



STATEMENT OF
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DIRECTOR, CENTER FOR DRUG AND HEALTH PLAN CHOICE
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ON
RESCISSION OF INDIVIDUAL HEALTH INSURANCE POLICIES
BEFORE THE
HOUSE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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Good morning Chairman Waxman, Ranking Member Davis, and distinguished members of the Committee. It is my pleasure to be here to discuss the Centers for Medicare & Medicaid Services' (CMS) role in the oversight of individual health insurance markets. As you know, the Agency's core mission is administering Medicare, Medicaid, and the State Children's Health Insurance Program. As Director of the Center for Drug and Health Plan Choice within CMS, I oversee day-to-day operations and lead new policy development with respect to individual insurance market issues within the Agency's jurisdiction as well as with respect to private plans in Medicare.

Let me make clear that we share the Chairman's concern with recent reports that under certain circumstances, insurers in the individual market might be using rescission as a means for circumventing the guaranteed renewability requirements established by the Health Insurance Portability and Accountability Act of 1996 (HIPAA). HIPAA is very clear that, with limited exceptions, an individual insurance policyholder has a right to "guaranteed renewability" – in other words, an insurer must renew or continue in force an individual's existing coverage unless a specific exception is met. Guaranteed

renewability does not apply, for example, if the insurer will no longer offer a policyholder's particular plan in the individual market; if the policyholder moves out of a network plan's service area; or – most relevant to today's discussion – if the policyholder acted fraudulently or made an intentional misrepresentation of a material fact under the terms of the coverage.

CMS believes that States very clearly have primary responsibility for enforcement of guaranteed renewability and that CMS can only act if it determines that a State fails to substantially enforce the requirement. We also believe that the vast majority of States, like the State of California, in fact are enforcing guaranteed renewability appropriately in the individual health insurance market.

We do believe the Federal government has a role to play in ensuring that the consumer protections established by HIPAA, including guaranteed renewability, are being enforced by the States. Specifically, if a State fails to enact legislation that meets or exceeds Federal HIPAA standards, or if it otherwise fails to substantially enforce the HIPAA standards, the U.S. Department of Health and Human Services has authority to investigate, and if necessary, take over direct enforcement of the standards in that State. While there is Federal oversight authority, there is no direct Federal role in regulating the private individual insurance market.

It has been suggested that in certain States private insurance issuers might be using rescission – a state contract law concept – to circumvent guaranteed renewability. The

role of CMS in addressing such situations hinges on the specific facts of the situation, including any actions already taken by the State. With that said, if there is any indication that the rescissions may be occurring for reasons that are inconsistent with the HIPAA guaranteed renewability standards, that would be a red flag that the State may be failing to substantially enforce those standards. CMS could then begin a process, set forth in our regulations, to assess the State's compliance with HIPAA's requirements. Depending on the outcome of our investigation, CMS could ultimately take direct control over enforcement of guaranteed renewability in a State.

To date, CMS has not had reason to exercise this authority in any State. In light of recent scrutiny of the use of rescissions in certain States, the National Association of Insurance Commissioners (NAIC) established a work group in May 2008 to examine and develop recommendations relating to the use of rescission in the individual health insurance market. CMS is actively engaged in this effort, and we applaud the NAIC's leadership on this emerging issue, particularly given HIPAA's clear intent that States take the lead in enforcing individual insurance market protections.

It is CMS' goal to work collaboratively with States and other stakeholders to enforce policyholder protections established by HIPAA for the individual insurance market. We will do whatever is possible within the scope of our jurisdiction to ensure that States are substantially enforcing HIPAA's protections. Thank you for the opportunity to testify today and I would be happy to answer any questions you may have.