage of wrongfully rescinded patients.

Rescission of a health plan contract is extremely detrimental to the patient. Not only is the rescinded patient left uninsured and often hundreds of thousands of dollars in medical debt, but is also virtually uninsurable in the individual market. Particularly harmful is the fact that a patient rescinded under an *allegation* of fraud is barred from enrolling in high-risk coverage through the Major Risk Medical Insurance Program (MMRMIP). As result, patients who have been wrongly rescinded are forced to rely on charity care and the state's underfunded health care safety net.

As you acknowledged at the recent Senate Health Committee oversight hearing, the Department has the authority to order reinstatement of health plan contracts. In fact, the Department has already ordered Kaiser Foundation Health Plan to reinstate the coverage of one patient.

In addition to the one Kaiser reinstatement, the Department has so far identified at least 90 additional illegal rescissions. The Department's survey of Blue Cross of California, issued to the public a full year ago, found that in all 90 cases reviewed, the plan failed to complete medical underwriting and rescinded coverage without proof of willful misrepresentation, in violation of Health and Safety Code section 1389.3. Yet, the Department has not ordered reinstatement of Blue Cross enrollees.

Further, a California Appellate Court in *Hailey v. California Physicians' Service*, dba Blue Shield of California (Cal. App. 4th, No. G035579), found Blue Shield did not have a procedure for resolving reasonable questions and did not show enrollees' willfulness prior to rescission – documenting a systematic violation of Health Code section 1389.3. The Department should order that enrollees who were rescinded, at least by Blue Cross and Blue Shield, be reinstated now.

To make patients whole, reinstatement must be retroactive to the time of cancellation and the plan must be liable for health expenses from the date of issuing the contract through the date of reinstatement.

Authority

This request for reinstatement is based on the same Knox Keene Act authority cited in the Department's October 6, 2006 Order requiring Kaiser Foundation Health Plan to reinstate coverage of one enrollee. That authority includes: the Director's statutory authority in Health & Safety Code section 1344(a) to adopt such Orders as necessary to carry out the provisions of the Knox-Keene Act, in particular, sections 1367(d), requiring continuity of care; 1367(e)(1), mandating that all services be readily available at reasonable times to each enrollee consistent with good professional practice; and 1389.3, mandating that health care service plan complete pre-enrollment medical underwriting before approving an application for coverage and requiring a "showing of willful misrepresentation" before a health coverage contract may be rescinded.

In addition to the authority cited by the Department its October 2006 Order, section 1365(b) requires reinstatement of wrongfully cancelled policies. Specifically, § 1365(b) provides:

An enrollee or subscriber who alleges that an enrollment or subscription has been canceled or not renewed because of the enrollee's or subscriber's health status or requirements for health care services may request a review by the director. If the director determines that a proper complaint exists under the provisions of this section, the director shall notify the plan. Within 15 days after receipt of such notice, the plan shall either request a hearing or reinstate the enrollee or subscriber. If, after hearing, the director determines that the cancellation or failure to renew is contrary to subdivision (a), the director shall order the plan to reinstate the enrollee or subscriber. A reinstatement pursuant to this subdivision shall be retroactive to the time of cancellation or failure to renew and the plan shall be liable for the expenses incurred by the subscriber or enrollee for covered health care services from the date of cancellation or nonrenewal to and including the date of reinstatement.

(emphasis added).

Under the plain language of the statute, § 1365(b) provides a process for reinstatement of cancelled policies. The Department considers "cancellation" to be synonymous to rescission for the purposes of section 1365(b) as evidenced in the Department's discussion draft of the § 1389.3 regulations:

A plan's determination to rescind, cancel, or limit a subscriber contract based on an alleged misstatement or omission in the coverage application shall be subject to the Director's review pursuant to section 1365(b) of the Act.

Specifically, § 1365 (b) provides that a patient who has alleged that health coverage has been cancelled because of the enrollee's health status may request a review by the Director. If the Director determines that a proper complaint exists, the Director shall notify the plan which shall either request a hearing within 15 days or reinstate the policy.

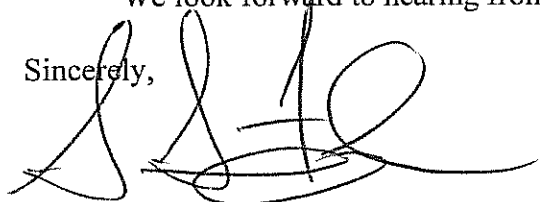
Here, patients have complained to the Department about wrongful rescissions carried out by health plans because of alleged omissions during the application process about the subscriber's health status. The Department's survey of Blue Cross finding that rescissions were wrongful in all 90 cases reviewed constitutes the Director's determination that a "proper complaint exists." That report, which was sent to Blue Cross for review, constitutes notice to the plan. If Blue Cross did not request a hearing within 15 days of receiving that survey, Blue Cross is overdue in reinstating those policies. If the Blue Cross survey is deemed not to be notice for the purposes of § 1365 (b), the Department must give immediate notice to Blue Cross of the requirements of § 1365 (b).

Request

Pursuant to Article 1 § 3 of the California Constitution, I request that you respond in writing as to what actions the Department will make regarding reinstatement. If your decision is to not order immediate reinstatement, please respond by providing specific statutory authority for that decision – including how such a decision comports with the requirements of § 1365(b). Given the health threat faced by wrongfully rescinded patients we urge that you respond to this request no later than April 25.

We look forward to hearing from you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jerry Flanagan', written over a horizontal line.

Jerry Flanagan
Health Policy Director
(310) 302-0522 ext. 319