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HEALTH PLAN REVIEW MAY BE INTENSIFIED

The state's top HMO regulator calls for outside oversight of insurers' attempts to drop policyholders.

The state's top HMO regulator said Monday that health plans should be required to get outside review before dropping a policyholder, a dramatic step up in oversight that probably would face stiff challenges from the industry.

Cindy Ehnes, director of the Department of Managed Health Care, said she hadn't yet developed details on how such a requirement would work. But she said any external input — possibly by the department or some independent panel — could significantly enhance policyholders' safeguards against the loss of coverage.

"It is clear to me that we have to have some independent oversight," Ehnes said.

Her call for outside review came after a public meeting she called in Los Angeles to hear from consumers, health plans and providers on what her agency could do to curtail the controversial practice of insurers canceling health coverage after policyholders have submitted claims for care.

Ehnes said the department's position was that the law banned retroactive rescissions unless a health plan could show that a policyholder intentionally lied about his health history on his application for coverage.

That contrasts with the view of the law held by most insurers. They believe that they may rescind coverage even if application discrepancies are inadvertent or innocent mistakes.

But as the Los Angeles Times highlighted in a series of recent articles, that has resulted in insurers routinely and unilaterally revoking coverage based on the health plans' own, often-secret investigations.

"The problem is, right now the companies are the prosecutor, judge, jury and executioner," said Harvey Frey, a physician and consumer advocate.

In lawsuits, hundreds of former policyholders accuse the state's major health plans of scouring their medical records in search of pretexts for dumping them after they submitted expensive claims.

The problem is unique to individual insurance. Unlike the group market, insurers that sell individual coverage are allowed to select policyholders based on medical history. Insurers require applicants to answer detailed health questionnaires, and people with serious and even common health problems, such as asthma and acne, are routinely turned away.

As a result, insurers say, they must be on guard against fraud, such as people lying on applications to obtain coverage after they discover they have a health problem.

Ehnes called Monday's meeting after the Foundation for Taxpayer and Consumer Rights petitioned the department to issue regulations clarifying the issue. The Santa Monica group was instrumental in the adoption of auto insurance rate reforms and enhanced patient protections against treatment denials by health

maintenance organizations.

Jerry Flanagan, a consumer advocate with the group, said he believed the complaints that had come to light so far were the "tip of the iceberg" because many people thought they had no recourse when an insurer accused them of lying on an application.

Insurers maintain that they rescind a small fraction of policies. But William Shernoff, a lawyer who represents several people whose policies have been canceled, said he had been privy to internal health plan documents that showed at least "tens of thousands" of people in California had lost coverage through retroactive rescissions over the last 10 years.

The department is investigating the cancellation practices of Blue Cross of California, Blue Shield of California and Kaiser Permanente. It also is considering issuing new rules in an effort to cut down on the incidence of policy revocations.

Ehnes noted that policy rescissions undermined the goal that Gov. Arnold Schwarzenegger articulated this month of expanding healthcare coverage. His proposal would require individuals to obtain insurance and insurers to sell it to everyone.

"We are proceeding not only because it is the right thing to do but also because the governor's health reform proposal is based partly on the importance of access to individual health coverage," said Ehnes, who was appointed by the governor.

Although Ehnes has not yet figured out how outside reviews would work, a couple of consumers suggested in testimony that the department should hold hearings on its own or with citizen panelists to decide whether a health plan had met its burden of showing intentional misrepresentation.

Chris Ohman, president of the California Assn. of Health Plans, contended that regulations to limit rescissions would not be necessary if the governor's plan were adopted and insurers had to sell to everyone.

"We see pursuing new regulation of rescission as a contradiction of the governor's overall policy direction," he said.

Ohman, whose organization represents 40 health plans, said any new rule that required insurers to prove intentional misrepresentation would invite litigation, confuse consumers and be seen by insurers as a change in the current legal standard.

Consumers, along with physician and hospital groups, urged Ehnes not only to adopt new regulations making rescissions more difficult but also to step up enforcement under the existing law.

For instance, the applications need to be simplified because, in their current format, they invite mistakes, said Scott Glovsky, a lawyer representing several canceled policyholders.

"This frankly is a trap for the unwary," he said. "It's a fraud."

Scott Svonkin, chairman of the Los Angeles County Commission on Insurance, said the Board of Supervisors recently approved a resolution supporting new rules at the state level that would limit revocations.

"It's going to take your department, through regulations, to make the insurance companies do the right thing," he said.

Ehnes also heard from consumers such as Patricia Abbott, who said Blue Shield rescinded her coverage after she had a hysterectomy that the health plan authorized in advance.

She said the plan accused her of concealing three diagnoses that she was unaware were in her medical charts or that were incorrect.

"You're at the mercy of your medical reports," Abbott said.