

Article 4 – State Fines Insurer, Orders Reforms in Disability Cases

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California insurance regulators today will announce that they are fining the nation's largest disability insurer \$8 million, requiring the company to reopen as many as 26,000 California cases and demanding that it alter the policies it sells in the state to include greater consumer protections.

The regulators said they intend to impose similar policy changes on all firms licensed to sell disability insurance in the state. Independent legal authorities said the changes will give disability claimants new rights to win court review in disputed cases, a precedent they said could spread to other kinds of insurance, such as healthcare coverage.

The action, which will come as a settlement with Chattanooga, Tenn.-based UnumProvident Corp., could substantially alter how insurance is regulated in California – and perhaps the nation as well if other regulators follow the state's precedent.

The action will be substantially stiffer than a settlement last fall between the company and regulators in 48 other states in which officials made no formal findings of wrongdoing but only identified "areas of concerns."

By contrast, California regulators will charge UnumProvident with more than 25 violations of state law, allegations that the company will neither admit nor deny in favor of settling the case.

Among the charges: that the company knowingly applied the wrong legal definition of disability in denying claims or ruling claimants were able to go back to work, targeted high-cost claims for denials to save the firm money, misused claimants' medical records and even the opinions of in-house medical personnel to deny benefits and wrongly sought to file cases under a federal benefits law that severely limits claimants' ability to successfully sue their insurers.

Regulators said they uncovered violations of state law in nearly one-third of a random sample of about 1,000 claims handled by UnumProvident.

"UnumProvident is an outlaw company. It is a company that for years has operated in an illegal fashion," said California Insurance Commissioner John Garamendi. "Our settlement is designed to make it a poster child of a legal company."

Garamendi is scheduled to announce his agency's settlement with the company at two news conferences in Los Angeles and San Francisco later today.

Reached Sunday, UnumProvident Chief Executive Thomas R. Watjen said he could not comment on California's allegations because details of the firm's settlement with the state were still being worked out. But Watjen suggested that the regulators' action is based on an outdated examination of company operations from 2000 through 2003.

"We've gone through an enormous amount of change in the past few years. Any review that was done a few years ago doesn't reflect the new UnumProvident," he said.

The changes include Watjen's replacement of longtime UnumProvident Chief Executive J. Harold Chandler in 2003.

News of California's tough action comes two months after a Los Angeles Times story detailed extensive problems at UnumProvident and other major disability insurers. The paper traced many of the problems to a series of court decisions concerning federal benefits law, which have blocked states from providing consumer protection for a wide array of employer-provided benefits including healthcare, and have limited claimants' right to sue.

Disability insurance is designed to replace half or more of a person's wages if they are incapacitated by illness or injury. More than 50 million Americans are covered, most through their employers. UnumProvident, with half the U.S. market, covers 25 million.

Under the firm's settlement with the state, UnumProvident policyholders in California whose claims were denied or whose benefits were terminated since Jan. 1, 1997, will be able to request that the company reassess their case with an eye to starting or resuming benefit payments.

But unlike a similar reassessment process set up by the 48-state settlement last fall, those dissatisfied with the company's review of their claims can appeal to an independent reviewer to be chosen jointly by the state Insurance Department and the company.

The settlement will require UnumProvident to change the language in all new – and some existing – California policies in several ways that favor consumers. For example, it will force the company to remove limitations on benefits for "self-reported" conditions such as migraine headaches and fatigue, which are impossible to measure objectively but can severely disable people.

It also will restrict the firm's use of a 24-month limitation on benefits for "mental and nervous conditions." UnumProvident repeatedly has been accused of wrongly categorizing claimants as suffering from such conditions, rather than physical ailments, to reduce what it must pay them.

The settlement will require the company to drop its court challenge to Garamendi's order outlawing so-called "discretionary authority" in policies. Discretionary authority language effectively makes the insurer the final arbiter of most disputes involving policies, and means that claimants' suing the firm have had to prove not simply that the company's decisions were wrong, but arbitrary and capricious – a difficult standard to meet.

State Insurance Department officials said they will call a meeting of other disability insurers for early November to discuss the new requirements, and will take regulatory action against those who refuse to adopt the policy changes.

"What we're saying to any company operating in this area of insurance," Garamendi said, "is it has to stop screwing its customers."

Additionally, the planned settlement "will undoubtedly bleed over into healthcare and give claimants a better chance to make their case for coverage," said Mark D. DeBofsky, a partner with the Chicago law firm of Daley, DeBofsky and Bryant.