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Trusting a Promise to Care

Some elderly clients aren't getting the long-term benefits they had counted on. As liabilities grow, some insurers leave the market.

To avoid becoming a financial burden to her children and grandchildren, Vera Smith bought long-term care insurance. Like a growing number of Americans, the 87-year-old retiree saw it as a sensible way to cover care-giving costs not included in Medicare and conventional health insurance.

But almost two years ago, Smith's insurer stopped paying benefits, contending that she violated the policy's terms by moving in with her daughter after she became too frail to take care of herself. That forced Veray Smith, the daughter, to quit her supervisory job and sell her mother's South Los Angeles house so she could afford to stay home with her.

"I'm the full-time caregiver now. It's hard," said Veray, who along with her mother has sued the insurer for bad faith. The insurer, Penn Treaty Network America Insurance Corp., declined to comment.

Consumer advocates and insurance regulators say that lawsuits and complaints like the Smiths' are likely to mushroom in the coming years as more baby boomers and their ailing parents make claims on long-term care insurance.

Sales of such policies grew 65% from 2000 to 2004, but actual and projected payouts have already caused a shakeout that could leave some policyholders with huge bills worried that insurers can't or won't pay. Some insurers who underestimated their potential obligations have sharply hiked their premiums or abandoned the market.

Insurers have denied long-term care claims for a variety of reasons, lawyers say. They have, for example, rejected as inadequate documentation from seniors too sick or distracted to be diligent record keepers. Or they have rescinded policies, saying the individual didn't fully disclose a preexisting medical condition on his or her application.

In response to multiplying consumer complaints, some states are requiring more training for sales agents and limiting insurers' ability to raise premiums, along with other restrictions.

The growing popularity of long-term care insurance "puts pressure on us as regulators to ensure that policies live up to their promise to pay," said Sandy Praeger, the insurance commissioner of Kansas and vice president of the National Assn. of Insurance Commissioners.

Industry representatives say the popularity of these policies speaks to their value for consumers and public confidence that carriers will make good on their promises.

"This product is rigorously regulated" by all 50 states, "each of them representing consumers," said Laura Moore, senior vice president for long-term care insurance at John Hancock Life Insurance Co., one of the largest participants in the market.

But experts say it's hard to predict the future of the market because these policies are fairly new and relatively few policyholders have needed to make claims so far.

For example, Moore said, just 1% of John Hancock's policyholders have claimed benefits. But the company is confident in its financial assumptions and its ability to make good on every policy, she said.

More than 6.1 million Americans were covered by long-term care policies in 2004, up from 5 million in 2002 and 3.7 million in 2000, according to the National Assn. of Insurance Commissioners. Employers have fueled the boom by offering group rates on care policies.

Policies typically cover care-giving, such as home nursing services, up to a fixed amount, such as $100 or $150 a day. But the policyholder must meet certain disability criteria, perhaps severe cognitive impairment or requiring help with dressing or bathing.

Premiums are based on an individual's medical history and the age at which the policy is purchased. For instance, a person in his or her late 40s who buys a typical employer-sponsored group policy can expect to pay premiums of $1,200 a year, Moore said. Annual premiums could rise to $2,000 for an individual policy and higher for an older person or someone with a history of diabetes, cancer or other chronic disease.

But financial pressures have forced some companies out of the long-term market, including CNA Financial Corp., Transamerica Corp. and Fortis Insurance Co., although regulations require that the policies they sold be honored.

Complaints about long-term care policies rose to 2,472 nationally in 2005, up from 2,175 in 2004 and 1,755 in 2003, according to the national insurance commissioners group.

The Smiths' case, regulator Praeger said, is a lesson to those considering a long-term care policy. "You want to make sure it has the most flexibility possible and that help can be delivered in the most settings possible."

Vera Smith moved to Los Angeles from Tennessee in 1945 with $1 in her pocket, her daughter said, and eventually saved enough from jobs as a cleaning lady and a school cook to buy her house.

The policy she bought in 1998 allowed her to stay in her own home even after she was diagnosed with Alzheimer's disease six years ago, paying as much as $100 a day for caregivers.

But after she was hospitalized with a severe urinary tract infection in January 2005, Smith grew so frail that her physician said she needed continuous care. The family decided she should move into her daughter's Phillips Ranch home, where Veray Smith had added a room equipped with grab bars and a wheelchair ramp to accommodate her mother.

That's when insurer Penn Treaty stopped paying for caregivers, Veray said, saying the residence did not qualify as a home under the terms of her policy.

Veray said her mother now has arthritis and diabetes and suffers from the aftereffects of a stroke. A few months ago, she was also diagnosed with bladder cancer.

Her mother's daily needs leave Veray little time for herself or her husband, she said. Apart from the constant care — bathing, helping Vera on and off the commode, doing her hair and cooking for her — Veray said her mother had become "very clingy. She doesn't want me out of her sight."

"I love her, but it's changed the dynamic of my marriage," she added. "I'll be lying in bed with my husband and she'll call, 'Veray, where were you?' "

The suit she and her mother filed in Pomona Superior Court last month accused Penn Treaty of breach of contract, bad faith and unfair dealing.

Veray, who holds power of attorney for her mother, said she notified Penn Treaty of her mother's change of address upon her discharge from the hospital and told the insurer that her mother would be leasing the room for $100 a month.

A month later, Veray received a letter from the company that denied her mother's claims for home helpers, explaining only that "your current residence does not meet the policy definition of a home."

"I sent them a copy of the rent checks, pictures of my mother's room, the building permit from the city and daily care-giving notes," she said. "But they kept saying no."

Linda Carraghan, an attorney with Penn Treaty, declined to respond to the Smiths' charges, saying only that "company policy is not to comment on litigation."

The Smiths' attorney, Frank Darras of Claremont, insists that Penn Treaty's definition of a "residence" in the policy should not disqualify the elder Smith. The policy, he said, defines "your personal residence" as "a private dwelling owned or leased by you, and includes a home for the retired or aged."

Darras, who called the facts in this case "particularly egregious," said he had filed about 20 cases involving such policies and said he received 15 to 20 calls from unhappy policyholders each month.

In most of his lawsuits, Darras said, the carrier disputed the policyholders' inability to care for themselves.

In one bad-faith case Darras settled last year, an elderly woman with Alzheimer's died while awaiting trial against Conseco Inc.

The woman and her husband claimed Conseco requested unreasonable and duplicative documentation of her condition, failed to respond to her request for help and then informed her that the care policy was invalid.