

Arnold Schwarzenegger, Governor
State of California
Business, Transportation and Housing Agency

Department of Managed Health Care
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schammout@dmhc.ca.gov

December 13, 2006

Jerry Flanagan
Health Care Policy Director
The Foundation for Taxpayer and Consumer Rights
1750 Ocean Park Blvd., Suite 200
Santa Monica, CA 90404

RE: Petition for Rulemaking and Enforcement Action Regarding Post-Claims Underwriting

Dear Mr. Flanagan:

The Department of Managed Health Care (Department) appreciates your correspondence dated November 13, 2006 (the Petition), requesting that the Department take rulemaking and enforcement action to protect consumers from illegal post-claims underwriting and coverage rescission by the Department's licensees (health plans). This letter provides the Department's response to the Petition consistent with the requirements of Government Code section 11340.7.

The Petition requests that the Department take five actions:

1. Promulgate regulations to reinforce the Knox-Keene prohibition on post-claims underwriting;
2. Audit and investigate all rescission complaints submitted to the Department;
3. Conduct a compliance review of existing coverage application forms and require correction of non-compliant application forms;
4. Promulgate regulations to remove financial incentives (with respect to recovering past compensation paid to providers) for illegal rescissions; and
5. Impose greater penalties against plans and their responsible officers and directors.

With respect to Items 1 and 4, above, requesting that the Department initiate rulemaking action, please be advised that informal rulemaking activity to address post-claims underwriting was commenced in March 2006. Since then, Department staff have conducted substantial research regarding post-claims underwriting issues and medical underwriting standards, and developed a comprehensive understanding of post-claims underwriting compliance violations.

At this time, the Department's Regulations Development Division is leading an interdivisional Department team in identifying alternative approaches to regulation structure and content to effectively address the identified medical underwriting and coverage cancellation deficiencies, including deficiencies as identified in the Petition.

As you may be aware, the Department's preferred approach is to make its rulemaking processes as transparent and readily accessible to impacted stakeholders as possible. The Department anticipates holding informal stakeholder meetings and workshops starting in January 2007 to identify, discuss, and collaboratively resolve issues of concern regarding the draft regulations before commencing formal rulemaking action. Your participation and that of other consumer advocacy groups in those meetings would be most welcome.

The Petition does not include a request for a public meeting or hearing, but the Department recognizes the value of an early opportunity for shared stakeholder input in an open forum attended by all interested persons. Accordingly the Department will schedule a public meeting to be held in January 2007. A formal Notice of Public Meeting will be issued shortly.

With respect to Items 2, 3, and 5, above, the Department notes that these are not requests for rulemaking action and are therefore outside the scope of Government Code section 11340.6. The requests in the Petition for specific enforcement actions beyond the promulgation of regulations are not supported by any citation to authority. The suggestion that the Department conduct full audits and investigations of all rescission complaints, impose fines and penalties for each illegal cancellation, and propose new legislation, involve matters entrusted to the Department's prosecutorial discretion. While the Department is quite willing to work cooperatively with all stakeholders, and is particularly interested in obtaining the views and recommendations of consumer advocacy groups, it cannot be compelled to exercise its discretion in such a particularized manner. Nevertheless, as part of the Department's oversight of health plan compliance with the Knox-Keene Act, the Department can conduct, and has conducted, non-routine surveys of health plans to determine compliance with the Knox-Keene Act, including but not limited to, compliance with the prohibition on post-claims underwriting.

Determination on the Petition

Although the Department's rulemaking activities regarding post-claims underwriting were in progress before the Petition was submitted, please consider the Petition granted as to Items 1 and 4. The ultimate structure and content of the final draft proposed regulations may be different than suggested in the Petition. As noted above, Items 2, 3, and 5 are not properly within the scope of the Petition as provided by Government Code section 11340.6, and are not requests that the Department can grant pursuant to Government Code section 11340.7.

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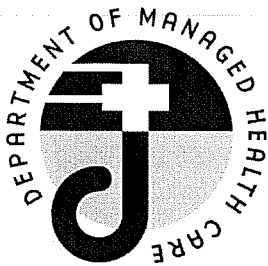
The Department appreciates your interest and participation in its rulemaking activities, and looks forward to working with you and other stakeholders in developing these regulations. Please do not hesitate to contact me directly with any questions or concerns regarding this rulemaking action.

Very truly yours,

A handwritten signature in cursive script, reading "Suzanne Chammout". The signature is fluid and elegant, with a large initial 'S' and a long, sweeping underline that extends across the width of the signature.

SUZANNE CHAMMOUT
Chief, Regulations Development Division
Office of Legal Services

cc: Susan Kennedy, Chief of Staff, Office of Governor Arnold Schwarzenegger
Barry Sedlik, Acting Secretary, Business, Transportation and Housing Agency



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ACTION: Notice of Public Meeting
Title 28, California Code of Regulations

SUBJECT: Scheduling Public Meeting Regarding Rulemaking Action Titled Post-Claims Underwriting, Control No. 2006-0633

PUBLIC PROCEEDINGS: Pursuant to Government Code section 11346.45(a), the Department of Managed Health Care (Department) has scheduled a public meeting to obtain information relevant to the need for, and input regarding the necessary scope and content of, the above-referenced new proposed rulemaking action. At this time the Department is considering including in these new regulations provisions to clarify processes relevant to medical underwriting, establish due process standards applicable to plan rescission and cancellation of subscriber contracts, and clarify requirements regarding provider claims settlement practices in connection with contract rescission circumstances.

PUBLIC MEETING: The public meeting will be:

**January 29, 2007
1:00 p.m.
Junipero Serra Building
320 W. Fourth Street
Los Angeles, California**

The purpose of this public meeting is to solicit and receive public comments regarding the above referenced proposed rulemaking action. Any interested person, or his/her duly authorized representative, may attend the meeting and submit oral comments relevant to the proposed regulatory action. Oral comments during the public meeting should be limited to the subject of the proposed regulation and no more than five (5) minutes in length. The public hearing will adjourn after all oral comments have been heard or at 5:00 p.m., whichever occurs sooner. The agenda for the public meeting is available on the Department's website under the "Upcoming Meetings" section at www.dmhc.ca.gov.

WRITTEN COMMENTS: The Department's Office of Legal Services will also accept written comments regarding any issues or concerns relating to post-claims underwriting up through 5:00 p.m. on January 29, 2007. Written comments may be submitted during the above-referenced public meeting or may be delivered to the Department as indicated below.

Please address all written comments to the Department of Managed Health Care, Office of Legal Services, Attention: Regulations Coordinator. Comments may be transmitted by regular mail, FAX, email or via the Department's website:

Website: <http://wpso.dmhc.ca.gov/regulations/>
Email: regulations@dmhc.ca.gov
Mail: Department of Managed Health Care
Office of Legal Services
Attn: Regulations Coordinator
980 9th Street, Suite 500
Sacramento, CA 95814
Fax: (916) 322-3968

Please note, if comments are sent via the website, email or fax, there is no need to send the same comments by mail delivery. All comments, including via the website, email, fax or mail, should include the author's name and U.S. Postal Service mailing address.

Questions regarding the proposed new rulemaking action or this public meeting can be submitted to the Department by fax at (916) 322-3968, via the DMHC website at <http://wpso.dmhc.ca.gov/regulations>, by e-mail addressed to Regulations@dmhc.ca.gov or by mail addressed to:

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REASONABLE ACCOMMODATIONS:

Reasonable accommodations for persons with disabilities are available upon request. Please submit your request for reasonable accommodations at least seven (7) days in advance. The Department will attempt to accommodate late requests to the extent possible. You may submit your request via email to Emilie Alvarez, Regulations Coordinator at evalvarez@dmhc.ca.gov or 916-445-9960. You may contact California Relay Service for the deaf or hearing impaired: 1-800-735-2929 (TTY) or 1-800-735-2922 (Voice).