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SICK BUT INSURED? THINK AGAIN

Lawsuits accuse insurance companies of retroactively dumping families that rack up large bills. Firms defend their policies, but the state is investigating.

When Steve and Leslie Shaeffer's daughter, Selah, was diagnosed at age 4 with a potentially fatal tumor in her jaw, they figured their health insurance would cover the bulk of her treatment costs.

Instead, almost two years later, the Murrieta, Calif., couple face more than \$60,000 in medical bills and fear the loss of their dream home. They struggle to stave off creditors as they try to figure out how Selah can keep seeing the physician they credit with saving her life.

"We're in big trouble," Leslie said.

Shortly after Selah's medical bills hit \$20,000, Blue Cross stopped covering them and eventually canceled her coverage retroactively, refusing to pay for treatment, including surgery the insurer had authorized in advance.

The company accused the Shaeffers of failing to disclose in their coverage application an undiagnosed bump on Selah's chin and physician visits for croup. Had that been disclosed, the company said in a letter, it would not have insured Selah.

The Shaeffers say they weren't trying to hide anything. When they applied for coverage, Selah did not have a tumor, at least as far as they — or any physician — knew. The doctor visits occurred after Leslie filled out the paperwork, and they seemed routine, the Shaeffers say. They believe Blue Cross was looking for any excuse to dump their daughter and dodge her bills.

Cancellations such as Selah's are fueling a new backlash against health plans. In a series of recent lawsuits, policyholders say they were illegally terminated, causing substantial financial hardship and jeopardizing their healthcare. State regulators are investigating and said they were preparing to take action against Blue Cross.

Dawn Foiles says an improper cancellation forced her and her husband to put their Riverside home up for sale. Steve Leyra says a cancellation — based on a condition he doesn't even have — cost him the chance to become a firefighter. George Nazaretyan and his wife are struggling to save their Van Nuys home and get care for their disabled twin daughters, even as their medical bills approach \$1 million.

The suits accuse health plans of dumping sick policyholders without evidence that the consumers intentionally omitted information about their medical condition or history. They also accuse insurers of using applications that are vague and confusing by design, trapping consumers into making mistakes that can be used to cancel their coverage later.

The complaints involve individual policies — the type of coverage sold to people who work for themselves or for employers who don't offer health benefits. Unlike many work-based plans, which are open to qualified employees regardless of health, insurers in California and many other states can reject applicants for individual policies based on their conditions or health histories. After an applicant is accepted, a state law prohibits health plans from canceling unless the policyholder lied to obtain coverage.

Aside from appealing to the company that dumped them, subscribers' only recourse is to complain to state regulators or sue. After an insurer yanks coverage, it can be difficult, if not impossible, to get a policy from another carrier.

Health plans encourage applicants they reject and policyholders they cancel to apply to a state-subsidized insurance fund for patients with high-cost or chronic conditions. But the wait can be long. Lacking coverage, patients often have to pay cash upfront or go without care.

More than 2 million California residents buy their own health policies, which some see as an increasingly important form of coverage because many employers have dropped the benefit as costs have gone up. Insurers, in a push for healthier and wealthier subscribers, view individual policies as a growth opportunity.

Outside the companies, no one tracks how often insurers cancel policies. Blue Cross, which has the biggest share of the California market, won't say. But an employee said in a deposition last year that a special department considers as many as 1,500 cases for cancellation each week in California alone. A consumer lawyer who saw Blue Cross' cancellation tally sheets described the department as a rescission factory.

The suits also target Blue Shield, Blue Cross' rival in California. Both companies sell individual policies in the form of insurance, as well as provide care through health maintenance organizations, and both types of coverage are at issue.

State regulators announced investigations in the spring, when they learned of the suits through news reports.

Late Friday, a spokeswoman for the Department of Managed Health Care said the agency could take action against Blue Cross as early as this week. The agency has concluded that the company systematically violated the law by improperly canceling policies and failing to verify medical information on applications before issuing coverage.

Spokeswoman Lynne Randolph said the agency's action "is not a consent agreement. It is not something we are working out with the plan to come to a negotiated settlement on. We will be bringing a fine and bringing an action against them for violating the law."

A spokesman for Blue Cross said the company had no comment because it had not been officially notified of the agency's plans.

The company has denied any wrongdoing, as has Blue Shield. The agency's investigation of complaints against Blue Shield is ongoing.

The companies won't talk about individual cases such as that of the Shaeffers. But they say that they cancel policies upon finding misrepresentations in applications and that such actions safeguard the integrity of the individual insurance market.

The way Steve and Leslie Shaeffer saw it, their \$498 monthly premium was the price of peace of mind. The self-employed tile installer and stay-at-home mother wanted to make sure that they and their two children got whatever care they needed and that the bills would never bury them.

Two years ago, they bought a family health policy from a Blue Cross affiliate, BC Life & Health. Only a couple of months later, Selah's diagnosis — aggressive fibromatosis, an extremely rare and fast-growing tumor — put that policy to the test.

Initially, Blue Cross paid for her care. But when the bills surpassed \$20,000, it stopped. Then, after collecting the Shaeffers' premiums for most of a year, Blue Cross canceled Selah, saying her parents left key information out of their application for coverage.

The Shaeffers say that's not so. When Leslie filled out the application, the couple said, Selah was a healthy girl who hadn't seen a doctor in months. After submitting the document, Leslie said, she noticed a bump on Selah's chin, but doctors told her they didn't think it was serious.

It was not until doctors took a biopsy of the bump — almost two months later and weeks after the Blue Cross policy had taken effect — that the Shaeffers said they had any idea that Selah had something seriously wrong.

But the full scope of Selah's condition did not come into view for a few more weeks. That's when doctors, after nearly seven hours of surgery, told Steve and Leslie that the tumor had stealthily invaded much of the left side of Selah's mouth and jaw. Surgeons removed chunks of her jaw, mouth and throat wall in an effort to get it all and guard against a recurrence.

Blue Cross ultimately refused to pay for that operation. And it threatened to go after the couple for \$19,000 it said it had paid for Selah's treatment before canceling her.

The cancellation jeopardized the girl's care and plunged the family into the financial turmoil they had sought to avoid when they bought insurance.

The Shaeffers paid about \$25,000 of the bills by borrowing against the equity in their home and selling a truck Steve used for work. But bills totaling more than double that amount remain unpaid. The Shaeffers fear having to sell the English-style cottage Steve designed and helped build.

"You come out of one battle and you have another one in front of you," Steve said. "How are we going to come up with the money? It's a sickening feeling. It's 24 hours a day."

Health plans say such cancellations are necessary to guard against people lying on applications. The companies rely on the information contained in that document to determine who gets coverage and at what price.

"The reason there is a rescission policy is to prevent fraud," said Chris Ohman, chief executive of the California Assn. of Health Plans.

But according to the depositions of Blue Cross and Blue Shield employees, fraud has little to do with it.

A review of depositions and company documents produced for the lawsuits shows that the health plans routinely scrutinize medical records, back 10 years or more, when subscribers submit claims for certain conditions within two years of signing up for coverage.

If the health plans find information in the records that was absent from the application, they cancel, often without finding out whether the discrepancy was an intentional lie or an honest mistake, according to the

depositions.

Some consumer lawyers say that violates state law, which forbids companies from canceling coverage unless a policyholder was intentionally misleading.

Amy Dobberteen, enforcement chief for the Department of Managed Health Care, said the law was clear. Health plans "are not supposed to be waiting until they get a huge claim and then trying to find a way out of it," she said. After a claim comes in, they may cancel only for " 'willful misrepresentation.' Those words are plucked right out of the statute."

The health plans see it differently.

Blue Shield takes the position that the applicant's intent doesn't matter. "The contracts state clearly if anything in the application is false or incomplete, coverage may be rescinded," spokesman Tom Epstein said.

He pointed to a 1973 California Supreme Court ruling as the foundation for the position that intent to deceive is not necessary for cancellation.

Blue Cross' parent, Indianapolis-based WellPoint Inc., the nation's largest health benefits company, also cancels California subscribers whether or not they intended to mislead, and it believes the practice is lawful, said spokesman Robert Alaniz.

Consumer advocates said the practice makes a mockery of the purpose of health coverage.

"You think you have insurance, and then, after you get the treatment, you find out you really don't have insurance after all," said Claremont lawyer William Shernoff, who represents former policyholders in several lawsuits against Blue Cross and Blue Shield.

The law is on policyholders' side, said Bryan Liang, executive director of the Institute of Health Law at California Western School of Law in San Diego.

The 1993 statute barring cancellation without "willful misrepresentation" trumps the 1973 court decision, Liang said, adding that asserting an older ruling amounted to "trolling for anything that's going to support" the insurers.

The companies say premiums would increase if, before issuing coverage, they had to verify all the information applicants submitted or if they had to investigate all policies for fraud before canceling them.

Irvine lawyer Robert Scott, who represents the Shaeffers and several others in suits against Blue Cross and Blue Shield, said the current practice was a misguided effort to hold down costs.

"It's all about the money," he said.

So far, the regulatory record is on the health plans' side, however. Over the last two years, 289 policyholders complained to the Department of Managed Health Care that they had been improperly canceled. The agency ruled against policyholders in all but 10 to 20 cases. Those cases, which include some of the plaintiffs suing Blue Cross or Blue Shield, remain under investigation.

Agency spokeswoman Randolph could not say whether any of the old cases would be reopened, but she said pending complaints would be resolved. In addition, she said, the agency planned to give such

complaints a higher level of scrutiny in the future.

Dawn and Steve Foiles were left with \$100,000 in bills when Blue Cross terminated Dawn's coverage after authorizing back and neck operations. It accused her of failing to disclose a 1997 back surgery and refused to reconsider after the Foileses told the company that it had made a mistake.

A copy of her application supports her contention that she disclosed the operation, including the date and name, location and telephone number of the hospital where it was performed.

But the company's apparent error didn't stop physicians from demanding payment. The couple used almost all of an \$8,000 home equity credit line to pay some of them.

But, when one physician's collection agent threatened to file a report with credit agencies over a \$7,000 bill, the Riverside couple thought they had to sell their home and move in with Steve's mother in Idaho.

"I've never been that stressed out in all my life," Dawn said.

In a suit set for trial in November, Blue Shield is accused of canceling Steve Leyra almost two years ago for failing to disclose diabetes, a condition the Fullerton man doesn't even have.

In correspondence with Leyra and in depositions, Blue Shield employees said they came to that conclusion based on a doctor's note in a chart and a prescription for a drug used for diabetes. They acknowledged that they made the decision without discussing the medication or Leyra's condition with him or his physician.

Leyra contested the decision, and his physician wrote a letter saying he had never diagnosed diabetes. "I told them, you guys are making a mistake," Leyra said.

Blue Shield stood its ground.

The cancellation scuttled a planned operation to correct a minor leg problem that prevented Leyra from running long distances.

Without it, he had to abandon plans to enroll in a firefighters' academy. Now, even if he wins his case, Leyra said, at age 40 he is too old to resurrect his dream of being a firefighter.

Both Blues say they cancel only a small fraction of individual policies. But that may be all it takes to save big because only a small portion of policies produce high claims, said attorney Gerry Goldsholle, a former executive with Metropolitan Life in New York.

"Undoubtedly," Goldsholle said, "they had a consultant come in and say, 'You don't get killed by the little stuff; it's the big stuff that kills us. Let's go over the big claims with a fine-tooth comb.' "

Blue Cross parent WellPoint is among the most profitable health insurers. The company, which operates in 14 states, reported \$751 million in net income in the second quarter, a 34% year-over-year increase. Overall enrollment rose slightly to 34 million, the result in part of the sale of nearly 200,000 individual policies in the first half of the year.

Companies selling individual coverage in California can, and do, reject applicants for everything from asthma to athlete's foot. These so-called underwriting guidelines allow the companies to pass up a significant portion of the population — the people most likely to use medical services — or charge them higher premiums. As a result, compared with group plan members, individual policyholders tend to be younger, healthier and cheaper to cover.

For others, consumer advocates say, the only way to ensure that they have health coverage is to get it through an employer.

In the individual market, "the deck is really stacked in favor of the companies," said Jerry Flanagan, a healthcare advocate with the Foundation for Taxpayer and Consumer Rights. "They are cash cows."

Indeed. At Blue Cross, the profit margins on its BC Life & Health individual policies were nearly twice that of its group business, according to state Insurance Department figures from 2004.

Blue Shield — a nonprofit led by an executive who advocates universal coverage regardless of medical history — says it can't afford to break ranks with the industry practice of selecting the healthiest customers.

Otherwise, "we will end up with all the high-risk people," said Blue Shield spokesman Epstein.

High-risk is one way to describe Ariana and Natalie Nazaretyan, twins born almost three months prematurely. The girls, who are developmentally disabled, spend most of their playtime in therapy.

Blue Shield dumped them this year, before their first birthday, leaving their parents with bills approaching \$1 million. It said George and Narine Nazaretyan failed to report a miscarriage and plans to seek fertility treatment.

The Nazaretyans say the Blue Shield agent was fully aware of all of that.

Without insurance, Narine can't get an operation to remove thyroid cysts that make breathing difficult. George fears losing his furniture restoration business and the ability to pay for the girls' care on credit because Blue Shield hired a collection agent to recover more than \$98,000 it paid out before terminating coverage.

"Everything we've worked for, everything we have, can just go down the drain," he said.

After an inquiry by The Times, Blue Shield's Epstein said the company halted the collection effort.