

LAW & MEDICINE

Rescinding Health Insurance

When he was asked about corporate America during one of his speeches on the presidential campaign trail, former Democratic candidate John Edwards noted, "They don't give the layperson anything; it has to be taken from them." How true this admonition and observation is when it comes to the plight of health plan members whose health insurance coverage is rescinded just when medical bills come due. The "poster child" for this problem seems to be Health Net Inc. of Woodland Hills, Calif.—for good reason.

On Feb. 21, 2008, California resident Patsy Bates was awarded \$9 million in an arbitration proceeding involving Health Net. Ms. Bates had a health insurance policy from another company, but was convinced by an insurance agent to try Health Net. She applied for the new policy in July 2003, and Health Net approved her new policy effective Aug. 1. In September of that year, she was diagnosed with breast cancer. Three months later, Health Net asked that she elaborate on certain answers she gave on her enrollment application. In January 2004, Health Net sent Ms. Bates a letter telling her it was rescinding her health insurance policy. This left her, at the time of the arbitration, with unpaid medical bills totaling nearly \$130,000.

Bates sued Health Net for breach of contract, and breach of the duty of good faith and fair dealing. She also claimed that by rescinding her policy, Health Net was guilty of oppression, fraud, or malice.

Evidence presented during the arbitration indicated that after Ms. Bates filled out and signed her application, her agent changed what she gave as her weight; however, he did not tell Ms. Bates about the change, nor did he have her approve the change in writing, as required by law.

One of the standards Health Net used for reviewing applications pertained to weight, i.e., if an applicant over age 50 weighed more than 198 pounds, the application could be declined, or "rated a +50." Although Ms. Bates' actual weight was not mentioned in the arbitration

record, it appears the agent changed the weight listed on the application from another amount to 185. Ms. Bates' application was initially approved without further investigation or follow-up.

Ms. Bates was a victim of one of the frequent "rescission investigations" performed by Health Net employees. Information omitted from an application, even by mistake, could be grounds for rescission, and employee bonuses were tied to the rescission investigations. "It's difficult to imagine a policy more reprehensible than tying bonuses to encourage the rescission of health insurance that helps keep the public well and alive," wrote the arbitrator in the case.

Ms. Bates claimed that the rescission of her policy was in bad faith because it was based upon the information supplied in the initially approved application. If there was a problem, it should have been investigated before the policy was issued so that if it was declined, she could still keep her previous coverage.

The arbitrator concluded that Health Net was more concerned with its own financial interests than concerned for the interests of Ms. Bates. The award covered Ms. Bates' medical expenses, emotional distress, and nearly \$8.5 million in punitive damages. According to one newspaper article, this ruling was the first of its kind, and the most powerful rebuke to California's major insurers concerning the practice of rescinding health insurance policies.

A day before the Bates decision came out, the Los Angeles City Attorney filed a 47-page lawsuit against Health Net and its various entities for claims based on unfair competition and false advertising (Dkt. No. BC385816, Sup. Ct., Cty. of Los Angeles). The thrust of this lawsuit is that coverage provided by Health Net and its member companies is largely illusory because they rescind coverage upon submission of a substantial claim for benefits, as was the case with Ms. Bates. That suit is ongoing.

For its part, Health Net reported that it paid out claims in excess of \$200 million in 2006 and that its program of tying bonus-

es to number of rescinded health insurance contracts has been dropped. The company also said that it has halted cancellations and that it would be changing its coverage applications and retraining its sales force.

Health Net is not the only California insurer in the crosshairs of legal scrutiny. Los Angeles City Attorney Rocky Delgadillo announced in April that he is suing Anthem Blue Cross for illegally cancelling the policies of more than 6,000 California residents. There is also the year-old class-action suit against Anthem for cancelling policies, and a case joined in last year by the largest organizations representing California doctors and hospitals, accusing the state's largest health plan of illegally and routinely refusing to pay millions of dollars for medical care provided to enrollees whose policies were later cancelled.

Then, of course, there was the much publicized decision earlier this year when Cigna HealthCare denied a liver transplant for a 17-year-old girl in California. The insurer then changed its mind, but it was too late—the girl died a few hours after the reversal was announced. Another insurer decided that after years of paying for nursing care for a badly disabled boy, the boy no longer needed it, even though he suffered from severe brain damage and was unable to walk, sit up, speak, or eat by mouth.

California's Department of Managed Health Care is trying to help people get their policies back. In mid-April, the department announced that it was ordering immediate reinstatement of policies for 26 consumers whose policies the department found were wrongfully rescinded. The department is also ordering a re-review of all other rescissions over the past 4 years as part of its ongoing investigation into the rescission practices of five of the largest health plans that offer individual coverage to state residents.

From all these examples, one could assert that there is a problem in California with insurers' wanting to get out of insurance contracts once an illness or treatment has occurred. But is it an epidemic, or is this problem of rescission only limited to California? Evidence has not suggested the problem is "systemic" nationwide, but where there is smoke, there surely is fire. One thing is for certain: Insurers seem to

be playing the "blame game"—blaming consumers for not filling out applications for coverage properly when these companies have failed to properly investigate the contents of those applications. Ain't that the American way now—place blame on others for your own failings?

Equally noteworthy is that by insurers of health coverage rescinding coverage due to their own shortcomings, they can still retain premiums paid by patients or employers, deny payments to doctors and health care facilities for care rendered and ... perhaps then make their profit margins even heftier. Moreover, buying insurance to protect against a loss or risk is the expectation of *only* those who buy the insurance—and also, perhaps, the physicians who treat patients because they have certain insurance coverage; they are expecting to be paid by that insurer. Another perspective exists, however: to see how inventive an entity protecting against that risk can be to deny or limit the coverage purchased, and to find ways to preclude the doctors who treat those patients from getting paid.

In the end, maybe the Latin, *caveat emptor*, might be worth thinking about. However, it should never come to this, since the insurance laws of any state in which an insurer wishes to write health policies should be inclusive of a provision or two barring cancellations or rescissions of policies based on innocent or negligently made mistakes done by the insured or anyone acting on behalf of the insured in filling out an application for insurance. Regardless of what remedies are put in place, a perception also certainly exists that rescission of health care coverage only adds to the woes of the health care crisis now engulfing our economy and nation today. But what is important for the reader to know is that maybe health insurers do not insure medical disease or injury, but instead insure that they will avoid risks themselves once a patient makes a claim.

MR. ZAREMSKI is a health care attorney who has written and lectured on health care law for more than 30 years; he practices in Northbrook, Ill. Please send comments on this column to cenews@elsevier.com.



BY MILES J. ZAREMSKI, J.D.

Report Advises Physicians on Reducing Their Carbon Footprint

BY ROBIN TURNER
Senior Editor

Physicians can take measures to mitigate the impact of climate change, the British Medical Association urged in an online report.

Rising temperatures, changing sea levels, and extreme weather patterns have resulted in a broad range of climate change that has affected all countries, especially developing nations. The results include a range of consequences from economic development to the transmission patterns of communicable diseases.

The BMA said the purpose of its report is to highlight practical actions that health professionals and health organizations can take to "reduce their carbon footprint and to protect and promote the health of the public."

Specifically, climate change will result in an increase in water-borne infections and food-related illnesses, and will have acute consequences for health, according to the report.

If unaddressed, growing greenhouse emissions could contribute to more cancer, heart disease, obesity, diabetes, and osteoporosis.

Still, the BMA wrote, there are practical measures physicians can take to address climate change and to encourage environmental responsibility.

Those measures include:

- ▶ Unplugging electrical appliances when not in use.
- ▶ Reducing heat and air-conditioning.
- ▶ Minimizing waste.
- ▶ Recycling items when possible and not oversupplying products that may reach their expiration date before use.

In addition, physicians are urged to opt for spray faucets to conserve water, and they should convert their toilets to mod-

els that have more efficient systems for flushing.

Health care providers also should report or repair leaks and make use of natural ventilation in their offices.

The report also promotes the use of teleconferences, electronic communication with patients and other physicians, and a shift to electronic health records to avoid unnecessary printouts.

For a copy of the full report and other recommendations for reducing one's carbon footprint, go to <http://www.bma.org.uk/ap.nsf/Content/climatechange~climatechangerecommendations>.