

ASSEMBLY BILL

No. 1324

Introduced by Assembly Member De La Torre

February 23, 2007

An act to amend Sections 1371.8 and 1389.3 of the Health and Safety Code, and to amend Sections 796.04, 10380, and 10384 of the Insurance Code, relating to health care coverage.

LEGISLATIVE COUNSEL'S DIGEST

AB 1324, as introduced, De La Torre. Health care coverage: rescinded coverage.

Existing law provides for regulation of health care service plans by the Director of Managed Health Care. Existing law provides for the regulation of health insurers by the Insurance Commissioner.

Existing law provides that a health care service plan or a health insurer that authorizes a specific type of treatment by a health care provider shall not rescind or modify this authorization after the provider renders the health care service in good faith and pursuant to the authorization.

This bill would define “authorizes” and “authorization” under these provisions.

Existing law prohibits postclaims underwriting, as defined, by health care service plans and health insurers, but does not limit a plan’s or insurer’s remedies in case of willful misrepresentation.

This bill would provide that a plan or an insurer has the burden of demonstrating to the director or the commissioner, as applicable, that an enrollee or insured engaged in willful misrepresentation.

Existing law provides that the falsity of a statement in a life or disability insurance policy application shall not bar the right to recovery under the policy unless the false statement was made either with actual

intent to deceive or it materially affected the acceptance of the risk or hazard assumed by the insurer.

This bill, with respect to health insurance, would require both of these conditions in order for falsity of a statement in the application to bar the right to recovery under the policy.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1371.8 of the Health and Safety Code is
2 amended to read:

3 1371.8. A health care service plan that authorizes a specific
4 type of treatment by a provider shall not rescind or modify this
5 authorization after the provider renders the health care service in
6 good faith and pursuant to the authorization. This section shall not
7 be construed to expand or alter the benefits available to the enrollee
8 or subscriber under a plan. *“Authorizes” and “authorization”*
9 *include, but are not limited to, verification of eligibility, authorizing*
10 *a procedure, or other communication by the plan indicating that*
11 *the health care services are covered under the plan.*

12 SEC. 2. Section 1389.3 of the Health and Safety Code is
13 amended to read:

14 1389.3. No health care service plan shall engage in the practice
15 of postclaims underwriting. For purposes of this section,
16 “postclaims underwriting” means the rescinding, canceling, or
17 limiting of a plan contract due to the plan’s failure to complete
18 medical underwriting and resolve all reasonable questions arising
19 from written information submitted on or with an application before
20 issuing the plan contract. This section shall not limit a plan’s
21 remedies upon a showing of willful misrepresentation. *A plan shall*
22 *have the burden of demonstrating to the director the willful*
23 *misrepresentation by the enrollee prior to rescinding coverage.*

24 SEC. 3. Section 796.04 of the Insurance Code is amended to
25 read:

26 796.04. ~~A disability health insurer that provides coverage for~~
27 ~~hospital, medical, or surgical expenses and a nonprofit hospital~~
28 ~~service plan that authorizes a specific type of treatment for services~~
29 covered under a policyholder’s contract or plan by a provider shall
30 not rescind or modify this authorization after the provider renders

1 the health care service in good faith and pursuant to the
2 authorization. This section shall not be construed to expand or
3 alter the benefits available or the terms and conditions of the
4 contract as may be agreed upon between a policyholder, certificate
5 holder, or trust, and the insurer. *“Authorizes” and “authorization”*
6 *include, but are not limited to, verification of eligibility, authorizing*
7 *a procedure, or other communication by the insurer indicating*
8 *that the health care services are covered under the contract or*
9 *plan.*

10 SEC. 4. Section 10380 of the Insurance Code is amended to
11 read:

12 10380. The falsity of any statement in the application for any
13 policy covered by this chapter shall not bar the right to recovery
14 under the policy unless ~~such false~~ *the* statement was made with
15 actual intent to deceive or unless it materially affected either the
16 acceptance of the risk or the hazard assumed by the insurer.
17 *However, the falsity of any statement in the application for any*
18 *policy of health insurance shall not bar the right to recovery under*
19 *the policy unless the false statement was made with actual intent*
20 *to deceive and it materially affected either the acceptance of the*
21 *risk or the hazard assumed by the insurer.*

22 SEC. 5. Section 10384 of the Insurance Code is amended to
23 read:

24 10384. No insurer issuing or providing any policy of ~~disability~~
25 ~~health insurance covering hospital, medical, or surgical expenses~~
26 shall engage in the practice of postclaims underwriting. For
27 purposes of this section, “postclaims underwriting” means the
28 rescinding, canceling, or limiting of a policy or certificate due to
29 the insurer’s failure to complete medical underwriting and resolve
30 all reasonable questions arising from written information submitted
31 on or with an application before issuing the policy or certificate.
32 *An insurer shall have the burden of demonstrating to the*
33 *commissioner the willful misrepresentation by the insured prior*
34 *to rescinding coverage.*

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