Los Angeles Times
September 22, 2006
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Blue Cross Faces Fine for Voiding Policy

The $200,000 penalty is the first in a continuing probe of allegations that the insurer illegally dumped sick patients.

In the first sanction of its kind, California's top HMO regulator fined Blue Cross on Thursday for illegally canceling a woman's medical policy because she did not disclose corrective surgery she had 23 years earlier.

The $200,000 fine might not be the last resulting from the state's investigation of allegations that insurers dump sick policyholders to avoid paying claims, said Cindy Ehnes, director of the Department of Managed Health Care.

The agency is continuing to investigate a score of complaints from consumers who held individual policies, as well as allegations that Blue Cross, its rival Blue Shield, Kaiser and other insurers routinely cancel policies for inadvertent or irrelevant omissions on applications for coverage.

"This is the first penalty in an ongoing investigation in which the [department] is still assessing the full extent of harm to consumers," Ehnes said at a news conference in Sacramento.

She said she considered the fine "a very significant step to protect consumers from illegal rescissions of their health coverage."

Gov. Arnold Schwarzenegger, who appointed Ehnes in 2004, applauded the action.

"Californians — who make the right decision to have health insurance as security for themselves and their families — should not be afraid that if they use it, they will lose it because of confusing applications," he said in a statement.

The fine was criticized by Blue Cross, which could challenge it, and consumer advocates, who said it was not sufficient punishment.

The insurer, a subsidiary of Indianapolis-based WellPoint Inc., is the nation's largest health benefits company. Blue Cross said it was disappointed because the sanction came even as it was in discussions to resolve the woman's complaint and after the company announced steps aimed at reducing errant revocations.

WellPoint spokesman Robert Alaniz said the company had not yet been served with the fine and had not decided whether it would pay or dispute it.

Consumer advocates said the fine was a step in the right direction but too small to compel a company as large and profitable as Blue Cross to make meaningful changes.

"They are making so much money off these rescissions that $200,000 is just the cost of doing business," said Jerry Flanagan, a patient advocate with the Foundation for Taxpayer and Consumer Rights in Santa Monica.

In letters Thursday to Ehnes and state Insurance Commissioner John Garamendi, the group called for regulators to thoroughly audit Blue Cross' revocation record and to order reforms to stop what it called an epidemic of improper cancellations. The agencies should force Blue Cross to dismantle its so-called rescission unit and to submit proposed cancellations to an independent outsider for review, the consumer group said.

The fine comes in the wake of scores of lawsuits filed in California in recent months by consumers. They say they were stuck with medical bills after insurers canceled them for making innocent mistakes on their applications or for leaving out health history details the individuals viewed as insignificant or irrelevant.

They also allege that insurers use applications that are confusing by design to trap consumers into making mistakes that can later be used against them.

Anthony Wright, executive director of Health Access California, a statewide healthcare consumer coalition, said the fine was not enough, "given the extent of insurers' dumping patients simply because they use their health insurance."

"Blue Cross must end its 'use it and lose it' policy," he said. "Patients need to know that their coverage will be there when they need it and not taken away at exactly the time they need care."

Claremont lawyer William Shernoff, who represents about 100 consumers who have been canceled by Blue Cross and other insurers, said he was underwhelmed by the size of the fine but pleased that regulators were investigating "because it's been going on for a long, long time."

The problem involves individual health insurance, the type people buy for themselves because they are self-employed or work for companies that do not offer health benefits. More than 2 million Californians have individual policies, about half of them from Blue Cross. Unlike with many group policies, insurers can decline to cover or can charge higher premiums for individual policies based on preexisting conditions.

Blue Cross and other insurers maintain that they have a legal right to cancel such health policies if they find that a consumer omitted information about his or her health history from an application for coverage — whether the omission was intentional or an innocent mistake.

But consumer advocates and policyholder lawyers contend that state law forbids cancellation unless insurers can prove that applicants intentionally misrepresented their health histories to obtain coverage.

In announcing the fine, Ehnes sought to clarify, saying insurers are prohibited from canceling health policies unless a policyholder lied.

In the case at hand, her department found that Blue Cross broke the law in two ways. First, the agency said, the insurer failed to adequately underwrite — meaning scrutinize the woman's medical history — before issuing her policy. Second, it found that Blue Cross "failed to prove that the member willfully misrepresented her health history."

"California healthcare consumers must have the peace of mind that their health coverage won't be rescinded unfairly if they make a claim," Ehnes said.