

If the attached PDF files are not accessible, or if you prefer to not open attachments, the documents can be found in their entirety at <http://www.gougeralert.org/>

For Immediate Release

Sunday, April 30, 2006

Distribution to:

U.S. Attorney General, California Senators and Representatives, California State Senators and Assembly Members, Attorney General, Governor, Insurance Dept., Dept. of Managed Care, Dept. of Consumer Affairs, Dept. of Industrial Relations, California Local Chambers of Commerce, California Print and Broadcast Media, California Consumer Watchdog Groups, National Assoc. of Health Underwriters, California Assoc. of Health Underwriters

An open letter to California and Federal Government Officials,

This letter was written to bring major antitrust violations to your attention. These violations have serious consequences for California insurance consumers and are an attempt to manipulate the marketplace. Blue Cross of California and Health Net are attempting to prevent employers from offering Congressionally sanctioned self funding alternatives, including Health Reimbursement Arrangements (HRAs) intended to reduce total health care expenses. They are also attempting to prevent employers from purchasing supplemental insurance plans, such as the popular AFLAC coverage from competing insurance carriers.

As health insurance premiums skyrocket, employers seek more cost effective options that will allow them to continue to offer health coverage to their employees. The most common and effective method is a shift to a higher deductible plan. This reduces premiums, but, unfortunately, increases the employee's out of pocket expenses.

Congress has created ERISA, HRA and HSA legislation and other funding vehicles to reduce the financial burden on employees. Many insurance carriers have responded to this situation by offering cost effective supplemental plans that help offset the higher out of pocket expenses.

Blue Cross and Health Net are actively attempting to deny access to alternatives that are beneficial to employers and employees as well as individuals. They are dictating that employers may not use HRA's and other funding vehicles provided for by Congress to reduce out of pocket expenses by employees. They are attempting to force employers to abandon the idea of purchasing insured low cost supplemental plans offered by competing insurance carriers. They are attempting to prevent professional insurance agents from offering all of the low-cost alternatives to employers and individuals by threatening them with loss of commissions and even their contracts.

The attached documents and text offer indisputable proof that Blue Cross and Health Net are attempting to manipulate the marketplace by coercing their independent agents into acting against the best interests of California consumers by telling them they are not permitted to

present low-cost alternative benefits ideas to their clients, and if their clients happen to choose low cost alternative benefits the agent will be punished with loss of commissions and termination of their contract .

The document titled “Clarification Regarding Small Group Employer Self-Funded Arrangements” clearly spells out the Blue Cross intent to financially penalize agents if they or their clients disobey Blue Cross’ unlawful mandates. The agent will be stripped of his compensation if the employer group purchases supplemental coverage or institutes a completely legitimate Congressionally created self funding plan, such as an HRA. The document even threatens agents with contract termination for non-compliance with this outrageous carrier mandate. Further, it implies that the agent will be penalized even if the employer proceeds without the knowledge of the agent.

The following text is taken verbatim from an email message recently distributed from Health Net to contracted agents. It is essentially identical to the letter from Blue Cross in that it threatens agents with severe economic consequences for perfectly legal actions taken by their clients.

Partially Self-Funded Deductible Plans and/or Section 105 Plans: **Under No Circumstances** may any of the HSA-compatible products be combined with any form of partial self-funding or insuring of the deductible, be it in a wraparound, addition or companion capacity.

On and after May 1, 2006, Health Net will strictly enforce this Guideline by requiring verification that it is being met for all new and renewing groups with HSA-compatible or other high-deductible plans. An Employer Acknowledgement Form, completed and signed by the group, must be provided.

Please note that **non-adherence** to this guideline will put your **commission at risk**.

Effective May 1, 2006, Health Net will **not pay medical plan commissions** for any policyholder found to be out of compliance with the Partially Self-Funded Deductible Plans and/or Section 105 Plans Underwriting Guideline.

Deviation from this requirement may also result in **termination of your Health Net Agent/Broker Agreement**. In addition, you should check your E&O policy, which may exclude liability for claims arising from self-funded arrangements.

Health Net suggests you encourage your clients to consult their attorney and accountant before self-funding. Self-funded employers are responsible for compliance with HIPAA, COBRA and ERISA, among other legal and regulatory obligations.”

The documents titled “Employer’s Statement of Understanding” and “Employer Acknowledgement Form” are clear attempts to inhibit or prevent employers from exercising their right to create self funded plans under ERISA or to purchase supplemental benefits for their employees. Although no consequences are spelled out in the documents, the implication is that

such actions by the employer may have unspecified adverse consequences on the Blue Cross or Health Net coverage.

These insurance companies are clearly engaging in violations of anti-trust regulations by attempting to manipulate the marketplace prevent consumers from seeking the cost effective alternatives established by the U.S. Congress or from competing companies. The tactics used against the agents are blatant violations of accepted ethical business practices and clearly against public policy. Further, they are designed to thwart the legislative intent of our lawmakers in establishing the economic alternatives in the first place. With Blue Cross taking the lead, other carriers in California have followed suit so that California's marketplace is being deprived of the options that Congress has so clearly established and encouraged. These attempts to prevent employers from utilizing cost reduction methods are unlawful, unethical and will cost consumers millions of dollars every year.

At this point in time, it appears that the California Department of Insurance has turned a blind eye to these gross violations. It is well known that Commissioner Garamendi is opposed to HSA plans and High Deductible health plans. This does not absolve him of his responsibility to protect California consumers from predatory practices by these companies. This illegal behavior could be stopped immediately if the Department simply enforced AB1672 prohibiting the "steering" of business to a particular company.

Please look into this matter as rapidly as possible. Actions by these companies will force enormous increases in health care expenditures by California consumers unless this illegal practice is terminated.