



Formerly The Foundation for Taxpayer & Consumer Rights

1750 Ocean Park Boulevard, #200, Santa Monica, CA 90405-4938 • Tel: 310-392-0522 • Fax: 310-392-8874 • www.consumerwatchdog.org

Wednesday, May 14, 2008

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

Dear Ms. Ehnes,

We have heard disturbing rumors that the Department will soon announce a settlement with Kaiser regarding illegal retroactive cancellations of coverage that falls significantly short of your duty to protect patients by allowing Kaiser to continue to refuse to pay past medical bills. What's worse, we understand that the agreement is also aimed at limiting Kaiser's future legal liability to patients who were left uninsured when they got sick and needed coverage the most—some of whom have lost their jobs and their homes because of Kaiser's malfeasance.

Health & Safety Code § 1365(b) requires that reinstatement must be retroactive to the time of the policy cancellation and that health plans must be liable for *all health expenses from the date of issuing the contract through the date of reinstatement*. You do not have authority to do anything less.

The Department has found in surveys of the state's largest health plans that many plans do not complete medical underwriting before issuing coverage, nor do *any* plans establish the required "showing of willful misrepresentation" on the part of the patient before rescinding coverage. H&S § 1389.3. As such, all previous rescissions carried out without a showing of willful misrepresentation were premature at best, and therefore wrongful, and patients must be immediately put back in the position that they were in prior to losing coverage. Dragging patients through months of review before reinstatement and/or full payment of past medical bills is simply further unjust punishment.

Your Department's failure to attend to the interest of the patients forced them to sue for relief. Now, the insurance company defendants that you regulate are counting on you to bail them out. This is an inappropriate role for an agency entrusted with the protection of patients.

This latest action marks a disturbing trend. Promised regulations are now 18 months overdue. Several company surveys are long overdue. It is not too late for you to put the Department back on track, but you must personally ensure that patients come first—even if that means upsetting some of the Governor's largest contributors.

Sincerely,

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

Jerry Flanagan