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Department of Managed Health Care releases plan to end illegal health insurance rescissions

Joins with Insurance Commissioner Poizner to end practice throughout industry

(Sacramento) – In a first-ever joint announcement by the two California entities regulating the health care industry, California Department of Managed Health Care (DMHC) Director Cindy Ehnes and Insurance Commissioner Steve Poizner announced that they would issue joint regulations to protect consumers purchasing health coverage in the individual market, and pledged that they would work together to end the practice of illegal rescissions.

The DMHC has released draft regulations to end illegal rescissions of health insurance policies by major California health plans. The California Department of Insurance is drafting parallel regulations. The jointly proposed regulations, if adopted, will be the strongest protection for consumers against the illegal rescission of health insurance in the nation.

“Rescission is a harsh practice that hits sick patients when they are down, leaving them uninsured and uninsurable. This regulation will help to bring an end to this cruel practice,” said Cindy Ehnes, Director of the DMHC. “Working with health plans to expand health insurance coverage is one of the goals addressed by the Governor’s health care reform proposal that we are trying to achieve this year.”

The DMHC regulations will clarify existing law which states that a consumer must willfully misrepresent his/her health history before a health insurance policy can be rescinded. It will also require that health plans conduct medical underwriting before issuing a policy and fully investigate questionable responses on health history questionnaires.

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The California Department of Insurance has also been actively investigating the rescission practices of health insurers and will be introducing regulations in tandem with the DMHC.

“This is another version of ‘Use It And Lose It,’ where using your insurance leads the insurer to withdraw your coverage,” said Commissioner Poizner. “That’s not how insurance should work, and it’s not what the law allows. Both our agencies face this problem, and we want consumers and the insurance industry to know that we will stand shoulder to shoulder to address it.”

Since late 2005, the DMHC has been investigating California health plans that offer individual health policies for engaging in the illegal practice of post-claims underwriting. After receiving a significant number of complaints from consumers about rescissions of health policies, especially after a claim has been made, the DMHC has taken an aggressive enforcement stand to fine plans and to provide new protections.

The underwriting practices of five of seven health plans offering individual policies in California have been investigated. To date, Blue Cross of California was fined \$1 million in March 2007 for routinely rescinding health insurance policies, and had previously been fined \$200,000 in September 2006 for illegally rescinding the health insurance policy of one of its members. Kaiser Foundation Health Plan has also been fined a total of \$325,000 for two illegal rescissions.

Once the regulations are formally submitted to the Office of Administrative Law (OAL), which is expected by mid-November, the DMHC will hold a hearing to receive public input on the regulations and make any changes necessary. The regulations must be adopted one year from the date which they were submitted to the OAL.

The California Department of Managed Health Care is the only stand-alone watchdog agency in the nation, touching the lives of nearly 21 million enrollees. The DMHC has assisted more than 800,000 Californians through its 24-hour Help Center by resolving HMO problems while educating consumers on health care rights and responsibilities, and working closely with health plans to ensure a solvent and stable managed health care system.

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Summary of proposed regulations attached.

Summary of proposed DMHC regulations on illegal health insurance rescissions

- Establishes definitions necessary to clarify section 1389.3 of the Knox-Keene Act, including the terms *medical underwriting*, *resolving reasonable questions*, and *limiting a plan contract*.
- Clarifies what is considered an unacceptable coverage application form, e.g. unclear, ambiguous, or unreasonable questions in the health questionnaire.
- Specifies that willful misrepresentation must be determined by a plan before rescinding, canceling, or limiting a subscriber contract.
- Clarifies that rescissions and cancellations for misrepresentation in the coverage application are subject to review by the Director.
- Prohibits plans from suspending coverage during an investigation, specifically, plans shall not delay, deny, or modify medically-necessary covered services that are needed on an urgent or necessary basis, and must complete investigation and deliver a determination within 30 days.
- Prohibits cancellation, rescission, or limitation of coverage for all enrollees under a contract if there is willful misrepresentation by only one person.
- Prohibits rescission, cancellation, or limitation of coverage after two years.
- Requires notice before cancellation and notice of the right to request a review by the Director.
- Imposes a temporary (two years) reporting requirement, necessary for effective DMHC oversight to confirm that widespread noncompliance has been corrected.