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# Long-Term-Care Insurers Under Fire Over Alleged Claims Denials, Rate Hikes

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OLDWICK, N.J. &mdash; U.S. long-term-care insurers are being hit by lawsuits filed by elderly policyholders contending their valid claims are being denied and that they are getting hammered with hefty premium increases. On the regulatory front, a committee of the National Association of Insurance Commissioners will meet to determine whether these products are properly being marketed to consumers.

"If I had to point a finger, I'd say it was an industry that jumped too fast," said Washington state Insurance Commissioner Mike Kreidler, chairman of the NAIC's market conduct/consumer protection committee. In developing long-term-care insurance, it spent "too little time" thinking about how the product would be structured and marketed.

Whatever the problem, some plaintiffs' attorneys maintain denial of legitimate claims is widespread among companies big and small. For seniors who can't feed, bathe or dress themselves or who have Alzheimer's, the claims process is "difficult, confusing and burdensome" said Frank Darras, managing partner with the California-based Shernoff, Bidart & Darras.

"It is a tried-and-true claim strategy that old people don't fight hard, and sick, old people don't last very long," maintains Darras, who says he has the biggest long-term-care and disability practice in the United States.

Darras, who takes up to 25 new long-term-care suits a month, says he files suits in federal courts seeking emotional distress damages and in the more egregious instances, punitive damages.

Insurers use several strategies to deny claims for policyholders needing nursing home, custodial or in-home care, Darras said. Among them is the "send-it-again" strategy where carriers tell policyholders to resubmit claims because carriers say they didn't receive it the first time.

Jesse Slome, executive director of the American Association for Long-Term Care Insurance, said it's misleading to think policyholders unable to contact insurers are left alone. "In fact, the opposite is true," he said. In situations when no family members are available, the insurer will be contacted by a neighbor, family friend or the agent who sold the policy, Slome said. The insurer will then contract with local, independent professionals to perform face-to-face assessments and access doctors' orders to determine the care that's needed, he said.

The industry pays long-term-care benefits to "tens of thousands" of Americans, Slome said. Earned premium was \$9.5 billion industry-wide in 2006, with insurers paying out \$3.3 billion in claims, he said.

Nevertheless, Darras says much like disability insurance of several years ago, long-term care was oversold, under-priced, with too many features and benefits and actuaries had hoped for increased lapse rates but didn't get them..

James Ryan, president of Lenox Long Term Care, an industry broker, called Darras' statements "a great parallel." The industry is now experiencing what happened in the disability market about 20 years ago, he said.

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Some long-term-care policies perhaps were "over-hyped" as to what would be provided, but weren't oversold, said Jim Summers, chair of the long-term-care advisory committee for the National Association of Health Underwriters.

However, there is a difference in that long-term-care carriers didn't make the mistake disability carriers made, said Ryan. Long-term-care insurers "gave themselves an out" by being able to raise rates, while disability insurers didn't have that option, he said.

Disability insurers had "played games" with policy language, such as the definition of "disability" and the nature and extent of someone's disability, said noted plaintiffs' attorney Ray Bourhis of Bourhis & Mann, San Francisco. However, disability claimants with a back injury, for example, are often younger people who still have the mental capacity to sue if their claim is unfairly denied.

In 2002, Bourhis, along with attorney Alice Wolfson, said they uncovered "clear evidence of unfair termination practices at (disability insurer) UnumProvident." The attorneys' cases resulted in federal jury verdicts involving millions of dollars against the former UnumProvident.

With long-term care, the situation is worse because claimants "are, by definition, senior citizens who cannot take care of themselves anymore," said Bourhis.

The biggest hurdle in getting national attention for a verdict is that with most of his cases, Darras said his clients die before trial. This occurred in a suit against Conseco, he said.

There's "serious questions" about how long-term-care insurers market to consumers, Kreidler said, noting their practices may also have led to unfair premium rate increases. State regulators have been working on the issues for quite some time, he said. "If there are claims practices that are unfair and just outright plain wrong and illegal, we're going to clamp down on those companies big time," Kreidler said, noting the matters will be discussed at the NAIC's meeting in June.

Seniors can't afford rate increases of up to 20%, said Darras, who also sues over costly rate hikes.

A recent front-page New York Times story examined complaints and suits against insurers, particularly Conseco and Penn Treaty American.

In a statement, Conseco said "while confidentiality agreements preclude us from discussing individual cases, Conseco is committed to the highest standards for ethics, fairness and accountability, and strives to pay all claims in accordance with policy contracts."

Cameron Waite, Penn Treaty's executive vice president, said the company has denied fewer than 1.7% of new claims in the past three years as a result of policyholder ineligibility decisions. Less than one-tenth of 1% of all Penn Treaty claims have gone to litigation, he said.

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[Listen to an interview with Darras at [www.bestdayaudio.com](http://www.bestdayaudio.com)].