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HEALTHCARE

Health insurers' rescission practices are exposed to more scrutiny

Local prosecutors, such as city attorneys, can sue over the practice of revoking sick patients' policies, an appellate court rules.

By Lisa Girion

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California's health insurance companies may have hoped that the more than \$13 million in fines they paid to regulators would put an end to the scrutiny of their practice of rescinding the policies of sick patients.

But a recent appellate court decision suggests that scrutiny over rescission, as well as other health insurance business practices, will continue and may even expand, legal experts say.

The state Court of Appeal in Los Angeles ruled last month that local prosecutors could sue health insurers over the way they treat consumers.

The opinion came in a high-stakes lawsuit accusing Anthem Blue Cross of California of violating state business laws by selling the promise of insurance but rescinding coverage after policyholders submit claims for costly medical care.

Blue Cross attempted to kill the suit by arguing that the company's rescission practices fell under the jurisdiction of the state Department of Managed Health Care and not the Los Angeles city attorney's office, which filed the suit in 2008. The state agency and Blue Shield of California, a competitor that faces a similar suit by the city attorney, filed papers supporting Blue Cross.

But the appellate court rebuffed those arguments, saying the law was "unambiguous" in giving the city attorney the authority to sue.

Legal experts say that ruling not only allows the city to pursue its lawsuits against the insurers but also could have more far-reaching influence.

"This puts new cops on the beat," said Bryan Liang, director of the Institute of Health Law Studies at California Western School of Law in San Diego. "Lots of stuff in the standard operating practices of health plans is going to be affected by that decision."

Los Angeles City Atty. Carmen Trutanich said he was pleased by the ruling. "I am committed 100% to pursuing



our litigation against these insurers," he said. "Illegally canceling people's healthcare coverage after they get sick is unconscionable."

Assistant City Atty. James W. Colbert III said the ruling could encourage local prosecutors in other cities to look at the practices of health insurers. "This decision invites that kind of interest," he said.

Blue Cross has time to decide whether to appeal. "We are considering options," spokeswoman Peggy Hinz said.

The managed healthcare department was dismayed by the decision and said prosecution of health insurers by local government amounted to "duplicative regulation" that would undermine progress made in working with consumers and health plans to "ensure quality, accessible healthcare." It feared the ruling would have the "unintended consequence" of raising healthcare costs.

A trade group representing insurers said enforcement ought to be solely the purview of state regulators.

"That is the most efficient, rational way of dealing with the issues that were assigned to the state regulator by the Legislature and the governor," said Patrick Johnston, chief executive of the California Assn. of Health Plans.

Blue Cross and other insurers should be worried about the fallout, said Andrew Selesnick, a Los Angeles lawyer who represents the local chapter of the American College of Emergency Physicians.

"It points out to other public agencies and other law enforcement officials and other city attorneys that they can go after insurers when they are engaging in unfair business practices," Selesnick said.

And more scrutiny of health insurers could be good for consumers, said Loyola Law School professor Brietta Clark.

"It could have a tremendous impact," she said.

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