



STATE OF CONNECTICUT
INSURANCE DEPARTMENT

6531

Testimony of the Connecticut Insurance Department

Before the

Insurance and Real Estate Committee

February 24th, 2009

Raised Bill 6531 – An Act Clarifying Post Claims Underwriting

The Connecticut Insurance Department would like to offer the following comments in opposition to Raised Bill 6531--An Act Clarifying Post Claims Underwriting. This proposal makes numerous changes to the existing law on post claims underwriting to address problems that the Department believes do not exist, primarily due to the passage of Public Act 07-113. While Connecticut never had a significant problem with rescissions of health insurance policies, as did a state like California, we have had our share of problems with pre-existing condition claim denials. Due to the enactment of PA 07-113, An Act Concerning Post Claims Underwriting, along with the Department's highly publicized enforcement action against Assurant that resulted in a \$2.1 million fine and \$900,000 in restitution to consumers, considerable change has occurred in the marketplace leading to a reduction in improper conduct.

Raised Bill 6351 proposes a number of changes to a law that is slightly less than 18 months old and has shown itself to successfully curb the problem of post-claim underwriting denials and rescissions. In addition, Connecticut's law has served as a model to other states, such as California and Maryland, that have adopted some of its provisions to address the problems of pre-existing condition denials and rescissions.

The Department believes that the following data may be useful as you consider Raised Bill 6531. For the period of October 1, 2007 to September 30, 2008, the first year following the implementation of the law, 32,950 individual health insurance policies were written in Connecticut. Of all those policies, fifty-two were rescinded without prior approval of the Department; that is, less than 1/10th of 1% of all these policies. These policies were issued pursuant to the insurer or health care center having completed medical underwriting and resolving all reasonable medical questions on the application. By way of background, carriers are required to seek permission from the Department to rescind a policy ONLY in those instances when they have NOT conducted pre-sale underwriting. Testimony on July 17, 2008, before the US House Committee on Oversight and Government Reform reflected that the number of complaints in Connecticut regarding pre-existing condition limitations and claim denials, as well as rescissions, has seen substantial improvement and reduction in incidence.

During that same time period, the Insurance Department has received a total of seven (7) consumer complaints claiming unjustified post claim underwriting. Our review of those

complaints found that in six of the instances, the consumer failed to disclose material medical history on the insurance application. Again, in that same period, the Department has received four (4) requests for prior approval to rescind individual medical policies where insurers identified information through claim processing which contradicted the medical application and therefore had reason to investigate whether the information submitted on the application had been complete or truthful. In all four requests, the Department has approved the rescission after finding that in each case, the consumer had either submitted written information on the application that was false at the time the application was made, or they should have known of the information or may have knowingly omitted the information.

In addition, compliance with this law is now an element of review for our Market Conduct Examinations and no companies having undergone market conduct exams since the implementation of the law have been found to be out of compliance.

The bill as proposed has serious flaws. We will not take your time to identify each of them, although we would be happy to provide a section by section analysis of the Department's concerns, but we do want to point to a few significant issues:

- The bill seeks to have insurers and carriers obtain prior approval for all rescissions, cancellations and limitations, no matter what steps they have taken on a presale basis. As currently written, that would also draw in cancellations for non-payment of premium or loss of eligibility.
- The bill seeks to absolve the applicants for any responsibilities for statements made on the application. It is unclear how that is reconciled with the requirement that applicants attest that they have read and certify the information is true and correct on each application.
- The bill seeks to restrict insurers to using a single, uniform application, designed by the Insurance Department, the Attorney General's Office and the Healthcare Advocate's Office for all lines of business. As drafted, this would require that property and casualty lines, as well as life, annuity, and health would use the same application. That is an overly burdensome and anti-competitive.

Applications are not crafted in isolation, but rather are reflective of the companies' respective product designs and underwriting guidelines, which reflect the companies' respective risk capabilities and business strategies. To require all companies to use the same application would cause the market to coalesce and may result in reduced market offerings, less product and underwriting innovations and may have the effect of shutting new companies out of the market. If all the companies have the same underwriting standards, then an applicant denied by one company has no chance of acceptance by a second company if they are evaluating on the same basis. Rather than protecting consumers, this further reduces access.

We urge the Committee to reject this proposal. Connecticut's post-claims underwriting law is relatively new and appears to be working as intended without any disruption to Connecticut's individual marketplace. The law is seen as a national model and any changes at this time are premature. The Department will continue to monitor compliance with the law and will certainly recommend any changes in the future.