



By Electronic Mail Only

February 22, 2010

Honorable Joseph Crisco, Chair
Honorable Steven Fontana, Chair
Insurance and Real Estate Committee
Legislative Office Building
Room 2800, Legislative Office Building
Hartford, CT 06106

RE: SB 12: An Act Clarifying Postclaims Underwriting
Response to Insurance Department Submitted Testimony for
February 11th Public Hearing

Dear Senator Crisco and Representative Fontana:

I write first to thank you again for sending SB 12 to the floor. I look forward to working with you to ensure passage of the bill and the support of the administration. To move the bill forward to quick passage I write also to refute inaccurate statements made in the Insurance Department's ("CID's") testimony. The assertions in their testimony run the risk of jeopardizing the bill's passage. It is important to set the record straight before the bill is debated on the Senate floor.

A number of the inaccurate assertions by the CID at the February 11th are addressed in our testimony from that same hearing, and are attached. In addition, there are a number of points that must also be addressed. I address those points in the order in which they appear in the CID testimony:

- **Of the 35,237 policies written in 2009, 34 were rescinded without prior approval of the Department; that is, less than 1/10th of 1% of all these policies.**

Thirty-four (34) rescissions without prior approval is actually slightly greater, on an annualized basis, than the number of policies rescinded from October 2007 to February

2009 - 44.¹ (I chose this time frame because P.A. 07-113 became effective on October 1, 2007.) The number of rescissions by insurers between July 2006 and September 2007, prior to the passage of P.A. 07-113, was 38.² Even without including the 22 rescissions Assurant made after the effective date of P.A. 07-113, the number of rescissions is, at best, static or slightly higher. The 38 rescissions that were the basis of the bill that became P.A. 07-113, represented less than 1/10th of 1% of policies written during that period, just as the current 34 rescissions represent less than 1/10th of 1% of policies written in 2009. It is no answer, therefore, for CID to assert that because the number of policies affected is less than 1/10th of 1% of all individual policies that there is no need for SB 12.

Besides incorrectly asserting that there have been fewer rescissions since P.A. 07-113, CID ignores the fact that SB 12, as did P.A. 07-113, extends to cancellations and limitations on policies. The number of policies affected is certain to be higher. The number of **people** affected is very likely even higher, since many individual policies cover couples and families. A rescission erases the policy for everyone on the policy. In OHA's public hearing testimony for SB 12, I said:

In practice rescission is a drastic remedy that results in severe and sometimes catastrophic consequences to an insured. Cancellations and limitations can lead to similar problems. A rescission is the termination of a policy back to its inception date (or retroactively) and results in the recoupment of all payments made by insurer to all providers. While a rescission results in the refund of the insured's premiums, practically, it is as if the policy never existed, leaving the consumer liable for all of his or her medical bills up to the amount(s) the providers charge. This could turn an expense for a procedure that was billed at \$50,000, but reimbursed by the insurer at \$25,000 with no liability to the consumer for any balance, into an unpaid balance to the consumer of the full charge of \$50,000. And until federal legislation passes or Connecticut-specific reform passes preventing insurers from denying coverage on the basis of a pre-existing conditions, a rescission, cancellation or limitation can leave a Connecticut consumer uninsurable or underinsured. Further, the subsequent "uninsurability" of consumers whose policies have been rescinded because of pre-existing conditions results in cost-shifting to the insured population.

These concerns were ignored by CID in its testimony. OHA is the state's consumer voice for healthcare. The consumer need for protection in these cases easily outweighs any concern that the number of policies affected is "small". The financial and potential impacts of rescission are great.

- **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.**

¹ This figure does not include the 22 rescissions in this period by Assurant. The company left the Connecticut market only after the Attorney General's office persisted in demanding the investigation referred to by CID that revealed Assurant's misconduct. The departure was not a result of P.A. 07-113. The 22 rescissions were of policies that were written prior to the effective date of P.A. 07-113, that were subject to the Act and for which Assurant did not seek prior approval.

² During this period, Assurant rescinded 42 cases. We have not included Assurant in our figures, because as CID notes in its testimony, Assurant was fined for its conduct. It did not write any policies after the March 2007 CID order. A more reliable comparison is to compare carriers participating from year to year.

This is the crux of the issue with P.A. 07-113. OHA helped draft that bill. Our interpretation, which is consistent with how regulatory statutes on consumer protections are read, interprets the statute broadly, but consistently with its language, to protect consumers. CID's interpretation was the narrowest possible, and although OHA disagreed with the interpretation, CID's interpretation prevailed. OHA had no choice but to ask the Committee to bring SB 12 forward, just as HB 6531 was brought forward last year - to achieve the goals that were set with passage of PA 07-113.

The CID assertions are factually incorrect. First, not all individual policies are medically underwritten. Shorter-term policies are not. Medical underwriting requires much more than the completion of a short questionnaire and the immediate issuance of a policy. The idea that short-term policies are medically underwritten is contradicted not only by the nature of these policies, but also by the insurers themselves who readily admit that if they had to conduct medical underwriting, they'd go out of business because it would cost them too much. Second, it is impossible for CID to claim that it knows these policies are medically underwritten when no one at CID reviews each and every one of them. CID leaves it to the insurers to determine whether they've completed "medical underwriting" and resolved all reasonable questions on the application. CID relies completely on the representations of the regulated entities. S.B. 12 eliminates this major loophole in PA 07-113 by requiring review by the Insurance Department prior to the Insurer rescinding a policy of less than one year on the basis of a material misstatement or omission.

- **The Department would like to encourage the Office of the Healthcare Advocate to forward to our agency any problems that may have been brought to their attention.**

OHA has referred a few cases to CID for review. Under P.A. 07-113, I believe that CID's findings were erroneous. Upon passage of SB-12, OHA will most certainly forward cases that require regulatory review. We have resolved other cases directly with the carriers.

- **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 pre-sale basis. As currently written, that would also draw in cancellations for non-payment of premium or loss of eligibility.**

This assertion is incorrect. **On its face** SB 12 prohibits rescissions under the same circumstances as P.A. 07-113; i.e., the insurer must prove that the consumer knowingly omitted or misrepresented material information or should have known that he or she omitted or misrepresented material information on the application, or that the consumer knowingly misrepresented or omitted or should have known of the existence of a pre-existing condition. It does **not**, despite repeated claims to the contrary by CID, prohibit rescissions, cancellations, or limitations on any other bases. Although CID hasn't approached OHA, we are willing to work with CID on a floor amendment that addresses its concerns on the scope of cancellations as addressed in CID's reference above to non-payments 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.

Under SB 12, consumers will have consequences, based on the requirement that they complete their applications **truthfully to the best of their knowledge**. Consumers are incentivized to tell the truth when applying for individual insurance because the price of lying is rescission of their policies. Under P.A. 07-113, a consumer was not required to accurately depict his or her condition. The consumer was and is required under SB 12 to “accurately depict his or her condition ***to the best of his or her knowledge.***” The tests for truthfulness in the application are identical to those in P.A. 07-113. Nothing in SB 12 changes those tests.

- **Language in lines 105-108 does not require positive action on the part of the applicant for a health insurance application to be accepted. This language binds the applicant unless the applicant rescinds the agreement in writing not later than 10 days after receipt of such letter. The Department currently requires that the completed application be delivered to the applicant for review and prior signature prior to the delivery of the contract. Disclosure language is also required to emphasize the importance of the accuracy of the responses on the application and the possibility of rescission of the contract. This bill takes these protections away.**

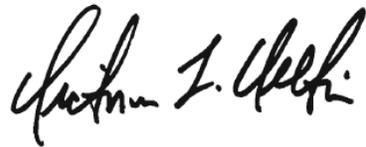
In practice, CID’s statement that it requires completed applications to be delivered to the applicant for review and prior signature prior to delivery of the contract is not the norm. In an era of telephonic, online applications and immediate issuance of individual policies after an exchange of credit or debit card information, the step requiring physical signature and delivery of the contract is neither practical nor ideal. Many consumers are getting policies via telephone. CID’s requirements can be met through the process of review of the application and opt-out and reiteration of the disclosures therein. We welcome modification to CID’s requirements to adjust for telephonic applications. It is noteworthy, however, that the concerns raised by CID concerning the application, are similar to those raised by OHA last year in proposing a uniform individual insurance application, as other states have done.

P.A. 07-113 was the product of negotiations between CID, the insurers, the AG and OHA. Three years later, the interpretation of the Act remains a stumbling block to consumer protection. Last year, the AG’s office and OHA negotiated HB 6531 with the insurers, and CID. The good faith negotiations resulted in easy passage of the bill. Shockingly, the bill was vetoed and included a disappointing message from the Governor that demonstrated a fundamental misunderstanding of rescissions, cancellations and limitations. The message cast consumers as those who commonly and deliberately set out on a path to deceive insurers and commit insurance fraud. (I want to assure you that the few consumers who do engage in this kind of conduct will be accountable under SB 12.)

Like you, OHA is committed to seeing SB 12 through to passage and to hold individual insurers and consumers to consistent standards when the insurer moves to rescind, cancel or limit individual policies. I hope that this letter dispels CID’s misstatements about the bill and provides you with helpful information for the floor debate.

As always, OHA is available to assist in whatever way necessary to move this bill through both chambers quickly.

Very truly yours,

A handwritten signature in black ink, appearing to read "Victoria L. Veltri". The signature is fluid and cursive, with the first name being the most prominent.

Victoria L. Veltri
General Counsel

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