

CHAPTER 471
FORMERLY
HOUSE BILL NO. 420
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 18 OF THE DELAWARE CODE RELATING TO HEALTH INSURANCE

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE :

Section 1. Amend Title 18 of the Delaware Code by adding a new Chapter 84 reading as follows:

“Chapter 84. Prohibition of Rescissions Based Upon Post Claims Underwriting.

§ 8401. Rescissions Based Upon Postclaims Underwriting Barred.

Unless approval is granted pursuant to § 8402 of this Chapter, no insurer may rescind, cancel or limit any health insurance policy, contract, evidence of coverage or certificate that provides coverage of the types specified in § 8403 of this Chapter on the basis of written information submitted on, with or omitted from an insurance application by the insured if the insurer failed to complete medical underwriting and resolve all reasonable medical questions related to the written information submitted on, with or omitted from the insurance application before issuing the policy, contract, evidence of coverage or certificate. No insurer may rescind, cancel or limit any such health insurance policy, contract, evidence of coverage or certificate once the enrollee is covered under such plan or coverage involved, except this Section shall not apply to a covered individual who has performed an act or practice that constitutes fraud or who makes an intentional misrepresentation of a material fact, as prohibited by the terms of the plan or coverage, and such omission materially affects the risk or the hazard assumed by the insurer or health care center. Such plan or coverage may not be cancelled except with prior notice to the enrollee, and except as permitted under applicable federal, state or local laws.

§ 8402. Approval of Rescission.

An insurer shall apply for approval of such rescission, cancellation or limitation by submitting such written information to the Insurance Commissioner on an application in such appropriate form as the Commissioner prescribes. Such insurer shall provide a copy of the application for such approval to the insured or the insured's representative. Not later than seven business days after receipt of the application for such approval, the insured or the insured's representative shall have an opportunity to respond and submit relevant information to the Commissioner with respect to such application. Not later than fifteen business days after the submission of information by the insured or the insured's representative, the Commissioner shall issue a written decision on such application. The Commissioner shall approve such rescission, cancellation or limitation if the Commissioner finds that:

(1) The written information submitted on or with the insurance application was false at the time such application was made and the insured or such insured's representative knew or should have known of the falsity therein, and such submission materially affects the risk or the hazard assumed by the insurer or health care center; or

(2) The information omitted from the insurance application was knowingly omitted by the insured or such insured's representative, or the insured or such insured's representative should have known of such omission, and such omission materially affects the risk or the hazard assumed by the insurer or health care center. Such decision shall be mailed to the insured, the insured's representative, if any, and the insurer.

§ 8403. Affected health insurance policies.

As used in this Chapter, "health insurance policy, contract, evidence of coverage or certificate" means insurance providing benefits due to illness or injury, resulting in loss of life, loss of earnings, or expenses incurred, and includes the following types of coverage:

- (1) Basic hospital expense coverage;
- (2) Basic medical-surgical expense coverage;
- (3) Hospital confinement indemnity coverage;
- (4) Major medical expense coverage;
- (5) Hospital or medical service plan contract; or

§ 8404. Authority of Insurance Commissioner to Promulgate Regulations.

The Insurance Commissioner may promulgate regulations to implement the provisions of this Chapter.”

Section 2. Amend § 7105 (a), Title 18 of the Delaware Code by inserting the phrase “rescission of insurance,” after the phrase “termination of insurance,”.

Section 3. Effective Date. This Act shall take effect on the later of (i) on September 23, 2010; or (ii) the date of its enactment.

Approved August 30, 2010