



Testimony for the Assembly Committee on Accountability and Administrative Review Hearing
on
Department of Managed Health Care and
Department of Insurance:
Rescission Settlement Agreements

March 10, 2010
State Capitol, Room 437
9:00 a.m.

Good morning Mr. Chairman and members. My name is Tim Le Bas and I am an Assistant Deputy Director at the California Department of Managed Health Care (DMHC). I am joined by our Assistant Deputy Director for Enforcement, Amy Dobberteen and Marcy Gallagher, Chief of the Division of Plan Surveys at the DMHC Help Center.

Thank you for inviting us this morning to present on the actions that the Department of Managed Health Care has taken relating to rescissions. As a result of DMHC actions, the number of rescissions industry-wide has dropped from 1,553 in 2005 to less than 10 in the last two years. The Department also assessed and collected \$13.6 million in penalties, the highest by any agency in the nation for illegal rescission; required health plans to offer guaranteed coverage to more than 3,400 enrollees; and returned more than \$870,000 in expenses to consumers in a matter of months. The Department's actions to halt illegal rescissions have been comprehensive, swift and binding.

Moreover, all of DMHC actions were designed to carefully balance the need to ensure that not only those consumers who were unfairly rescinded were protected, but that all consumers in the individual market would have access to affordable health care coverage.

Despite the well-documented practice of post-claims underwriting and rescission that surfaced in 2006, early court cases that were brought against health plans simply did not provide the long-term relief that consumers expected and deserved.

As the initial proposed rescission court settlements were being made public, the DMHC Director was extremely concerned that deals were being struck quickly, without putting the consumer first. Instead, they seemed to provide no real benefit for the consumer other than a small, one-time payout.

Therefore, in early 2007, the DMHC became the first agency in the nation to take serious action to end the practice of illegal and inappropriate rescissions. The Department's 'war on rescission' resulted in unprecedented actions and strong new consumer protections that have forever changed the California health plan industry. These actions also had such a profound impact that they changed the industry practices across the nation.

In short, the net effect of the DMHC enforcement and consumer protection actions have already produced the major changes in the health plan industry demanded by consumer groups and in the pending Department of Insurance draft regulations.

These industry changes include:

- Clearer, understandable application forms to obtain accurate information and that capture each individual's responses.
- Clear disclosure statements so consumers understand their rights and obligations.
- Broker and applicant attestations to ensure and verify complete understanding of the application and disclosures.
- More complete medical underwriting of individual policies prior to issuance.
- Resolution of all reasonable questions pertaining to prior medical conditions before issuing coverage.
- Notice to consumers that an investigation has commenced, the reasons for the investigation and invitation to provide explanation.
- Documentation requirements to demonstrate the completion of medical underwriting and the basis for any actions resulting from the investigation.
- A fair, impartial grievance process for consumers.

In addition, throughout the settlement period, consumers retained the ability to choose a private cause of action instead of the remedies provided to them by our agency.

These industry changes prompted by the enforcement actions have been continually monitored by the DMHC and are well under way to full implementation within all five plans covering essentially all of the individual market in California under the jurisdiction of the DMHC. Moreover, the DMHC has initiated follow-up surveys of each plan to ensure these reforms are appropriately implemented.

The Administration's goal through these investigations and reforms has been to offer coverage to as many as possible, as quickly as possible and to reform industry practices so that consumers receive a fair review of their application up front.

It is important to also point out that the law still allows for rescission in some circumstances. As we have seen, in several recent court cases, some rescissions do involve misrepresentations on the part of consumers when filling out their health history questionnaires. In a market that will continue to have a need to rescind coverage at times, the Department was able to demand a fair and balanced rescission process, which is vital to protect all consumers from unfairly subsidizing higher premiums resulting from those who may misrepresent their health status. Given the volatile nature of the individual market and the soaring costs of health care coverage, the DMHC could not in good conscience make a difficult market worse.

But the need for this type of delicate balance once again illustrates the need for the type of meaningful health care reform contained in the Governor's and former Speaker's 2007 legislative proposal. These reforms would have provided guaranteed issue of coverage, regardless of a person's health status and eliminated the need for medical underwriting.

Thank you for your time. We can respond to any questions you may have for us today.