

DEPARTMENT OF INSURANCE**Executive Office**

45 Fremont Street, Suite 2300
San Francisco, CA 94105

**NOTICE**

TO: All Admitted Health Insurers and Other Interested Persons

DATE: May 17, 2011

SUBJECT: Enforcement of Independent Medical Review Statutes

This Notice reminds insurers that the California Department of Insurance (CDI) is committed to enforcing the provisions of the Insurance Code governing Independent Medical Review (IMR) of disputed health care services to ensure the full protection under the law of insureds with policies of health care insurance regulated by the CDI. The CDI requires that insurers fully comply with Insurance Code Section 10169 governing IMR as well as with Insurance Code Section 10169.3(f), which specifies that the Insurance Commissioner's written decisions adopting the determination of the independent medical review organization shall be binding on the insurer.

Please also take notice that CDI evaluates insurers' communications with insureds regarding coverage of health care services, and payment of claims for those services, for compliance with Insurance Code Section 790.03. This statute defines, and prohibits as unfair methods of competition and unfair and deceptive acts or practices, the following conduct, among other acts:

- (a) Making...or causing to be made...any...statement misrepresenting the terms of any policy issued, or the benefits or advantages promised thereby....

- (h) Knowingly committing or performing with such frequency as to indicate a general business practice any of the following unfair claims settlement practices:

- (1) Misrepresenting to claimants pertinent facts or insurance policy provisions relating to any coverages at issue;

- (5) Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear.

Additionally, please note that the CDI website at <http://www.insurance.ca.gov/0100-consumers/0020-health-related/imr2010stats.cfm>, identifies nine separate instances in 2010 in which insurers' denials of behavioral therapy such as Applied Behavioral Analysis have been overturned in IMR. In two of those instances, the insurers' denials - based on a contention that the therapy was experimental or investigational - were overturned because such treatment is now recognized as the standard of care for autism. In another seven instances, the IMR reviewers overturned the insurer's denial, finding that the treatment was medically necessary for the insured.

All health insurers should take steps to evaluate how they are processing, paying for, and denying health insurance claims to ensure that they are complying with the above statutes.

If you have any questions, please contact Patricia Sturdevant, Deputy Insurance Commissioner, at 916-492-3578 or via email at patricia.sturdevant@insurance.ca.gov.