



SPONSOR: Rep. Scott & Sen. Blevins
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HOUSE OF REPRESENTATIVES
145th GENERAL ASSEMBLY

HOUSE BILL NO. 420

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:

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

2 "Chapter 84. Prohibition of Rescissions Based Upon Post Claims Underwriting.

3 § 8401. Rescissions Based Upon Postclaims Underwriting Barred.

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

15 § 8402. Approval of Rescission.

16 An insurer shall apply for approval of such rescission, cancellation or limitation by submitting such written
17 information to the Insurance Commissioner on an application in such appropriate form as the Commissioner prescribes.
18 Such insurer shall provide a copy of the application for such approval to the insured or the insured's representative. Not
19 later than seven business days after receipt of the application for such approval, the insured or the insured's representative
20 shall have an opportunity to respond and submit relevant information to the Commissioner with respect to such application.
21 Not later than fifteen business days after the submission of information by the insured or the insured's representative, the
22 Commissioner shall issue a written decision on such application. The Commissioner may approve such rescission,
23 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) Disability income protection coverage;
- (6) Accident only coverage;
- (7) Long term care coverage;
- (8) Specified accident coverage;
- (9) Medicare supplement coverage;
- (10) Limited benefit health coverage;
- (11) Hospital or medical service plan contract; or
- (12) Specified disease coverage.

§ 8404. Authority of Insurance Commissioner to Promulgate Regulations.

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

Section 2. Effective Date. This Act shall take effect on the later of (i) on September 23, 2010; or (ii) the date of its enactment.

SYNOPSIS

This Act is intended to prohibit the practice of “post-claims underwriting” by health insurers, as defined in Title 18 of the Delaware Code. Underwriting is the practice of determining, based upon information provided by an applicant for an insurance policy about the applicant’s health and background, whether the insurance company should offer the applicant a policy and, if so, what should be the terms and the cost of the policy. Health insurance underwriting normally is completed prior to the issuance of an insurance policy. Post claims underwriting is a practice whereby an insurance company fails to properly complete underwriting prior to issuing a policy, and instead waits until a claim is filed to determine that the insured was originally ineligible for the policy and rescind the policy, notwithstanding the fact that the insured has, in some instances, been paying premiums on the policy for several months or years. This Act prohibits rescissions of health insurance policies, as defined in the Act, based upon post-claims underwriting. This Act does not apply in instances where the insured knowingly misrepresented or omitted information which materially affects the risk of hazard assumed by the insurer.